

SCOTT E. STAHLA)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
NORTHLAND SERVICES,)	DATE ISSUED: 09/26/2013
INCORPORATED)	
)	
and)	
)	
SEABRIGHT INSURANCE,)	
INCORPORATED)	
)	
Employer/Carrier-)	ORDER on MOTION
Respondents)	RECONSIDERATION

Claimant has filed a timely motion for reconsideration of the Board’s Decision and Order in the captioned case, *Stahla v. Northland Services, Inc.*, BRB No. 12-0517 (July 11, 2013). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Claimant seeks clarification regarding his entitlement to concurrent awards of permanent partial disability benefits for periods subsequent to March 2, 2007. Employer has not responded to this motion. We grant claimant’s motion and instruct the administrative law judge to additionally consider, on remand, claimant’s entitlement to concurrent awards.

In its Decision and Order, the Board affirmed the administrative law judge’s findings that: 1) claimant is entitled to temporary total disability benefits based on the fiscal year 2005 maximum compensation rate, \$1,047.16; 2) claimant is entitled to permanent total disability benefits from March 28, 2006 through September 30, 2006, based on the fiscal year 2006 maximum compensation rate, \$1,073.64; and 3) claimant is entitled to permanent total disability benefits from October 1, 2006 through March 1, 2007 based on the fiscal year 2007 maximum compensation rate, \$1,114.44. *See Roberts v. Director, OWCP*, 625 F.3d 1204, 44 BRBS 73(CRT) (9th Cir. 2010), *aff’d sub nom. Roberts v. Sea-Land Services, Inc.*, 132 S.Ct. 1350, 46 BRBS 15(CRT) (2012). The Board rejected claimant’s assertion that his compensation rates for any award of permanent partial disability benefits should be the maximum rate in effect at the time of each preceding period of total disability and held that the administrative law judge properly limited the maximum rate for permanent partial disability to that in effect for fiscal year 2005, \$1,047.16. *Id.* Nevertheless, the Board remanded the case for

clarification regarding the type of benefits to which claimant is entitled for the various periods he did and did not work after his return to employment on March 2, 2007. *Stahla*, slip op. at 4-6.

On reconsideration, claimant contends that if, as the Board held, he is entitled to permanent partial disability benefits for his unscheduled injuries after March 2, 2007, based on the maximum rate in effect for fiscal year 2005, \$1,047.16, he is entitled to receive a pro-rated portion of his scheduled permanent partial disability award for his left arm injury based on the difference between the maximum weekly compensation rate in effect at that time and \$1,047.16 pursuant to *I.T.O. Corp. of Baltimore v. Green*, 185 F.3d 239, 33 BRBS 139(CRT) (4th Cir. 1999). We agree.

An award under the schedule may not coincide with an award of total disability benefits. *Rupert v. Todd Shipyards Corp.*, 239 F.2d 273 (9th Cir. 1956); *Johnson v. Del Monte Tropical Fruit Co.*, 45 BRBS 27 (2011); *Byrd v. J.F. Shea Constr. Co.*, 18 BRBS 48 (1986), *aff'd mem.*, 802 F.2d 1483 (D.C. Cir. 1986) (table); *James v. Bethlehem Steel Corp.*, 5 BRBS 707 (1977). Rather, the schedule award lapses during total disability and resumes when total disability is terminated. *Bogden v. Consolidation Coal Co.*, 44 BRBS 43 (2010); *Turney v. Bethlehem Steel Corp.*, 17 BRBS 232, 235 n.4 (1985). When the claimant's scheduled and unscheduled injuries are each partially disabling, the claimant is entitled to concurrent awards provided the amount paid does not exceed the amount claimant would receive if he were permanently totally disabled. *I.T.O. Corp. of Baltimore v. Green*, 185 F.3d 239, 33 BRBS 139(CRT) (4th Cir. 1999); *Bogden*, 44 BRBS 43. If the concurrent partial awards exceed the total disability rate, the unscheduled award should be given priority and paid in full while the scheduled benefits should be pro-rated and paid out over a longer period of time until they are paid in full. *Bogden*, 44 BRBS 43; *Padilla v. San Pedro Boat Works*, 34 BRBS 49, 53 (2000); *see also Stevedoring Services of America v. Price*, 382 F.3d 878, 38 BRBS 51(CRT) (9th Cir. 2004), *cert. denied*, 544 U.S. 960 (2005).

Consequently, on remand, for periods of permanent partial disability subsequent to March 2, 2007, the administrative law judge should award claimant concurrent awards consisting of his unscheduled permanent partial disability award, to be paid at the maximum rate of \$1,047.16, plus a pro-rated portion of his scheduled award, so long as the total amount of the concurrent awards does not exceed the higher maximum rate in effect for permanent total disability. *Padilla*, 34 BRBS at 53.

Accordingly, claimant's motion for reconsideration is granted. 20 C.F.R. §802.409. In all other respects, the Board's prior decision, affirming in part and vacating in part the administrative law judge's decisions, is affirmed, and the case is remanded to the administrative law judge for further consideration consistent with these opinions.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge