

JOHN HARRISON	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
WASHINGTON AIR COMPRESSOR	)	
	)	
and	)	
	)	
ZURICH AMERICAN INSURANCE	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS,	)	
UNITED STATES DEPARTMENT OF	)	
LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Motion for Competency Examination, and Dismissing Claim, and the Order Denying Motion for Reconsideration of Christine McKenna, Administrative Law Judge, United States Department of Labor.

John Harrison, Washington, D.C., *pro se*.

Joseph C. Veith, III (Montedonico, Hamilton, & Altman, P.C.), Fairfax, Virginia, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Motion for Competency Examination, and Dismissing Claim, and the Order Denying Motion for Reconsideration (95-DCW-23, 95-DCW-24) of Administrative Law Judge Christine McKenna rendered on claims 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 *et seq.* (1973)(the Act). In an appeal by a claimant without representation, we will review the administrative law judge's decision to determine if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant filed two claims against employer and, following the issuance of an initial denial by the district director, the case was forwarded to the Office of Administrative Law Judges for a formal hearing pursuant to claimant's request.<sup>1</sup> The administrative law judge issued a Notice of Hearing on October 25, 1995, scheduling a formal hearing for February 12, 1996. In response, claimant filed with the administrative law judge a motion for reconsideration requesting that the claims be remanded to the district director because they were not ripe for adjudication as they were pending before the Board, and because the district director had not made an unspecified transcript available to the claimant. On December 7, 1995, the administrative law judge issued her Order Denying Motion for Reconsideration and Directing Claimant to Show Cause Why His Claim Should Not Be Dismissed. The administrative law judge specifically determined that claimant failed to set forth sufficient grounds for remanding the cases to the district director since claimant failed to identify with any particularity what documentation was withheld by the district director, or what steps he had taken to obtain this material, and because the Board had already dismissed claimant's appeals and thus, the claims were no longer pending before the Board. In addition, the administrative law judge ordered claimant to submit a statement to her by December 22, 1995, showing cause why his claims should not be dismissed for failure to state the type of relief being requested under the Act.<sup>2</sup> Moreover, given that claimant was not represented by counsel, the administrative law judge specified what claimant must provide in order for the administrative law judge to proceed on his claims.

---

<sup>1</sup>Prior to any adjudication of his claims by the administrative law judge, claimant filed a number of appeals before the Board, challenging certain correspondence which he received pertaining to his claims. In a series of Orders, the Board dismissed each of these four appeals, BRB Nos. 95-1374, 95-1460, 95-2096 and 95-1966, for lack of jurisdiction since none of the appealed letters represented a decision within the meaning of 20 C.F.R. §802.301. Claimant filed motions for reconsideration in three of these cases, BRB Nos. 95-1374, 95-1460 and 95-1966, which the Board denied.

<sup>2</sup>In her Order, the administrative law judge also acknowledged that claimant had failed to respond to her two separate requests for clarification as to the relief that claimant was requesting through the proceeding.

The administrative law judge then issued her Decision and Order Denying Motion for Competency Examination, and Dismissing Claim on February 1, 1996. Noting that claimant provided nothing in the way of clarification in response to her Show Cause Order dated December 7, 1995, the administrative law judge examined claimant's pre-hearing statement, Form LS-18, signed June 9, 1995, and found that it fails to state a claim upon which relief can be granted under the Act. Specifically, the administrative law judge found that claimant does not allege an injury arising in the course of employment. Accordingly, the claims were dismissed. The administrative law judge further denied claimant's motion that she undergo a competency examination, noting that no such relief exists under the Act. Claimant then filed a motion for reconsideration with the administrative law judge, who issued her Order Denying Motion for Reconsideration on April 2, 1996.

Claimant filed separate appeals of the administrative law judge's Order Denying Motion for Reconsideration and Directing Claimant to Show Cause Why His Claim Should Not Be Dismissed, the administrative law judge's Decision and Order Denying Motion for Competency Examination, and Dismissing Claim, and the administrative law judge's Order Denying Motion for Reconsideration. In its Order dated July 24, 1996, the Board acknowledged and addressed all of these appeals, assigning each a separate docket number, respectively BRB Nos. 96-606, 96-1161, and 96-887. The Board first dismissed claimant's appeal of the administrative law judge's Order Denying Motion for Reconsideration and Directing Claimant to Show Cause Why His Claim Should Not Be Dismissed, BRB No. 96-606, as interlocutory. The Board next dismissed claimant's appeal of the administrative law judge's Decision and Order Denying Motion for Competency Examination, and Dismissing Claim, BRB No. 96-1161, as premature, since claimant had already filed a motion for reconsideration of that decision with the administrative law judge. Lastly, the Board informed claimant that it would consider claimant's third appeal, BRB No. 96-887, as an appeal of both the administrative law judge's Decision and Order Denying Motion for Competency Examination, and Dismissing Claim, and the administrative law judge's Order Denying Motion for Reconsideration. Claimant subsequently filed a Motion for Reconsideration of the Board's Order.

In its Order dated November 6, 1996, the Board denied claimant's motion for reconsideration, noting that his appeals in BRB Nos. 96-606 and 96-1161 were properly dismissed as interlocutory and premature. In addition, the Board denied claimant's motion for Writ of Mandamus, as well as his request for copies of the docket sheets and records of his prior appeals in BRB Nos. 95-1374, 95-1460, 95-2096, and 95-1966. Lastly, the Board accepted claimant's Petition for Review as to BRB No. 96-887 and noted that it considers claimant's Motion for Written Argument as his brief in support of his Petition for Review. Consequently, claimant's appeal of the administrative law judge's Decision and Order Denying Motion for Competency Examination, and Dismissing Claim, and the administrative law judge's Order Denying Motion for Reconsideration, is presently before the Board.

On appeal, claimant generally asserts that the administrative law judge violated claimant's procedural rights by dismissing the claim without first providing claimant with an opportunity to have a hearing on his case. Employer responds, urging affirmance. Claimant has also filed a reply brief, reasserting his contentions on appeal.<sup>3</sup>

In the instant case, claimant was advised on several occasions by the administrative law judge regarding the information required for consideration of his claim and given the opportunity to show cause why his claim should not be dismissed after he failed to provide such information in a timely fashion. Claimant, however, repeatedly ignored the administrative law judge's requests, making absolutely no effort to indicate the basis for which he sought relief under the Act. Thus, claimant failed to prosecute his claim in a manner which would enable the administrative law judge to proceed with the merits of his claims. Rather, claimant has continually filed numerous motions before the administrative law judge and appeals before the Board generally asserting that his rights have been violated. In essence, claimant's actions in this case amount to an abuse of the administrative process. *See generally Harrison v. Barrett Smith, Inc.*, 24 BRBS 257 (1991), *aff'd mem. sub nom. Harrison v. Rogers*, No. 92-1250 (D.C. Cir. Mar. 19, 1993). Moreover, contrary to claimant's assertions, all of the administrative law judge's written decisions in the instant case have been executed in a timely manner which is not violative of any of claimant's procedural rights. Furthermore, the administrative law judge properly found that there is absolutely no evidence in this case to support the filing of claimant's claims. Specifically, at no time does claimant allege an injury, let alone one which occurred during the course of his employment with employer, which is a prerequisite to filing a claim for benefits under the Act. *See U.S. Industries/Federal Sheet Metal v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). In his LS-18 dated June 9, 1995, as well as in his handwritten statements to the Board, claimant alleges violations of his procedural and human rights by the district director and the administrative law judge. Whatever these allegations may be, they cannot be redressed by filing a claim under the Act. To allow further action in this case would be prejudicial to employer given the course of the proceedings. *Twigg v. Maryland Shipbuilding & Dry Dock Co.*, 23 BRBS 118 (1989). Consequently, we hold that the administrative law judge did not abuse her discretion by dismissing the instant claims.<sup>4</sup> *See Bomate v. Ford Motor Co.*, 761 F.2d 713, 714 (D.C. Cir. 1985); *Harrison*, 24 BRBS at 257; *Twigg*, 23 BRBS at 118.

---

<sup>3</sup>The Board acknowledges receipt of correspondence from claimant on December 9, 13 and 26, 1996, and accepts this as claimant's reply to employer's response brief.

<sup>4</sup>We also affirm the administrative law judge's rejection of claimant's motion that she undergo a competency examination as she correctly noted that no such relief exists under the Act.

Accordingly, the administrative law judge's Decision and Order Denying Motion for Competency Examination, and Dismissing Claim, and the Order Denying Motion for Reconsideration are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge