

BRB No. 94-0219

MARIA NERANTZIS (Widow of)	
HARRY NERANTZIS))	
)	
Claimant-Respondent)	DATE ISSUED:
)	
v.)	
)	
HILTON HOTELS CORPORATION)	
)	
Self-Insured)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Amended Award of Death Benefits of Maria Borrero, District Director, United States Department of Labor.

Mark L. Schaffer (Ashcraft & Gerel), Washington, D.C., for claimant.

Stuart S. Manela and Brian D. Sullivan (Arent Fox Kintner Plotkin & Kahn) Vienna, Virginia, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Amended Award of Death Benefits (Case No. 40-148334) of District Director Maria Borrero 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.* (1982), as extended by the District of Columbia Workmen's Compensation Act, 36 D.C. Code §§501, 502 (1973)(the Act). The determinations of the district director must be affirmed unless they are shown to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *Sans v. Todd Shipyards Corp.*, 19 BRBS 24 (1986).

The decedent, Harry Nerantzis, was awarded permanent total disability benefits under the Act by Administrative Law Judge Aaron Silverman on January 10, 1984.¹ Mr. Nerantzis died on April 13, 1989. On October 5, 1990, District Director Floyd Goff issued an Award of Death Benefits in which he held the Special Fund liable for the payment of death benefits to claimant, and employer liable for claimant's funeral expenses. *See* 33 U.S.C. §909 (1982).² In 1993, the instant case was reviewed by the district director's office, at which time it was determined that the October 1990 Order was incorrect. On October 12, 1993, District Director Maria Borrero issued an Amended Award of Death Benefits, in which employer, rather than the Special Fund, was ordered to pay claimant death benefits from April 14, 1989, to October 7, 1993, and continuing, as well as funeral expenses. This appeal followed.

On appeal, employer contends that the district director's amended order constituted an untimely modification pursuant to Section 22 of the Act, 33 U.S.C. §922, inasmuch as employer had last voluntarily paid claimant death benefits on October 10, 1990. Employer also avers that, as it received no written notice that the October 1990 award would be amended until shortly before the amended award was issued by District Director Borrero, "(employer) has been deprived of all opportunity to raise the substantial legal and factual questions relating to Mrs. Nerantzis' continued eligibility for widow's death benefits under Section 9(e) of the (Act)." Emp. Brief at 7. Claimant responds, urging affirmance.

Employer initially contends that the district director's modification of the October 1990 award of death benefits is untimely. We disagree. As claimant was receiving continuing death benefits from the Special Fund pursuant to the initial award when the district director modified that award, such modification proceedings were timely. *See* 33 U.S.C. §922; 20 C.F.R. §702.373; *Intercounty Construction Corp. v. Walter*, 422 U.S. 1, 2 BRBS 3 (1975).

Employer next asserts that, as it did not receive notice of the district director's intent to modify the initial October 1990 award until shortly before the amended award was issued, its due process rights were violated. We agree. It is undisputed that employer did not receive timely notice of the district director's intent to modify the initial award of death benefits to hold employer liable for same and that, as a result, employer was deprived of the opportunity to either request a hearing or obtain information regarding claimant's status to receive such benefits. Accordingly, we hold that, as employer was not given an opportunity to address its potential liability for claimant's death benefits prior to the district director's modification of the initial award, employer was denied due process of law. *See Abbott v. Universal Iron Works, Inc.*, 24 BRBS 169, 171-172 (1991), *modifying in part, part on recon.*, 23 BRBS 196 (1990). In the instant case, employer avers that claimant's

¹There were no findings pertaining to any dependents made by the administrative law judge.

²Under the Act as amended in 1972 and as applicable to this claim, death benefits are payable to eligible survivors if the employee was permanently totally disabled at the time of a non-work-related death, as it appears is the situation in this case. *See Shea, S & M Ball Co. v. Director, OWCP*, 929 F.2d 736, 24 BRBS 170 (CRT)(D.C. Cir. 1991).

present marital status is unknown.³ Whether claimant is qualified to receive widow's benefits involves questions of fact; because Section 19(d) of the Act, 33 U.S.C. §919(d), provides that fact-finding authority rests with the administrative law judge, *see Toyer v. Bethlehem Steel Corp.*, 28 BRBS 347, 353 (1994)(McGranery, J., dissenting), employer may request that the case be forwarded to the Office of Administrative Law Judges for a formal hearing on this issue. Thus, because employer may seek a hearing on the issue of claimant's entitlement to continuing widow's benefits, we vacate the Amended Award of Death Benefits issued by the district director, and we remand this case to the district director for further proceedings as appropriate. *See* 20 C.F.R. §702.331.

Accordingly, the Amended Award of Death Benefits is vacated and this case is remanded to the district director for further proceedings consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

³Claimant apparently resides in Peroulades, Corfu, Greece.