

BRB No. 10-0581

JAY D. NELSON)	
)	
Claimant-Respondent)	
)	
v.)	
)	
JONES STEVEDORING COMPANY)	DATE ISSUED: 09/14/2010
)	
Self-Insured)	
Employer-Petitioner)	ORDER

On July 8, 2010, employer filed a timely notice of appeal of the district director's Compensation Order Requiring Employer to Pay Medical Benefits (OWCP No. 14-0151447). On July 12, 2010, the Board acknowledged this appeal and assigned it the Board's docket number, BRB No. 10-0581. Employer has now filed a motion to hold its appeal in abeyance.

Claimant, on January 26, 2009, sustained an injury to his lower back while working for employer as a holdman. In a Compensation Order dated January 27, 2010, the district director approved, pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i), a settlement agreed to by the parties wherein claimant agreed, *inter alia*, to accept the sum of \$500 to settle all claims for past and future compensation, interest and penalties, and the sum of \$500 for future medical benefits. Additionally, the approved settlement agreement stated that employer agreed to pay and hold claimant harmless as to the outstanding medical expenses associated with his treatment with Drs. Milam and Kellogg.

A dispute subsequently arose regarding employer's responsibility for the payment of Dr. Milam's outstanding medical charges. Specifically, on May 5, 2010, Dr. Milam's office informed the district director that employer refused to pay the outstanding charges associated with claimant's treatment. Employer, in response, averred that it agreed to reimburse claimant for only those medical expenses payable under the Act, and that Dr. Milam's treatment of claimant was non-curative, excessive and repetitive. In a Compensation Order dated June 8, 2010, the district director rejected employer's interpretation of the approved settlement agreement, noting that the actual language of that agreement states that "employer agrees to pay and hold claimant harmless as to the outstanding medical

bills for treatment on account of this injury with Dr. Milam.” Accordingly, the district director ordered employer to pay the January 26, 2009 through January 27, 2010, outstanding medical charges of Dr. Milam. Employer appeals this order.

Employer has now filed a Motion for Stay of its appeal, informing the Board that, in an effort to resolve the disputed issues of fact presented in this case, the case has been referred to the Office of Administrative Law Judges for a formal hearing. Consequently, employer requests that its appeal be held in abeyance pending the issuance of a decision by an administrative law judge. Claimant has not responded to employer’s motion to stay its appeal.

Disputes over the terms of an approved settlement agreement, as well as disputes arising over whether the medical treatment obtained by claimant was reasonable and necessary, are factual matters within an administrative law judge’s authority to resolve. *See D.G. [Graham] v. Cascade General, Inc.*, 42 BRBS 77 (2008); *Weikert v. Universal Maritime Service Corp.*, 36 BRBS 38 (2002); *Jeschke v. Jones Stevedoring Co.*, 36 BRBS 35 (2002); *Hoey v. Owens-Corning Fiberglas Corp.*, 23 BRBS 71 (1989). In this case, employer has raised issues of fact regarding employer’s liability under the terms of the settlement agreement for outstanding medical charges incurred as a result of claimant’s treatment with Dr. Milam, and it has sought to resolve these issues by requesting a formal hearing before an administrative law judge. As the resolution of these disputed issues requires findings of fact by an administrative law judge, *see Graham*, 42 BRBS 77; *Durham v. Embassy Dairy*, 40 BRBS 15 (2006); *Sanders v. Marine Terminals Corp.*, 31 BRBS 19 (1997), we vacate the district director’s order and we dismiss employer’s appeal as jurisdiction over this case is properly before the Office of Administrative Law Judges.¹

¹ Any aggrieved party may file an appeal with the Board pursuant to 33 U.S.C. §921(a) after the administrative law judge issues a decision.

Accordingly, the district director's order is vacated. Employer's appeal, BRB No. 10-0581, is dismissed.²

NANCY S. DOLDER
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

² As a result of the dismissal of employer's appeal, employer's Motion for Stay and Motion for Extension of Time to file its petition for review and brief are rendered moot.