

BRB No. 13-0312

NAZER A. HAMIDZADA)
)
 Claimant-Respondent)
)
 v.)
)
 MISSION ESSENTIAL PERSONNEL)
)
 and)
)
 ZURICH AMERICAN INSURANCE) DATE ISSUED: June 26, 2014
 COMPANY)
)
 Employer/Carrier-)
 Petitioners)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
) ORDER on
 Respondent) RECONSIDERATION

Claimant has filed a timely motion for reconsideration of the Board's Decision and Order in *Hamidzada v. Mission Essential Personnel*, BRB No. 13-0312 (Mar. 21, 2014) (unpub.). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Employer responds, urging the Board to reject claimant's motion.

In its decision, the Board vacated the administrative law judge's average weekly wage calculation, which was based solely on claimant's overseas earnings. The administrative law judge had applied the Board's decisions in *Proffitt v. Serv. Employers Int'l, Inc.*, 40 BRBS 41 (2006) and *K.S. [Simons] v. Serv. Employees Int'l, Inc.*, 43 BRBS 136 (2009) (*en banc*), *aff'g on recon.* 43 BRBS 18 (2009). As the district court had vacated the Board's decision in *Simons*, see *Serv. Employees Int'l, Inc. v. Director, OWCP*, Civ. Act. No. H-11-01065, 2013 WL 943840 (S.D. Tex. Mar. 11, 2013), shortly before the administrative law judge issued his decision, the Board remanded the case for the administrative law judge to determine claimant's average weekly wage unconstrained by the Board's *Simons* decisions.

In his motion for reconsideration, claimant contends the Board erred in stating that the administrative law judge felt constrained to apply the Board's decisions in *Simons* and *Proffitt*. Claimant thus contends that remand is unnecessary because the administrative law judge already exercised his discretion and determined that the facts of this case are sufficiently similar to *Proffitt* such that claimant's average weekly wage should be based solely on his overseas earnings.

The arguments raised by claimant in his motion for reconsideration were fully addressed and rejected by the Board in its initial Decision and Order. See *Hamidzada*, slip op. at 3, 5. Therefore, we deny his motion for reconsideration and affirm the Board's decision.

Accordingly, claimant's motion for reconsideration is denied. 20 C.F.R. §802.409. The Board's decision is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge