BRB Nos. 00-838,
00-838A and 00-838B

JOSEPH D. WEBER, III	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
S.C. LOVELAND COMPANY	)	
	)	
Employer-Respondent	)	
Cross-Petitioner A	)	
	)	
and	)	
	)	
AETNA CASUALTY AND SURETY COMPANY	)	DATE ISSUED: May 17, 2001
	)	
Carrier-Respondent	)	
Cross-Petitioner B	)	
	)	
and	)	
	)	
CHUBB INSURANCE COMPANY	)	
	)	
Carrier-Petitioner	)	
Cross-Respondent B	)	
	)	
and	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Upon Remand of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Jane G. O'Donnell (Deasey, Mahoney & Bender, Ltd.), Philadelphia,

Pennsylvania, for claimant.

Michael Huber (Freeman, Barton, Huber & Sacks, P.C.), Haddonfield, New Jersey, for employer.

John M. Sartin, Jr. (Cornelius, Sartin & Murphy), New Orleans, Louisiana, for Aetna Casualty & Surety Company.

David R. Kuntz (David Robertson Kuntz & Associates), Philadelphia, Pennsylvania, for Chubb Insurance Company.

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

PER CURIAM:

Employer, Aetna Casualty and Surety Company (Aetna), and Chubb Insurance Company (Chubb) each appeal the Decision and Order Upon Remand (1990-LHC-1275) of Administrative Law Judge Paul H. Teitler 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 administrative law judge's findings of fact and conclusions of law 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).

This is the second time this case has come before the Board. The facts are not in dispute. On May 3, 1986, while working for employer as a field superintendent, claimant injured his back in the port of Kingston, Jamaica, when he was walking on the catwalk on employer's barge, and he slipped and fell. Claimant was hospitalized in Jamaica and later flown back to the United States. Though claimant attempted to return to work for a few days in 1987, it is undisputed that claimant is permanently totally disabled as a result of the May 1986 injury. Chubb has paid claimant medical benefits in the amount of $550,335.79 and workers' compensation payments in the amount of $231,880.67, under Pennsylvania law pursuant to the Foreign Voluntary Workers' Compensation policy purchased by employer. From May 3, 1986, through February 18, 1989, employer paid claimant his salary in contemplation of its potential liability under the Jones Act regarding claimant's claim for lost wages, and claimant signed his compensation checks over to employer.

Claimant's usual job included making repairs, cleaning and painting employer's vessel, loading and unloading cargo, and transferring people to different jobs. Claimant

testified that 90 to 95 percent of his work occurred within the United States, and the remaining time was spent in other countries, including Canada, Mexico, Columbia, Costa Rica, Venezuela, Cuba, and Jamaica. On the day of his injury, claimant was sent to Jamaica to discharge a vessel's grain cargo, which had been loaded in New Orleans, Louisiana.

Claimant brought an action in the United States District Court for the Eastern District of Pennsylvania under the Jones Act, 46 U.S.C. §688 *et seq.* In an Order dated March 18, 1989, Judge William Ditter, Jr., determined that the Jones Act did not apply and granted summary judgment in favor of employer. The judge found that claimant is an "employee" under Section 2(3) of the Longshore Act, 33 U.S.C. §902(3), and not a Jones Act seaman. Cl. Ex. 1. Following the dismissal of the Jones Act case, employer continued to pay claimant his salary in appreciation of claimant's past services until June 30, 1994.[1]

In his initial decision, the administrative law judge found, and the parties do not dispute, that claimant meets the status requirement of Section 2(3) of the Act. However, the administrative law judge determined that "navigable waters of the United States," pursuant to Section 3(a) of the Act, 33 U.S.C. §903(a), did not extend to the territorial waters of another nation. As claimant's injury occurred in the territorial waters of Jamaica, the administrative law judge concluded that claimant did not meet the Section 3(a) situs requirement, and he denied claimant benefits.

On appeal, the Board reversed the administrative law judge's determination that claimant's injury did not occur on a site covered under the Act, and held that coverage under the Longshore Act extends to claimant who was injured in the port of Kingston, Jamaica. The Board remanded the case for the administrative law judge to address Chubb's contention regarding its right to reimbursement from Aetna, and employer's entitlement to relief under Section 8(f) of the Act, 33 U.S.C. §908(f).[2] *Weber v. S.C. Loveland Co.*, 28 BRBS 321

[1]On October 12, 1993, employer filed for bankruptcy, and subsequent to a final decree on October 27, 1995, a new company was formed, Loveland Holdings, which purchased the name S.C. Loveland and has continued employer's business.

[2]As an initial matter, the Board affirmed the administrative law judge's finding that

(1994).

On remand, the administrative law judge determined that claimant's injury is covered by the Act, pursuant to the Board's decision in this matter. Decision and Order Upon Remand at 6. The administrative law judge next found that the longshore endorsement contained in the insurance policy issued by Aetna does not provide coverage for claimant's injury, as it limits coverage only to work performed in the states designated therein and does not cover injuries extending beyond the borders of the United States. *Id.* at 12. By contrast, the administrative law judge found that the insurance policy issued by Chubb did cover claimant's injury, as no exclusion for longshore benefits is contained in Coverage A of that policy. Accordingly, the administrative law judge concluded that Chubb is not entitled to reimbursement from Aetna, but found that pursuant to Section 14(j) of the Act, 33 U.S.C. §914(j), employer is entitled to reimbursement from Chubb for the payments employer made from May 3, 1986, through February 18, 1989, under the assumption that it would be reimbursed by its Jones Act carrier. *Id.* at 13-15.

On appeal, employer requests that the Board reverse its prior decision in this case and hold that claimant's injury did not occur on a covered situs under Section 3(a) of the Act. BRB No. 00-838A. Aetna also appeals, supporting employer's contention that the Act should not extend to a worker, such as claimant, injured in foreign territorial waters or in a foreign port. BRB No. 00-838B. Chubb and claimant respond, asserting that the Board should reaffirm its previous decision in the instant case in accordance with the law of the case doctrine. Chubb also appeals, contending that the administrative law judge erred in finding it, and not Aetna, liable for claimant's disability compensation. Chubb also asserts that the administrative law judge's order failed to reference the liability of the Special Fund pursuant to Section 8(f) of the Act. BRB No. 00-838. Employer and Aetna respond, urging affirmance of the administrative law judge's determination that Aetna is not liable as the responsible carrier. Employer, however, agrees that the Director, Office of Workers' Compensation Programs (the Director), has stipulated that the Special Fund is liable for compensation payments as of May 2, 1994.

Coverage / Law of the Case

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employer was not collaterally estopped from raising the situs issue, holding that since situs was not a necessary determination in the district court's determination that claimant was not a seaman but was a "maritime employee" under the Act, the prerequisites to the application of collateral estoppel are missing. *Weber v. S.C. Loveland Co.*, 28 BRBS 321, 325 (1994).

The Board has held that it will adhere to its initial decision when a case is before it for a second time unless there has been a change in the underlying factual situation, intervening controlling authority demonstrates the initial decision was erroneous, or the first decision was clearly erroneous and to let it stand would produce a manifest injustice. *See Jones v. U.S. Steel Corp.*, 25 BRBS 355 (1992); *Williams v. Healy-Ball-Greenfield*, 22 BRBS 234 (1989) (Brown, J., dissenting). For the reasons that follow, we conclude that the contentions of employer and Aetna do not fall within any of the exceptions to the law of the case doctrine, and, accordingly, we shall apply the doctrine to the Board's previous holding that claimant's injury occurred on a covered situs. First, no party contends there has been a change in the underlying factual situation in this case. Additionally, a review of the Board's previous decision reveals a thorough discussion of the law and policy considerations on this issue, producing no evidence of clear error, even in light of intervening law.

