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|-------------------------------|---|--------------------|
| MACARIO FLORES                | ) |                    |
|                               | ) |                    |
| Claimant-Petitioner           | ) |                    |
|                               | ) |                    |
| v.                            | ) | DATE ISSUED:       |
|                               | ) |                    |
| NATIONAL STEEL & SHIPBUILDING | ) |                    |
| COMPANY                       | ) |                    |
|                               | ) |                    |
| Self-Insured                  | ) |                    |
| Employer-Respondent           | ) | DECISION AND ORDER |

Appeal of the Summary Decision and Order of Henry B. Lasky, Administrative Law Judge, United States Department of Labor.

Jeffrey Winter (Law Offices of Preston Easley), National City, California, for claimant.

Roy D. Axelrod (Littler, Mendelson, Fastiff, Tichy & Mathiason), San Diego, California, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Summary Decision and Order (91-LHC-2217, 91-LHC-2218) of Administrative Law Judge Henry B. Lasky 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). We must affirm the findings of fact and conclusions of law of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, on March 26, 1990, sustained a twisting injury to his back while in the course of his employment as a painter. In a Decision and Order dated March 26, 1992, Administrative Law Judge Alfred Lindeman awarded claimant temporary total disability compensation from March 28 through April 22, 1990. Thereafter, on April 30, 1992, Judge Lindeman denied claimant's petition for reconsideration.

Claimant subsequently sought modification of Judge Lindeman's Decision and Order pursuant to Section 22 of the Act, 33 U.S.C. §922. In seeking modification, claimant argued that

there was a mistake in a determination of fact as employer misrepresented the fact that claimant did not do very heavy work. On February 5, 1993, Administrative Law Judge Henry B. Lasky denied claimant's petition for modification, finding that "claimant has not shown nor even alleged why any alleged new evidence could not have been submitted at the original trial," that "[claimant] has not even alleged or shown any mistake of fact on the issues of credibility, medical opinion relied upon and causation," and that, accordingly, granting claimant's petition would not "render justice under the Act." Summary Decision and Order at 3.

On appeal, claimant challenges the administrative law judge's denial of his request for modification. Specifically, claimant refers to another injured painter with a disability precluding heavy work who was not allowed to return to work for employer and argues that employer can not have a double standard in what constitutes "very heavy work" for one painter but not another. Employer responds, urging affirmance of the administrative law judge's Summary Decision and Order.

Section 22 of the Act, 33 U.S.C. §922, provides the only means for changing otherwise final decisions; modification pursuant to this section is permitted based only upon a mistake of fact in the initial decision or a change in claimant's condition. *See Dobson v. Todd Pacific Shipyards Corp.*, 21 BRBS 174 (1988). In order to obtain modification for a mistake in fact, the modification must render justice under the Act. *McCord v. Cephas*, 532 F.2d 1377, 3 BRBS 371 (D.C. Cir. 1976). In the instant case, the administrative law judge concluded that, since claimant failed to allege or show any mistake in fact in Judge Lindeman's relying upon the opinions of Drs. Schwab and Fuller in determining that claimant's March 26, 1990 twisting injury was resolved upon his return to work on April 23, 1990, and, as claimant failed to allege why he could not have submitted this supportive evidence or testimony at the original hearing, it would not render justice under the Act to grant claimant's petition. As this finding is rational and in accordance with law, it is affirmed. *See generally General Dynamics Corp. v. Director, OWCP*, 673 F.2d 23, 14 BRBS 636 (1st Cir. 1982).

Accordingly, the administrative law judge's Summary Decision and Order is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge