BRB No. 13-0594

YOUKHANA YOUNAN	)	
	)	
Claimant	)	
	)	
v.	)	
	)	
GLOBAL LINGUIST SOLUTIONS	)	
	)	
and	)	
	)	
ZURICH AMERICAN INSURANCE COMPANY	)	DATE ISSUED: Aug. 19, 2014
	)	
	)	
Employer/Carrier-Respondents	)	
	)	
Dr. DIKLA SHIDLOV-COHEN and Dr. L. ELENA HERNANDEZ	)	
	)	
	)	
Putative Intervenors-Petitioners	)	DECISION and ORDER

Appeal of the Order Approving Stipulations, Remanding Claim, Setting Time to File Petition for Attorney's Fees and Costs and Denying Motion to Intervene, the Order Denying Reconsideration on Motion to Intervene and for Fees, and the Order on Renewed Reconsideration on Motion to Intervene and for Fees of William Dorsey, Administrative Law Judge, United States Department of Labor.

Lisa Wilson (Laughlin, Falbo, Levy & Moresi, LLP), San Francisco, California, for employer/carrier.

Matthew J. Witteman (Law Office of Matthew J. Witteman), San Rafael, California, for putative intervenors.

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

PER CURIAM:

Putative Intervenors (the doctors)[1] appeal the Order Approving Stipulations, Remanding Claim, Setting Time to File Petition for Attorney's Fees and Costs and Denying Motion to Intervene, the Order Denying Reconsideration on Motion to Intervene and for Fees, and the Order on Renewed Reconsideration on Motion to Intervene and for Fees (2012-LDA-00433) of Administrative Law Judge William Dorsey 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.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). The administrative law judge's discretionary determinations will be upheld unless the challenging party establishes they are arbitrary, capricious, based on an abuse of discretion, or not in accordance with law. *See generally National Steel & Shipbuilding Co. v. U. S. Dep't of Labor*, 606 F.2d 875, 11 BRBS 68 (9th Cir. 1979); *Armani v. Global Linguist Solutions*, 46 BRBS 63 (2012); *Tignor v. Newport News Shipbuilding & Dry Dock Co.*, 29 BRBS 135 (1995).

Claimant sustained work-related injuries in the course of his employment in Iraq. After his claim was transferred to the Office of Administrative Law Judges, the doctors alleged that employer was not paying for their treatment of claimant's work injuries. The district director's office scheduled, and then cancelled, an informal conference on this issue; the claims examiner stated that the issues concerning medical benefits were among those listed for resolution by the administrative law judge.

Thereafter, employer apparently paid some of the medical bills in question upon receipt of an itemized statement from claimant's attorney. *See* June 12, 2013 letter from Mr. Birnbaum to Judge Dorsey. Believing that the issue of unpaid medical benefits was largely resolved, on June 25, 2013, claimant and employer submitted the following stipulations of fact to the administrative law judge: claimant was hired as an Arabic linguist in Iraq in December 2008; on October 10, 2011, he slipped and fell and suffered injuries to his back and left elbow; claimant suffered cumulative trauma through his last day of work, November 3, 2011, to his back, neck, upper left extremity, and left knee, and he also suffers from work-related headaches and post-traumatic stress disorder; claimant has been temporarily totally disabled since October 26, 2011; claimant's psychological injury has not reached maximum medical improvement; claimant's back and neck conditions reached maximum medical improvement on January 29, 2013; claimant cannot return to his usual work; an impairment rating for claimant's left upper extremity is pending; employer voluntarily paid claimant temporary total disability benefits commencing October 26, 2011; claimant is entitled to medical benefits for the work-related conditions and he will provide itemized invoices and statements to

[1] Dr. Shidlov-Cohen has been claimant's psychologist since 2012, when she began treating him for post-traumatic stress disorder. Dr. Hernandez temporarily treated claimant for this condition while Dr. Shidlov-Cohen was on maternity leave.

employer; employer "will pay, adjust, or litigate any outstanding medical bills" and/or claimant's claims for reimbursement for out-of-pocket expenses he paid; claimant's counsel, Mr. Birnbaum, is entitled to an attorney's fee payable by employer. Stipulations at 1-3. Meanwhile, the doctors had hired an attorney on June 6, 2013, and had filed a motion to intervene in claimant's case on June 12, 2013 in order to obtain their unpaid medical fees.

The administrative law judge approved the parties' stipulations in an Order dated June 26, 2013. In the same order, he denied the doctors' motion to intervene "without prejudice to them being able to file an appropriate claim" with the district director. The administrative law judge cancelled the hearing and remanded the case to the district director. The doctors filed a motion for reconsideration of the order remanding the case and denying their motion to intervene, and their attorney, Mr. Witteman, filed an application for an attorney's fee of $6,600. The administrative law judge denied the doctors' motion for reconsideration and counsel Witteman's leave to file a petition for an attorney's fee.[2] The administrative law judge explained that there was no dispute that the medical services were rendered for treatment of claimant's work injuries. As only a "billing" dispute relating to the amount of medical benefits owed remained, the administrative law judge stated it was appropriate, as he had instructed in his first Order, for the doctors to first present their dispute regarding non-payment to the district director, citing 20 C.F.R. §§702.413-702.414(c). Thereafter, he stated, if a dispute remained, it would it be appropriate for him to hold a hearing. 20 C.F.R. §702.415. The doctors filed a second motion for reconsideration and a second motion for leave to file a petition for an attorney's fee. The administrative law judge summarily denied the motions. The doctors appeal the administrative law judge's orders denying their motion to intervene. Employer responds, urging affirmance of all the administrative law judge's orders; the doctors filed a reply brief.

The doctors contend the administrative law judge erred in denying their motion to intervene, pursuant to Federal Rule of Civil Procedure 24. They argue that, "given the longstanding, repetitive, and egregious failure" of employer to pay their medical bills, they were entitled to intervene before the administrative law judge in order to secure payment of their bills. The doctors note that the district director's office had previously rebuffed their efforts to bring their claim before that office. Thus, they assert they were given conflicting directives and that the administrative law judge should have permitted them to intervene.[3] *See* Fed. R. Civ. P. 24.

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[2] Despite this denial, counsel Witteman filed a revised fee petition for over $13,000 with the administrative law judge on November 1, 2013.

[3] In support of their appeal, the doctors have filed a motion for the Board to take judicial notice of certain documents and facts. Employer has responded, urging denial of

Rule 24 of the Federal Rules of Civil Procedure provides for two types of intervention: an intervention as of right[4] and a permissive intervention.[5] Fed. R. Civ. P. 24.[6] We reject the doctors' contention that the administrative law judge erred in denying their petition to intervene. The doctors' interest is their entitlement to be paid for medical services rendered to claimant for his work-related injuries; that interest is derivative of claimant's entitlement to medical benefits. *Hunt v. Director, OWCP*, 999 F.2d 419, 27 BRBS 84(CRT) (9th Cir. 1993). If claimant's claim for medical benefits is successful, employer is liable for medical fees, within the constraints of the Act. *See* 33 U.S.C. §907; 20 C.F.R. §702.413. In this case, employer stipulated it is liable for medical treatment of the kind supplied by the doctors. *See* Stipulations 4, 14. Having disposed of the factual disputes between claimant and employer by virtue of accepting the stipulations, the administrative law judge remanded the case to the district director. There was no showing by the doctors that any issues remained that only the

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the motion. The doctors' purpose for requesting that the Board take judicial notice of certain documents obtained from counsel Birnbaum's file appears to be solely to demonstrate that employer did not pay the bills for medical services in a timely manner. We acknowledge the doctors' position; however, it is unnecessary for the Board to take judicial notice of the documents. 33 U.S.C. §923(a). Therefore, we deny the motion.

[4] An intervention as of right is permitted if the application is timely, there is an interest in the property or transaction of the litigation which may be impaired by the disposition of the matter, and the applicant's interest is not adequately represented by an existing party. *McDonald v. Means*, 300 F.3d 1037 (9th Cir. 2002); *Cnty. of Orange v. Air California*, 799 F.2d 535 (9th Cir. 1986); Fed. R. Civ. P. 24(a). Review of the denial of a motion to intervene as of right is de novo, except for the issue of timeliness which is reviewed for an abuse of discretion. *NAACP v. New York*, 413 U.S. 345 (1973); *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893 (9th Cir. 2011); *Cnty. of Orange*, 799 F.2d 535.

[5] A permissive intervention may be granted if there is a timely motion and a common question of law and fact with the main action, and if the intervention will cause no undue delay or prejudice to the original parties' rights. *Beckman Indus. v. Int'l Ins. Co.*, 966 F.2d 470 (9th Cir.), *cert. denied*, 506 U.S. 868 (1992); Fed. R. Civ. P. 24(b). The denial of a motion for permissive intervention is reviewed for an abuse of discretion. *Perry v. Schwarzenegger*, 630 F.3d 898 (9th Cir. 2011); *Cnty. of Orange v. Air California*, 799 F.2d 535 (9th Cir. 1986).

[6] The Federal Rules of Civil Procedure apply to administrative law judge proceedings under the terms of 29 C.F.R. §18.1. *Adams v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 78 (1989).

administrative law judge was empowered to resolve or that, once the case was remanded to the district director, their right to pursue payment of their bills was limited by the administrative law judge's Order accepting the parties' stipulations.[7] Indeed, the administrative law judge correctly stated that disputes about the amount of medical bills should be brought before the district director, 20 C.F.R. §702.413, and claimant stipulated that he would provide itemized invoices prepared by each medical provider to facilitate the payment of the fees. *See* Stipulation 15. Because the doctors did not establish that their interests would be impaired absent their intervention before the administrative law judge, we reject their argument that the administrative law judge erred in denying their motion to intervene as of right.[8] *See McDonald v. Means*, 300 F.3d 1037 (9th Cir. 2002); Fed. R. Civ. P. 24(a).

Similarly, we reject the doctors' assertion that they should have been granted permissive intervention. As we have stated, once the parties stipulated that claimant's injuries are work-related and that employer is liable for medical benefits, there were no remaining factual disputes regarding the compensability of any medical treatment or the necessity or reasonableness of any particulate treatment. Thus, there were no issues requiring adjudication. Contrary to the doctors' contention, the decision in *Hunt*, 999 F.2d 419, 27 BRBS 84(CRT), does not compel the conclusion that the administrative law judge should have permitted them to intervene in this case.[9] In *Hunt*, two doctors continued to treat the claimant after employer ceased paying disability and medical benefits on the ground that the claimant was not disabled and required no additional treatment for his work injury. These doctors obtained their own counsel and intervened in the proceedings on claimant's claim to protect their interest in being paid for their services. The administrative law judge adjudicated the claim, awarded the claimant

[7] Although the doctors consider it one of two conflicting directives, by remanding the case, the administrative law judge resolved the dilemma faced by the doctors as to where they should raise their payment issues. They filed claims forms with the district director on July 1, 2013.

[8] The doctors assert that, "if nothing else," the administrative law judge's order impedes their right to protect their right to an attorney's fee. Drs.' Brief at 8. We reject this assertion. The purpose of intervention is to protect an interest that would be impaired absent the movant's involvement. An attorney's fee may be generated in protecting that interest; however, on the facts presented here, "protection" of an alleged right to an attorney's fee cannot, alone, be the basis for the intervention.

[9] Neither the Board's underlying decision in *Bjazevich v. Marine Terminals Corp.*, 25 BRBS 240 (1991), nor the court's decision in *Hunt*, describes the circumstances of the doctors' intervention in that case.

disability benefits, and held employer liable for medical benefits, including those provided by the doctors who intervened. The United States Court of Appeals for the Ninth Circuit held that the doctors' attorney was entitled to an attorney's fee payable by employer, *see* 33 U.S.C. §§9097(d)(3), 928(a), and that the doctors are entitled to interest on their unpaid bills. However, it does not follow that the administrative law judge abused his discretion by denying the motion to intervene in this case. Unlike *Hunt*, where the employer contested the compensability of the claim and the necessity of the claimant's continued medical treatment, which required that the administrative law judge fully adjudicated the claim, employer here stipulated to claimant's entitlement to medical treatment for his work-related injuries. Upon approving the stipulations in this case, the administrative law judge properly determined there were no remaining factual issues, medical or otherwise, for him to address, thus obviating the need for the doctors to intervene before the administrative law judge.[10] The doctors are not without recourse, as the administrative law judge properly informed them that they can raise the issue of non-payment with the district director. 20 C.F.R. §§702.413-702.417 (disputes over the amounts of the medical bills and/or the prevailing community rates therefor are investigated by the district director's office);[11] *see generally Potter, et al v. Electric Boat Corp.*, 41 BRBS 69 (2007); *Weikert v. Universal Maritime Service Corp.*, 36 BRBS 38 (2002). Therefore, we affirm the administrative law judge's denial of the doctors' motion to intervene, as the doctors have not established an abuse of the administrative law judge's discretion. *See Perry v. Schwarzenegger*, 630 F.3d 898 (9th Cir. 2011). Thus, we also affirm the administrative law judge's denial of the doctors' motions for reconsideration and the denial of the doctors' attorney's motion for leave to file a petition for an attorney's fee.[12]

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[10] We reject the doctors' contention that they raised before the administrative law judge a factual issue of whether they are entitled to interest on delayed payments for medical services. This is not a factual issue; interest may be assessed against the employer on overdue medical expenses, whether reimbursement is owed to the provider or to the employee. *Hunt v. Director, OWCP*, 999 F.2d 419, 27 BRBS 84(CRT) (9th Cir. 1993); *Ion v. Duluth, Missabe & Iron Range Ry. Co.*, 31 BRBS 75 (1997). Any amounts due as interest are inextricably tied to payments on which the interest is due; that amount can be calculated by the district director.

[11] As the administrative law judge properly noted, the parties are entitled to a formal hearing if there are unresolved issues following proceedings before the district director. *See* 20 C.F.R. §§702.316, 702.415.

[12] Because the issue of the payment of medical benefits is one that is properly before the district director, and because *Hunt* establishes that an employer may be held liable for a doctor's attorney's fee, if the district director determines that counsel Witteman provided services that were reasonable and necessary for obtaining the doctors'

Lastly, we discern legal error on the face of the administrative law judge's decision in that the administrative law judge failed to enter an order awarding benefits to claimant in accordance with the stipulations. Section 19(c) of the Act, 33 U.S.C. §919(c), and its implementing regulation, 20 C.F.R. §702.348, specifically require that an administrative law judge's order must include an award or denial of benefits. The Board has held that an order based on the parties' stipulations must include a specific award to claimant. *Mitri v. Global Linguist Solutions*, __ BRBS __, BRB No. 13-0497 (June 13, 2014); *Luttrell v. Alutiiq Global Solutions*, 45 BRBS 31 (2011); *Aitmbarek v. L-3 Communications*, 44 BRBS 115 (2010); *Davis v. Delaware River Stevedores, Inc.*, 39 BRBS 5 (2005). Therefore, we remand the case for the administrative law judge to enter an award of benefits in accordance with Section 19(c) of the Act.

Accordingly, we affirm the administrative law judge's denial of the petitions to intervene and for an attorney's fee for the doctors' counsel. We remand this case for the administrative law judge to enter an Order awarding claimant benefits pursuant to the parties' stipulations.

SO ORDERED.

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BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

medical fees from employer, the district director may award the doctors an attorney's fee despite the fact that the services were rendered while the case was before the administrative law judge. *See Lewis v. Todd Pacific Shipyards Corp.*, 30 BRBS 154, 160 (1996).