In its initial decision, the Board discussed cases which extend the Act's coverage to include injuries occurring on the high seas. *See Cove Tankers Corp. v. United Ship Repair*, 683 F.2d 38, 14 BRBS 916 (2d Cir. 1982), and *Reynolds v. Ingalls Shipbuilding Div., Litton Systems, Inc.*, 788 F.2d 264, 19 BRBS 10(CRT) (5th Cir. 1986), *cert. denied*, 479 U.S. 885 (1986). It specifically addressed the decision in *Kollias v. D & G Marine Maintenance*, 29 F.3d 67, 28 BRBS 70(CRT) (2d Cir. 1994), *cert. denied*, 513 U.S. 1146 (1995), wherein the United States Court of Appeals for the Second Circuit held that the term "navigable waters" includes the high seas without qualification. *See Weber*, 28 BRBS at 327. Looking to other federal admiralty statutes for guidance, such as the Jones Act and the Death on the High Seas Act (DOHSA), the Board noted that cases decided under those statutes established a trend in admiralty law toward extending coverage to persons injured on foreign territorial waters, as the term "high seas" as used in DOHSA was not meant to exclude foreign territorial waters, *see Howard v. Crystal Cruises, Inc.*, 1992 AMC 1645, 1648 (1992), *aff'd*, 41 F.3d 527 (9th Cir. 1994), *cert. denied*, 514 U.S. 1084 (1995); *Mancuso v. Kimex, Inc.*, 484 F.Supp. 453, 455 (S.D. Fla. 1980), and the Jones Act is applicable to a seaman injured or killed in foreign territorial waters or in a foreign port, *see Ivy v. Security Barge Lines, Inc.*, 606 F.2d 524, 528 (5th Cir. 1979) (*en banc*), *cert. denied*, 446 U.S. 956, *reh'g denied*, 448 U.S. 912 (1980); *McClure v. United States Lines Co.*, 386 F.2d 197 (4th Cir. 1966). *Weber*, 28 BRBS at 329-330. Thus, in view of developing case law, as well as the policy concern for providing uniform coverage and protection for American workers working in foreign waters when all contacts except the site of injury are with the United States, the Board held that the Act extends to cover claimant's injury in the port of Kingston, Jamaica. *Weber*, 28 BRBS at 333.

Our review of intervening law corroborates this conclusion. Contrary to the assertions of employer and Aetna, the decision in *In re Air Crash Off Long Island, New York, On July 17, 1996*, 209 F.3d 200 (2d Cir. 2000), does not require a different result than that reached by

the Board. In *Air Crash Off Long Island*, the plaintiffs were the relatives and estate representatives of the 213 passengers and crew members who died in the crash of TWA Flight 800 which occurred eight nautical miles off the coast of Long Island. The defendants, TWA, Boeing and Hydro-Aire, moved to dismiss the plaintiffs' claims for non-pecuniary damages as barred by DOHSA.[3] In affirming the district court's denial of the defendants' motion, the court held that although eight nautical miles off the coast of Long Island was "beyond a marine league from the shore of any State," *see* 46 U.S.C. §761, the crash site did not occur on the "high seas" under DOHSA because the territorial waters of the United States were extended to 12 miles from the shore pursuant to Presidential Proclamation No. 5928, issued in 1988 by President Reagan. Thus, the court ruled that DOHSA did not apply. *Air Crash Off Long Island*, 209 F.3d at 207-211, 215. In so ruling, the court rejected as inapposite defendants' reliance on the line of cases applying DOHSA to the territorial waters of a foreign state, *see, e.g., Jennings v. Boeing Co.*, 660 F.Supp. 796 (E.D. Pa. 1987), *aff'd*, 838 F.2d 1206 (3d Cir. 1988) (table); *In re Air Crash Disaster Near Bombay, India on January 1, 1978*, 531 F.Supp. 1175 (W.D. Wash. 1982), as these cases do not require, or even suggest, the application of DOHSA to the territorial waters of the United States. *Air Crash Off Long Island*, 209 F.3d at 212. In *dicta*, the Second Circuit stated: "We take no position on what courts should do when faced with the difficult question of whether to apply DOHSA in foreign territorial waters, where plaintiffs might otherwise be left with only foreign remedies in foreign courts." *Id.* In sum, the court in *Air Crash Off Long Island* was faced with a situation that involved death occurring *within* the territorial waters of the United States. As that case does not concern death occurring in foreign territorial waters, it does not provide guidance in resolving the issue of whether the Longshore Act should apply to injuries occurring in foreign territorial waters. Moreover, far from demonstrating that the Board's analysis was incorrect, the court in *Air Crash Off Long Island* recognized the trend in federal court decisions towards extending coverage of DOHSA to individuals injured on foreign territorial waters.[4] *See id.* Therefore, based on the foregoing, we affirm the Board's

[3]Section 2 of DOHSA limits recovery to "a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought." 46 U.S.C. §762.

[4]In support of their contention that the Act should not extend to cover claimant's injury, employer and Aetna rely on several federal decisions that were previously discussed by the Board. In its initial decision, the Board stated that the courts in *Christianson v. Western Pacific Packing Co.*, 24 F. Supp. 437 (W.D. Wash. 1938) (the court held that the Act did not apply to an employee injured while servicing canning machinery on a barge in British Columbia waters in Canada), and *Panama Agencies Co. v. Franco*, 111 F.2d 263 (5th Cir. 1940) (the Act did not apply to a longshore employee injured while loading a steamship in the Panama Canal Zone), summarily found no coverage without providing any reason for their rulings, and therefore, these cases were not definitive of the coverage issue. The Board

initial decision, and we hold that claimant's injury occurred on a covered situs. *See generally Alexander v. Triple A Machine Shop*, 34 BRBS 34 (2000).

Responsible Carrier

The Board has held that it is within the authority of the administrative law judge to hear and resolve insurance issues which are necessary for the resolution of a claim under the Act. *See Ricks v. Temporary Employment Services, Inc.*, 33 BRBS 81 (1999); *Pilipovich v. CPS Staff Leasing, Inc.*, 31 BRBS 169 (1997); *Schaubert v. Omega Service Industries, Inc.*, 31 BRBS 24 (1997); *Weber*, 28 BRBS at 333; *see* 33 U.S.C. §919(a), (d). Pursuant to the Board's remand order, the administrative law judge was faced with the issue of whether the insurance policies issued by Aetna and Chubb provide coverage for claimant's injury which occurred in Kingston, Jamaica. The administrative law judge found that Aetna's policy does not cover claimant's injury, but that the insurance policy issued by Chubb does cover claimant's injury and, therefore, Chubb is the carrier liable for claimant's disability compensation. On appeal, Chubb asserts that the administrative law judge erred in finding it to be the responsible carrier. In order to address the issue of responsible carrier, the two insurance policies must be analyzed.

The Aetna Policy

Aetna issued to employer a Worker's Compensation and Employer's Liability Policy. Item 3A of the information page of the policy states:

> Workers Compensation Insurance: Part One of the policy applies to the Workers Compensation Law of the states listed here
>
> N.J., MD., PA., VA.

Jt. Ex. 4 at 31. The endorsement for Longshore coverage states:

> This endorsement applies only to work subject to the Longshoremen's and

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further noted that *Maharamas v. American Export Isbrandtsen Lines, Inc.*, 475 F.2d 165 (2d Cir. 1973) (coverage denied to a claimant injured while working as a hairdresser on a Mediterranean cruise), was inapposite as the claimant was not doing longshore work, and in *Garcia v. Friesecke*, 597 F.2d 284 (1st Cir. 1979), *cert. denied*, 444 U.S. 940 (1979), the denial of coverage related to an injury occurring in Puerto Rican territorial waters which gave rise to a conflict of law issue and dealt with special circumstances of Puerto Rico's status as a territory of the United States. *See Weber*, 28 BRBS at 328 n.3.

> Harbor Workers' Compensation Act in a state shown in the Schedule. The Policy applies to that work as though that state were listed in item 3A of the Information Page.
>
> The definition of workers compensation law includes the Longshoremen's and Harbor Workers' Compensation Act (33 USC Sections 901-950) and any amendment to that Act that is in effect during the policy period.
>
> This endorsement does not apply to work subject to the Defense Base Act, the Outer Continental Shelf Lands Act, or the Nonappropriated Funds Instrumentalities Act.

Id. at 46. The states listed in the Schedule are Pennsylvania and Virginia. *Id*.

The administrative law judge found that the language of the Aetna policy is specific in defining its geographic scope, thereby limiting coverage only to work performed in the states designated in the policy, and there is nothing in the policy to suggest or imply that it has any extraterritorial application. Decision and Order Upon Remand at 10-11. Finding that Section 35 of the Act, 33 U.S.C. §935, and Section 703.115 of the regulations, 20 C.F.R. §703.115, do not operate to extend coverage to portions of a compensation district that are not covered by the terms of the underlying insurance contract, the administrative law judge concluded that Aetna's policy does not provide coverage for claimant's injuries in this case. Decision and Order Upon Remand at 12. The administrative law judge's determination is rational, supported by the terms of the contract, and in accordance with law. *See Director, OWCP v. National Van Lines, Inc.*, 613 F.2d 972, 11 BRBS 298 (D.C. Cir. 1979), *cert. denied*, 448 U.S. 907 (1980) (court held that Section 35 does not operate to cover employer under Longshore Act when policy only covers compensation claims arising under Virginia law). Therefore, we affirm his conclusion that Aetna is not the responsible carrier.

The Chubb Policy

Chubb, through its subsidiary Pacific Indemnity Company, issued to employer a Foreign Voluntary Workers' Compensation and Employer's Liability Insurance Policy. According to the "Benefits Applicable" section of the Schedule, benefits are to be paid "According to the Laws of the State(s) or Provinces Scheduled Below." Pennsylvania is the only state listed as a "Designated State" under the Schedule. Jt. Ex. 2 at 23. Under the "Designated Countries" section of the Schedule, the policy states: "Worldwide, Excluding The US its territories possessions and Canada." *Id*. The relevant portion of the coverage section of the policy provides:

> **Coverage A–Workers' Compensation**

The Company agrees to pay voluntarily on behalf of the **Insured** to **employees** defined in this insurance schedule, the compensation, medical and other benefits specified in the **Worker's Compensation Law** of the state or province designated in this insurance schedule in the same manner as if such **employees** were covered under the provisions of the said law or laws.

Coverage B–Employer's Liability

The Company agrees to pay on behalf of the **Insured** all sums which the **Insured** shall become legally obligated to pay as damages because of the **bodily injury** by accident or disease, including death at any time resulting therefrom, sustained by an **employee** as defined in this insurance schedule and arising out of and in the course of employment in operations connected with his employment in a country or countries stated in this insurance schedule.

* * *

Application of this Insurance

This insurance applies only to injury (1) by accident occurring during the policy period, or (2) by disease caused or aggravated by exposure of which the last exposure, in the employment of the **Insured**, to conditions causing the disease occurs during the policy period.

The coverage afforded herein shall attach and shall terminate as respect any individual **employee** as follows:

> A. If the **employee** is not hired in the **United States** or Canada, coverage shall attach from the moment he is hired or assigned for such work and shall terminate at the moment his employment or assignment is terminated.
>
> B. If the **employee** is hired within the **United States** or Canada, coverage shall attach at the time of his departure from the **United States** or Canada and shall terminate upon his return to the **United States** or Canada; except that if the **employee** resigns from his employment or elects after termination of his employment to remain outside the **United States** or Canada, coverage shall in either case terminate upon termination or his employment.

Jt. Ex. 2 at 24 (bold in original policy). Paragraph 6 of the "Exclusions" Section, which delineates when the policy will not apply, was amended on January 1, 1985, and states the following:

> Under Coverage B, to bodily injury, including death resulting therefrom, sustained by a master or member of the crew of any vessel or by any employee of the Insured in the course of an employment subject to the United States Longshoremen's and Harbor Workers' Compensation Act, U.S. Code (1946) Title 33, Sections 901-49, or the Federal Employers' Liability Act, U.S. Code (1946) Title 45, Sections 51-60, or sustained by any member of the Flying Crew of any Aircraft.

Id. at 10, 25.[5] Lastly, the Chubb policy defines the United States as "the United States of America, its territories and possessions, and Puerto Rico." *Id*. at 28.

The administrative law judge rejected Chubb's contention that its policy does not cover claimant's injury based on the exclusion of Longshore Act coverage contained in the policy. Rather, the administrative law judge found that this exclusion specifically applied to Coverage B, the Employer Liability section, and not to Coverage A, the Workers' Compensation section, and therefore the Longshore Act was applicable under the Workers' Compensation section. Additionally, the administrative law judge found that Chubb's policy provided for coverage of compensation benefits pursuant to the Pennsylvania workers' compensation statute for injuries occurring while outside of the United States, and that claimant specifically fell within the policy's coverage as he was hired within the United States and worked abroad. Thus, the administrative law judge concluded that Chubb is liable to claimant under Coverage A of its policy, for which no exclusion for longshore benefits applies. Decision and Order Upon Remand at 13.

[5]The original policy contains the Longshore Act as excluded from Coverage B; the amendment adds the Federal Employers' Liability Act as being excluded under Coverage B of the policy. *See* Jt. Ex. 2 at 10, 25.

The administrative law judge's interpretation of Coverage B under the Chubb policy is reasonable, and we affirm his finding as to that portion of the policy. Specifically, Coverage B is a liability section that concerns "damages" for traumatic injury or disease, not workers' compensation, and the policy explicitly excludes Coverage B from applying to injuries arising under the Act. However, as Chubb asserts, the administrative law judge's finding that the Longshore Act applies under the Coverage A workers' compensation section, making Chubb liable for longshore benefits, cannot stand. While the administrative law judge correctly found that Coverage A *does not exclude* liability under the Longshore Act, his erroneous conclusion was that it, therefore, *includes* liability under the Longshore Act. Such interpretation is not supported by the language of the policy. In fact, the Chubb policy contains no Longshore endorsement in accordance with Section 35 of the Act and Section 703.109 of the regulations, 20 C.F.R. §703.109. Further, although the Chubb policy is designed to cover employees injured overseas, as it provides that benefits are applicable to injuries occurring "Worldwide," the policy also specifies that benefits will be paid in accordance with the laws of the designated states or provinces as if the injuries occurred therein. The only state designated in the policy is Pennsylvania; thus, the only law applicable is Pennsylvania workers' compensation law. This means the Chubb policy covers injuries occurring outside the United States under Pennsylvania workers' compensation law as if the injuries occurred in Pennsylvania.[6] As the Chubb policy applies only Pennsylvania law, and as it does not contain the necessary longshore endorsements, Chubb cannot be held liable for longshore benefits. *See National Van Lines*, 613 F.2d 972, 11 BRBS 298. Consequently, we reverse the administrative law judge's conclusion that longshore workers' compensation benefits are available under Coverage A of the Chubb policy.

[6]In fact, Chubb has paid claimant workers' compensation under Pennsylvania law. *See* Decision and Order Upon Remand at 4.

Accordingly, based on the language of the Aetna and Chubb insurance policies, we hold that neither Chubb nor Aetna is the responsible carrier.[7] Our holding does not leave claimant without recourse. Rather, under the circumstances of this case, employer is liable for permanent total disability compensation from May 2, 1992, until May 2, 1994, the date the Director agreed the liability of the Special Fund commences.[8] *See generally Meagher v. B.S. Costello, Inc.*, 20 BRBS 151 (1987), *aff'd*, 867 F.2d 722, 22 BRBS 24(CRT) (1st Cir. 1989); *see also* discussion, *infra*.

Section 8(f)

In the instant case, the Director stipulated that the Special Fund is liable for permanent total disability compensation pursuant to Section 8(f), and to the issuance of an order approving Section 8(f) relief, with the agreed date of maximum medical improvement at May 2, 1992, and payments from the Special Fund to begin on May 2, 1994. *See* Jt. Exs. 1 at 3, 8 at 79; Decision and Order Upon Remand at 4. As the administrative law judge's order does

[7]In this regard, we reject Chubb's contention that Aetna's failure to respond to a Request for Admissions required a finding under 29 C.F.R. §18.20 that Aetna's policy provided coverage for claimant's injury. 29 C.F.R. §18.20 concerns the admission of facts, providing that a matter of which an admission is requested is admitted unless specifically denied in writing within 30 days after service of the request. In the instant case, Chubb served Aetna with a Request for Admissions which included a statement that on May 3, 1986, a policy issued by Aetna to employer covering injuries arising under the Longshore Act was in force. *See* Jt. Ex. 5 at 65. Aetna does not dispute Chubb's contention that it did not respond to this assertion. Contrary to Chubb's contention, however, 29 C.F.R. §18.20 does not require a determination that Aetna is liable for claimant's disability compensation, as it does not bind an administrative law judge from drawing a legal conclusion based on facts admitted. The fact that Aetna issued a policy covering employer for injuries arising under the Longshore Act was not in dispute. The issue in dispute, which the administrative law judge properly addressed, was the legal effect of Aetna's policy, specifically, whether the geographic limitations of Aetna's Longshore policy applied to exclude from coverage claimant's injury occurring in Kingston, Jamaica. As we have held that the administrative law judge properly determined that Aetna is not responsible for claimant's longshore benefits, his failure to consider the Request for Admissions is harmless.

[8]Pursuant to Section 3(e) of the Act, 33 U.S.C. §903(e), employer and the Special Fund are entitled to a credit for amounts paid to claimant under a state workers' compensation law for the same injury or disability. *D'Errico v. General Dynamics Corp.*, 996 F.2d 503, 27 BRBS 24(CRT) (1st Cir. 1993); *Bouchard v. General Dynamics Corp.*, 963 F.2d 541, 25 BRBS 152(CRT) (2d Cir. 1992); *Stewart v. Bath Iron Works Corp.*, 25 BRBS 151 (1991).

not reflect employer's entitlement to Section 8(f) relief, we modify the administrative law judge's decision to this effect.[9]

[9]The administrative law judge granted employer a credit, and he ordered Chubb to reimburse employer for the amounts it paid as salary to claimant from May 3, 1986, to February 18, 1989, finding that this credit was necessary to prevent claimant from receiving a double recovery, *i.e.*, "retaining the previous payments of his full salary by the Employer as well as payments to be received under the Chubb policy." Decision and Order Upon Remand at 15. Chubb does not appeal this ruling and requests only reimbursement from the Special Fund.

Accordingly, the administrative law judge's determination that Chubb is liable for claimant's benefits is reversed. Employer is liable for benefits from May 2, 1992, through May 2, 1994, when the liability of the Special Fund commences. The administrative law judge's decision is modified to reflect such liability. In all other respects, the administrative law judge's Decision and Order Upon Remand is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge