

B.B. )  
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 Claimant-Respondent )  
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 v. )  
 )  
 SOUTHERN MAINTENANCE AND )  
 REPAIR )  
 )  
 and )  
 )  
 UNITED STATES FIRE INSURANCE ) DATE ISSUED: 09/24/2007  
 COMPANY )  
 )  
 Employer/Carrier- )  
 Petitioners )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Respondent ) ORDER

Claimant and the Director, Office of Workers' Compensation Programs, (the Director) have filed a motion to dismiss employer's appeal of the Supplemental Compensation Order, Declaration of Default (Case No. 06-184754) of District Director Charles D. Lee rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The district director issued a default order assessing a penalty under Section 14(f) of the Act, 33 U.S.C. §914(f), following an administrative law judge's award of benefits for a work-related left knee injury claimant sustained on February 23, 2001. In his Decision and Order, the administrative law judge found employer liable for payments of temporary partial disability compensation, based upon a loss of wage-earning capacity of \$984.56, from August 2, 2004, through October 23, 2005, and permanent partial disability benefits for a 50 percent loss under Section 8(c)(2), based on an average weekly wage of \$1,304.56, 33 U.S.C. §908(b), (c)(2); employer was held liable for 104 weeks of permanent partial disability commencing October 24, 2005, and the Special Fund was

liable for the remainder. 33 U.S.C. §908(f). The administrative law judge additionally ordered employer to pay interest and a penalty pursuant to Section 14(e) of the Act, 33 U.S.C. §914(e), on the temporary total disability compensation due claimant during the period January 9, 2003, through November 27, 2004, and he further found employer and the Special Fund entitled to a credit for the benefits previously paid to claimant as a result of a scheduled disability to his left lower extremity.

Following the filing of the administrative law judge's decision, claimant sent the district director a letter dated December 6, 2006, asserting that employer had not paid in a timely manner the total amount of benefits and interest due pursuant to the administrative law judge's decision; specifically, claimant averred that employer had paid only \$34,613.12 of the \$39,246.21 owed to him pursuant to the administrative law judge's Order. Accordingly, claimant sought a default order and the imposition of a 20 percent penalty payable by employer pursuant to Section 14(f). On February 8, 2007, the district director ordered employer to show cause as to why it failed to timely pay the amounts due claimant pursuant to the administrative law judge's Decision and Order. Employer responded that its failure to pay the amounts allegedly due claimant stemmed from the lack of a precise calculation by either the administrative law judge or the district director as to the amounts due claimant. In response, claimant averred that the administrative law judge's Order awarding benefits and interest did not require a calculation by the district director since that Order meticulously stated the benefits due claimant.

On March 23, 2007, the district director issued his Supplemental Compensation Order, Declaration of Default, wherein he found that the administrative law judge's Decision and Order did not specifically direct him to calculate the payments due claimant and that the evidence of record supports a conclusion that employer was delinquent in processing the payments due claimant. Accordingly, the district director ordered employer to pay a 20 percent penalty, pursuant to Section 14(f), on all compensation due but unpaid within 10 days from the service of the administrative law judge's Decision and Order by the district director.

Employer appeals this Order, asserting that the district director's Supplemental Compensation Order must be reversed. In response, the Director and claimant contend that the employer's appeal must be dismissed since the Board has no jurisdiction over the instant matter raised by employer on appeal. We grant the motion and dismiss the appeal.

Section 14(f) of the Act states:

If any compensation, payable under the terms of an award, is not paid within ten days after it becomes due, there shall be added to such unpaid

compensation an amount equal to 20 per centum thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in section 921 of this title and an order staying payment has been issued by the Board or court.

33 U.S.C. §914(f). Compensation payable under an order becomes due on the day the order is filed with the district director. 33 U.S.C. §921(a). Section 14(f) thus mandates that if an employer does not pay compensation within 10 days after it becomes due, then the employer is liable for an additional 20 percent of compensation as a penalty, which shall be paid at the same time as the compensation. 33 U.S.C. §914(f); *Reid v. Universal Maritime Serv. Corp.*, 41 F.3d 200, 28 BRBS 118(CRT) (4<sup>th</sup> Cir. 1994); *Lauzon v. Strachan Shipping Co.*, 82 F.2d 1217, 18 BRBS 60(CRT) (5<sup>th</sup> Cir. 1985). Section 18(a) of the Act provides that where an employer defaults in payment of compensation for 30 days after it is due and payable, a claimant may apply to the district director for a supplemental order declaring default, and he may then take a certified copy of that order to federal district court for enforcement thereof. In general, the district court determines whether the default order is in accordance with law and enters judgment on the matter. 33 U.S.C. §918(a); *Providence Washington Ins. Co. v. Director, OWCP*, 765 F.2d 1381, 17 BRBS 135(CRT) (9<sup>th</sup> Cir. 1985); 20 C.F.R. §702.372(a).

The Board does not have jurisdiction, pursuant to Section 21(b), 33 U.S.C. §921(b), to review the district director's order declaring employer to be in default of an amount due pursuant to Section 14(f) when employer has not paid the penalty.<sup>1</sup> Rather, pursuant to Section 18(a), 33 U.S.C. §918(a), jurisdiction over the enforcement and lawfulness of the district director's default order lies only with the district court. *Hanson v. Marine Terminals Corp.*, 307 F.3d 1139, 36 BRBS 63(CRT) (9<sup>th</sup> Cir. 2002); *Snowden v. Director, OWCP*, 253 F.3d 725, 35 BRBS 81(CRT) (D.C. Cir. 2001); *Pleasant-El v. Oil Recovery Co., Inc.*, 148 F.3d 1300, 32 BRBS 141(CRT) (11<sup>th</sup> Cir. 1998); *Sea-Land Serv., Inc. v. Barry*, 41 F.3d 903, 29 BRBS 1(CRT) (3<sup>d</sup> Cir. 1994); *Providence Washington*, 765 F.2d 1381, 17 BRBS 135(CRT); *Tidelands Marine Serv. v. Patterson*, 719 F.2d 126, 16 BRBS 10(CRT) (5<sup>th</sup> Cir. 1983). The Board and courts have recognized that jurisdiction will lie under Section 21 in cases involving Section 14(f) under limited circumstances, including where the district director declines to issue a default order or where the employer has paid the Section 14(f) penalty. *Barry*, 41 F.3d 903, 29 BRBS 1(CRT); *Brown v. Marine Terminals Corp.*, 30 BRBS 29 (1996) (*en banc*) (Brown and McGranery, JJ., concurring and dissenting); *Irwin v. Navy Resale Exch.*, 29 BRBS 77

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<sup>1</sup> Employer's reliance on *Jennings v. Sea-Land Serv., Inc.*, 23 BRBS 12 (1989), in support of its contention that the Board has jurisdiction in this case is misplaced, as employer in that case paid the Section 14(f) penalty assessed against it.

(1995); *McCrary v. Stevedoring Services of America*, 23 BRBS 106 (1989); *Matthews v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 440 (1989); *Lynn v. Comet Constr. Co.*, 20 BRBS 72 (1986); *Durham v. Embassy Dairy*, 19 BRBS 105 (1986). In those instances, as there is no default order to enforce, employer has no remedy under Section 18(a) and may proceed under Section 21. *Id.* The present case, however, does not fit these latter parameters. Rather, the record and pleadings before the Board do not establish that employer has paid the Section 14(f) penalty imposed by the district director. As such, the instant case raises issues regarding the enforcement and lawfulness of the district director's default order which are solely within the purview of the district court and thus beyond the scope of the Board's review authority under Section 21(b).<sup>2</sup> *See, e.g., Hanson*, 307 F.3d 1139, 36 BRBS 63(CRT). Consequently, we lack jurisdiction to consider employer's appeal of the district director's default order.<sup>3</sup> *Providence Washington*, 765 F.2d 1381, 17 BRBS 135(CRT).

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<sup>2</sup> The decisions of the United States Court of Appeals for the Fifth Circuit in *Lazarus v. Chevron USA, Inc.*, 958 F.2d 129, 25 BRBS 145(CRT) (5<sup>th</sup> Cir. 1992), and *Severin v. Exxon Corp.*, 910 F.2d 286 , 24 BRBS 21(CRT) (5<sup>th</sup> Cir. 1990), which are relied upon by employer, support this conclusion, as in each of these cases jurisdiction passed to the district court after employer was determined to be in default and thereafter declined to pay the awarded penalty to claimant.

<sup>3</sup> As the Board lacks jurisdiction, we do not reach employer's contentions regarding the unenforceability of the administrative law judge's Decision and Order.

Accordingly, employer's appeal of the district director's Supplemental Compensation Order, Declaration of Default is dismissed for lack of jurisdiction.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge