

THOMAS CATHEY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SERVICE EMPLOYEES)	DATE ISSUED: 03/15/2013
INTERNATIONAL, INCORPORATED)	
)	
and)	
)	
INSURANCE COMPANY OF THE)	
STATE OF PENNSYLVANIA)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT OF)	
LABOR)	ORDER on MOTION
)	for RECONSIDERATION
Respondent)	

The Director, Office of Workers' Compensation Programs (the Director), has filed a timely motion for reconsideration in the captioned case, *Cathey v. Service Employees Int'l, Inc.*, 46 BRBS 69 (2012). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. No party has filed a response thereto.

In her motion, the Director requests that the Board delete language in the decision that indicates that the federal government's acceptance of employer's claim for reimbursement under Section 104 of the War Hazards Compensation Act (WHCA), 42 U.S.C. §1704, permanently relieves employer of its liability under the Defense Base Act, 42 U.S.C. §1651 *et seq.* (DBA). The Director asks the Board to clarify its statements to reflect that employer remains liable under the DBA and that the payment of benefits by the federal government is only for administrative purposes. The Director does not take issue with the Board's affirmance of the administrative law judge's decision granting employer's motion for summary decision. We grant the Director's motion for reconsideration and clarify the Board's decision. 20 C.F.R. §802.409.

To the extent the Board's decision states that an employer is relieved of liability for benefits upon having its application for reimbursement under the WHCA accepted, it is overbroad.¹ If an employer applies for reimbursement under the WHCA after having been held liable for a claimant's disability and/or medical benefits under the DBA, and the Division of Federal Employees' Compensation (DFEC) approves the employer's application, the DFEC may opt to reimburse the employer for future benefits as they are administered and paid out by the employer, or it may opt to administer the process itself and pay future benefits to the claimant directly. Either way, the employer remains a party to the case and remains primarily liable for the claimant's benefits under the DBA. If a dispute arises between the DFEC and the claimant regarding his entitlement or the employer's liability, the dispute is resolved under the DBA. At no time is the employer entirely "relieved" of its liability; rather, until such time as, and if, the DFEC transfers the case back to the employer, the employer is relieved only of its current responsibility to administer and pay the claimant's benefits. 42 U.S.C. §§1704, 1711; 20 C.F.R. §§61.2, 61.100 *et seq.*²

Accordingly, the Director's motion for reconsideration is granted and the Board's decision is clarified as stated herein. The Board's decision is otherwise affirmed. 20 C.F.R. §802.409.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

¹Specifically, references to employer having been "relieved" of liability are found at 46 BRBS at 70, paragraphs two and five, at 46 BRBS at 71, paragraph three, and at 46 BRBS at 72, paragraph one. Moreover, 20 C.F.R. §61.100(c) does not relieve employer of liability under the DBA, 46 BRBS at 71.

²We also note that the Director correctly avers that in cases involving reimbursement requests from employers, as here, Section 101 of the WHCA, 42 U.S.C. §1701, and 20 C.F.R. §61.200(b) do not apply.