BRB No. 00-0794

RONALD E. LEWIS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
BAY SHIPBUILDING COMPANY	)	DATE ISSUED: March 26, 2001
	)	
and	)	
	)	
SENTRY INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Granting Benefits and the Supplemental Decision and Order Denying Reconsideration and Awarding Attorney Fees of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Holly P. Lutz, Wausau, Wisconsin, for claimant.

Gregory P. Sujack (Garofalo, Schreiber & Hart, Chartered), Chicago, Illinois, for employer/carrier.

Thomas Giblin (Judith E. Kramer, Acting Solicitor of Labor; Carol A. DeDeo, Associate Solicitor; Samuel J. Oshinsky, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, SMITH and McATEER, Administrative Appeals Judges.
PER CURIAM:

Employer appeals the Decision and Order Granting Benefits and the Supplemental Decision and Order Denying Reconsideration and Awarding Attorney Fees (97-LHC-1373) of Administrative Law Judge Pamela Lakes Wood 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. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3). The amount of an attorney's fee award is discretionary and may be set aside only if the challenging party shows it to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

On February 29, 1996, claimant injured his lower back during the course of his employment as a steelworker. Employer provided work within claimant's restrictions until he was laid off on June 21, 1996. Claimant resided during the week in Green Bay with his daughter for employment purposes, but he returned to his residence in Tipler, Wisconsin, on weekends. After his layoff in June 1996, claimant continuously resided in Tipler, which is located approximately 180 miles from employer's facility in Sturgeon Bay and 130 miles from Green Bay. Claimant was terminated by employer on November 6, 1996, for failure to report for work without reasonable cause for four consecutive days after receiving employer's written request that he return to work on October 23, 1996. He has not since returned to the workforce.

In her Decision and Order Granting Benefits, the administrative law judge found the medical evidence establishes that claimant is unable to return to his usual employment as a steelworker, which required occasional lifting up to a hundred pounds and frequent lifting and carrying up to 50 pounds. The administrative law judge credited the opinions of claimant's treating physicians, Dr. Robinson and Dr. Carlson, to find that claimant is restricted to light duty work involving lifting no more than 20 pounds occasionally and 10 pounds frequently. The administrative law judge next found that employer did not offer claimant employment at its facility in November 1996, or any time thereafter, that was within his work restrictions. The administrative law judge then determined that the northern counties of Wisconsin surrounding claimant's residence in Tipler are the appropriate geographic area for establishing the availability of suitable alternate employment. The administrative law judge credited employer's June 8, 1998, labor market survey to find that employer identified suitable alternate employment in the northern counties, and that this employment establishes that claimant has a residual wage-earning capacity of $6.00 per hour. Accordingly, claimant was awarded compensation for temporary total disability, 33 U.S.C. §908(b), from June 21, 1996, to September 27, 1996, compensation for permanent total disability, 33 U.S.C. §908(a), from September 27, 1996, to June 8, 1998, and, thereafter,

compensation for permanent partial disability, 33 U.S.C. §908(c)(21), based on a loss of wage-earning capacity. Finally, the administrative law judge denied employer Section 8(f) relief, 33 U.S.C. §908(f), from continuing compensation liability.

Subsequent to the administrative law judge's decision, Russell J. LaCourse of the law office of Courtney, LaCourse and Little, P.A., submitted a fee petition requesting $27,485.84, representing 70 hours of attorney services by the late James Courtney III, at an hourly rate of $185, 21.75 hours of paralegal services by the late Jill N.T. Swapinski, at an hourly rate of $75, 94.5 hours of paralegal services by Joan Lindgren at an hourly rate of $60, and costs of $7,234.59. Holly Lutz submitted a fee petition requesting $7,307.50, representing 39.5 hours at an hourly rate of $185, plus costs of $300.[1] Employer filed objections to the fee requests.

In her Supplemental Decision and Order Denying Reconsideration and Awarding Attorney Fees, the administrative law judge denied both employer's and claimant's motions for reconsideration on the issues of suitable alternate employment and wage-earning capacity. The administrative law judge, after considering the objections raised by employer, approved the hourly rates requested, and the number of hours requested for Mr. Courtney, reduced by 3.75 the number of hours claimed for work performed by Ms. Swapinski, reduced by one the number of hours sought for Ms. Lundgren, and reduced by 1.25 the number of hours requested by Ms. Lutz. The administrative law judge granted Ms. Lutz's motion requesting an additional six hours at $185 per hour for responding to employer's objections to her fee petition. Accordingly, the administrative law judge awarded the law offices of Courtney, LaCourse and Little, P.A., $26,104.59, representing $20,097.50 for attorney and paralegal time and costs of $6,007.09. The administrative law judge awarded Ms. Lutz an attorney's fee of $8,186.25, representing $7,076.25 for the initial time requested, $1,110 for time spent responding to employer's fee objections, and costs of $300.

On appeal, employer challenges the administrative law judge's findings that claimant is capable of performing only light duty work, that employer did not offer claimant a job at its facility within his work restrictions, and that the northern counties surrounding Tipler, Wisconsin, are the appropriate geographic area for purposes of establishing the availability of suitable alternate employment. Employer also contends the administrative law judge erred by denying its request for Section 8(f) relief. Finally, employer challenges the administrative law judge's fee awards. Claimant responds, urging affirmance of the

[1]After the June 10, 1998, formal hearing, Mr. Courtney and Ms. Swapinski died in an August 1998 airplane crash. Holly Lutz entered an appearance as claimant's substitute counsel by letter dated October 15, 1998.

administrative law judge's decisions awarding benefits and attorneys' fees. The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the administrative law judge's denial of Section 8(f) relief.

Employer initially contends that the administrative law judge erred by crediting the opinions of Dr. Robinson and Dr. Carlson restricting claimant to light duty work due to his injury. Employer argues that the opinion of Dr. Blasier, as well as Dr. Robinson's notation in his September 27, 1996, report that claimant was farming tobacco, which Dr. Robinson opined constitutes medium or medium-heavy work, establish that claimant is capable of performing medium duty employment lifting up to 25 pounds frequently and 50 pounds occasionally.

It is well-established that claimant bears the burden of establishing the nature and extent of any disability sustained as a result of a work-related injury. *See generally Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989). In the instant case, the administrative law judge credited the assessment of Dr. Carlson restricting claimant to lifting or carrying 10 pounds frequently and lifting 20 pounds occasionally, which the administrative law judge found consistent with the assessment made by Dr. Robinson on June 11, 1996. The administrative law judge explicitly rejected employer's interpretation of Dr. Robinson's notation regarding claimant's tobacco farming, finding that Dr. Robinson's statement does not establish that claimant is capable of performing medium duty work on a full-time basis. Moreover, in her decision on reconsideration, the administrative law judge noted claimant's assertion that there has been no showing of the nature and extent of claimant's work on his small tobacco plot, and the administrative law judge found that much of the work was performed by claimant's wife and children. *See* Tr. at 80, 82. The administrative law judge further found Dr. Blasier's opinion outweighed by the opinions of claimant's treating physicians, Drs. Carlson and Robinson, who had assessed claimant's condition over a period of time. *Compare* EX 1 *with* CX 1-K, O.

In adjudicating a claim, it is well-established that the administrative law judge is entitled to weigh the evidence, and is not bound to accept the opinion or theory of any particular witness. Rather, the administrative law judge may draw his own conclusions and inferences from the evidence. *See Peabody Coal Co. v. Benefits Review Board*, 560 F.2d 797 (7th Cir. 1977). In the instant case, we hold that the administrative law judge's decision to credit Dr. Carlson's opinion, as supported by the June 1996 assessment of Dr. Robinson, over the opinion of Dr. Blasier and Dr. Robinson's September 1996 notation regarding claimant's farming activities is rational. Accordingly, we affirm the administrative law judge's conclusion that claimant is restricted to light duty employment as it is supported by substantial evidence of record.

Employer next challenges the administrative law judge's finding that it did not establish the availability of suitable alternate employment by offering claimant a job at its facility within his work restrictions. Employer contends there is no evidence that claimant would not have been offered light duty after he was recalled to return to work in October 1996, and employer asserts it established that there were both light duty and medium duty positions available to claimant at its facility. Where, as here, it is uncontested that claimant is unable to return to his usual employment, the burden shifts to employer to demonstrate the availability of realistic job opportunities within the geographic area where claimant resides, which claimant, by virtue of his age, education, work experience and physical or psychological restrictions, is capable of performing. *Bunge Corp. v. Carlisle*, 227 F.3d 934, 34 BRBS 79(CRT) (7th Cir. 2000). For an employer to meet its burden, it must supply evidence sufficient for the administrative law judge to determine whether the job is realistically available and suitable for the claimant. *Id.* Merely alleging such work is available will not suffice. *Roger's Terminal & Shipping Corp. v. Director, OWCP*, 784 F.2d 687, 18 BRBS 79(CRT) (5th Cir.), *cert. denied*, 479 U.S. 826 (1986). A job in the employer's facility within the claimant's work restrictions may meet this burden provided it is necessary work. *Darby v. Ingalls Shipbuilding, Inc.*, 99 F.3d 685, 30 BRBS 93(CRT) (5th Cir. 1996); *Ezell v. Direct Labor, Inc.*, 33 BRBS 19 (1999). However, the job must be actually available to claimant to establish the availability of suitable alternate employment. *See, e.g., Norfolk Shipbuilding & Drydock Corp. v. Hord*, 193 F.3d 797, 33 BRBS 170(CRT) (4th Cir. 1999); *Mendez v. National Steel & Shipbuilding Co.*, 21 BRBS 22 (1988).

The administrative law judge found that employer never offered claimant light duty work and failed to establish it could realistically offer such work to someone with claimant's low seniority status, and she credited evidence that claimant would have been offered medium duty work by employer had claimant reported to work in October 1996, pursuant to employer's recall notice. In her decision on reconsideration, the administrative law judge rejected employer's assertion that testimony from John Schauske, employer's production manager, established that employer had both medium and light duty work available to claimant.

We affirm the administrative law judge's finding that employer's employment offer to claimant in October 1996 of medium duty work fails to establish the availability of suitable alternate employment inasmuch as we have affirmed the finding that claimant was limited to light duty work. Employer's only evidence of light duty work at its facility is Mr. Schauske's testimony that as of the date of the June 1998 formal hearing employer had available light duty work tinning insulation. Tr. at 137-138. The administrative law judge found, however, that this testimony fails to establish the availability of suitable alternate employment as there is no evidence that employer ever actually offered claimant a job

tinning insulation or that employer offered claimant any other type of light duty employment. *Roger's Terminal & Shipping Corp.*, 784 F.2d 687, 18 BRBS 79(CRT); *Mendez*, 21 BRBS 22. Accordingly, we affirm the administrative law judge's finding that employer failed to identify suitable alternate employment available to claimant at its facility.

Employer next challenges the administrative law judge calculation of claimant's loss of wage-earning capacity, contending that claimant is capable of earning more than the $6.00 per hour found by the administrative law judge. In this regard, employer argues that the administrative law judge erred by limiting the relevant geographic area for consideration of suitable alternate employment to the northern counties of Wisconsin within 40 miles of claimant's residence in Tipler, and thus, improperly precluded several higher paying positions identified by employer's vocational expert in the Green Bay/Sturgeon Bay area. Employer specifically maintains that the administrative law judge incorrectly relied on *See v. Washington Metropolitan Area Transit Authority*, 36 F.3d 375, 28 BRBS 96(CRT) (4th Cir. 1994), as authority on this issue, because claimant established Green Bay/Sturgeon Bay as his residence before and during the course of his employment for employer, and, alternatively, the administrative law judge failed to properly weigh all of the relevant factors enumerated therein.[2] In *See*, the United States Court of Appeals for the Fourth Circuit held that where claimant relocates following an injury, the administrative law judge should determine the relevant labor market after considering such factors as claimant's residence at the time he files for benefits, his motivation for relocating, the legitimacy of that motivation, the duration of his stay in the new community, his ties to the new community, the availability of suitable jobs in that community as opposed to those in his former residence and the degree of undue prejudice to employer in proving suitable alternate employment in a new location. *See*, 36 F.3d 375, 28 BRBS 96 (CRT); *see also Wood v. U.S. Dept. of Labor*, 112 F.3d 592, 31 BRBS 43(CRT) (1st Cir. 1997); *Holder v. Texas Eastern Products Pipeline, Inc.*, BRBS , BRB No. 00-0602 (March 12, 2001).

[2]We decline to address claimant's contention, raised in his response brief, that the administrative law judge erred in finding that employer established the availability of suitable alternate employment. Claimant did not file an appeal of the administrative law judge's decision, and the contention does not support the result reached by the administrative law judge. *Del Vacchio v. Sun Shipbuilding & Dry Dock Co.*, 16 BRBS 190 (1984).

Citing *See*, the administrative law judge determined that the northern counties surrounding Tipler are the relevant labor market, although she acknowledged that the issue is a close one. The administrative law judge found that Tipler is claimant's permanent home, notwithstanding that he lived with his daughter in Green Bay until he was laid off by employer in June 1996 in order to take advantage of the higher wages available in that area. The administrative law judge found the limited job opportunities in the northern counties surrounding Tipler and the resulting prejudice to employer outweighed by the length of claimant's residence in Tipler of ten years and his wife's employment there. The administrative law judge also rejected claimant's contention that the relevant job area is only Tipler, and found that jobs available in the counties surrounding Tipler also are relevant as claimant is able to drive 30 to 40 miles. In calculating claimant's post-injury wage-earning capacity at $6.00 per hour, the administrative law judge relied on the lower paying jobs presented by the vocational expert as more reflective of the limited and seasonal opportunities available in the northern counties.[3]

We reject employer's contention that the administrative law judge's findings are in error, as she weighed the relevant factors and her findings are rational and supported by substantial evidence. *See Holder*, slip op. at 8; *Wilson v. Crowley Maritime*, 30 BRBS 199 (1996). The administrative law judge rationally found that, although at the date of his injury claimant resided in Green Bay with his daughter for employment purposes, claimant's ties to that community were otherwise limited, particularly when contrasted with Tipler, where claimant resided before his employment in Sturgeon Bay, weekends during the course of his employment for employer, and permanently after he was laid off by employer in June 1996. Additionally, the administrative law judge recognized that the job market is more limited and seasonal in the northern counties, but nonetheless found that employer established the availability of suitable alternate employment in that region, and thus any prejudice to employer is not "undue." In *See*, the Fourth Circuit found the most persuasive definition of the relevant labor market to be the "community in which [claimant] lives," which in the instant case, the administrative law judge found to be the Tipler area. *See*, 36 F.3d at 375, 28 BRBS at 96(CRT). Thus, we affirm the administrative law judge's determination that northern counties of Wisconsin surrounding the Tipler area are the relevant labor market in the instant case, and, therefore, her finding that claimant has a post-injury wage-earning

[3]Employer's vocational expert stated that the most likely rate of pay available in the northern counties is $6.00 to $8.00 per hour, and is $7.00 to $8.00 in the Green Bay/Sturgeon Bay area.

capacity of $6.00 per hour based on positions available in that location.

We next address employer's contention that the administrative law judge erred in denying its claim for Section 8(f) relief. Specifically, employer contends it established that claimant had pre-existing disabilities due to a prior back injury and ulcers, which contribute to claimant's current permanent partial disability. Section 8(f) shifts the liability to pay compensation for permanent disability or death after 104 weeks from an employer to the Special Fund established in Section 44 of the Act. 33 U.S.C. §§908(f), 944. An employer may be granted Special Fund relief, in a case where a claimant is permanently partially disabled, if it establishes that the claimant had a manifest pre-existing permanent partial disability, and that his current permanent partial disability is not due solely to the subsequent work injury but "is materially and substantially greater than that which would have resulted from the subsequent work injury alone." 33 U.S.C. §908(f)(1); *Marine Power & Equipment v. Dep't of Labor [Quan]*, 203 F.3d 664, 33 BRBS 204(CRT) (9th Cir. 2000); *Two "R" Drilling Co., Inc. v. Director, OWCP*, 894 F.2d 748, 23 BRBS 34(CRT) (5th Cir. 1990); *C&P Telephone Co. v. Director, OWCP*, 564 F.2d 503, 6 BRBS 399 (D.C. Cir. 1977). Employer must present medical or other evidence to establish that claimant's current disability is materially and substantially greater due to the contribution of the prior disability. *Sproull v. Director, OWCP*, 86 F.3d 895, 30 BRBS 49(CRT) (9th Cir. 1996), *cert. denied*, 520 U.S. 1155 (1997).

We affirm the administrative law judge's denial of Section 8(f) relief. The administrative law judge found employer established that claimant had a manifest pre-existing back disability. The administrative law judge also found, however, that employer failed to establish that claimant's ulcers are a manifest pre-existing permanent partial disability, or that either condition materially and substantially contributes to claimant's current permanent partial disability. With regard to the contribution element, the administrative law judge found Dr. Blasier's statements too equivocal to establish that claimant's current back condition would be materially greater had claimant not had ulcers or a pre-existing back injury. Specifically, the administrative law judge found there is no indication that claimant would have been capable of performing more than light duty but for his pre-existing back condition and ulcers. We hold that the administrative law judge rationally found Dr. Blasier's statements regarding the contribution of claimant's pre-existing back injury and ulcers to claimant's current disability insufficient to establish that claimant's disability is materially and substantially greater than it would be due to the work injury alone.[4] *See generally Quan*, 203 F.3d 664, 33 BRBS 204(CRT)*; Director, OWCP v.*

[4]With regard to claimant's back condition, Dr. Blasier wrote in his October 9, 1996, medical report that, "claimant had pre-existing pathology and probably some pre-existing disability. However, the principle (sic) portion of his disability is due to the lifting accident of February 29, 1996." EX 1. In response to written

Newport News Shipbuilding & Dry Dock Co. [Harcum II], 131 F.3d 1079, 31 BRBS 164(CRT) (4th Cir. 1997). Thus, as the administrative law judge's determination that employer failed to establish the contribution element necessary for Section 8(f) relief with regard to either claimant's ulcers or claimant's pre-existing back condition is rational and supported by the record, that finding is affirmed.[5] *See Director, OWCP v. General Dynamics Corp. [Bergeron]*, 982 F.2d 790, 26 BRBS 139(CRT) (2d Cir. 1992).

Finally, we address employer's appeal of the administrative law judge's fee awards. Specifically, employer challenges the hourly rate awarded by the administrative law judge on the basis that it is not representative of the usual and customary rate of counsel or the rate appropriate for northeastern Wisconsin. Moreover, employer challenges counsel's quarter-hour minimum billing method and employer avers that specific time entries by Mr. Courtney and Ms. Lutz are either vague, excessive, duplicative or clerical. Finally, employer challenges the administrative law judge's allowance as a cost Mr. Courtney's use of his personal plane for case-related travel and the administrative law judge's allowance, as either a cost or as a medical expense, of Dr. Carlson's medical fees.

---

interrogatories concerning the effect of claimant's ulcers on his back condition, Dr. Blasier opined that claimant's ulcers impair his ability to drive to the extent that claimant suffers pain resulting from his inability to tolerate anti-inflammatory pain medications. Employer's Application for Section 8(f) Relief, EX B.

[5]Accordingly we need not address the administrative law judge's findings that employer failed to establish that claimant's ulcers constituted a manifest pre-existing permanent partial disability.

Section 702.132, 20 C.F.R. §702.132, provides that the award of any attorney's fee shall be reasonably commensurate with the necessary work done, the complexity of the legal issues involved and the amount of benefits awarded. *See generally Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10th Cir. 1997); *see also Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989). The administrative law judge, in awarding counsel a fee at the hourly rate requested, found that employer failed to establish that $185 is not Mr. Courtney's and Ms. Lutz's customary billing rate and she noted the complexity of this multiple issue case, the skill exhibited by Mr. Courtney at the hearing, and the competence of Ms. Lutz in taking over the case. We affirm the hourly rate of $185 awarded as the administrative law judge applied the regulatory criteria and employer has not shown that the administrative law judge abused her discretion in this regard. *See McKnight v. Carolina Shipping Co.*, 32 BRBS 165, *aff'd on recon. en banc*, 32 BRBS 251 (1998). Similarly, the administrative law judge adequately addressed employer's challenge to various itemized entries as vague, excessive, duplicative, or clerical, as we decline to disturb her determinations that the entries at issue are compensable.[6] *See Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995). Employer's specific objection to counsel's method of billing in minimum increments of one-quarter of an hour also is rejected. The Board has previously determined that this method is reasonable under the applicable regulation, 20 C.F.R. §702.132. *Neeley v. Newport News Shipbuilding & Dry Dock Co.*, 19 BRBS 138 (1986); *cf. Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999).

Finally, we reject employer's contentions regarding the costs awarded by the administrative law judge. Section 28(d) of the Act, 33 U.S.C. §928(d), provides that where an attorney's fee is awarded against employer, costs also may be assessed against employer. *See Picinich v. Lockheed Shipbuilding*, 23 BRBS 128 (1989). In the instant case, a review of Mr. Courtney's fee petition does not support employer's contention that Mr. Courtney sought a fee for time expended piloting his private plane in addition to the cost of operating the plane. *See generally Ferguson v. Southern States Cooperative*, 27 BRBS 16 (1993). Regarding the cost of Dr. Carlson's medical report, the administrative law judge found employer liable for $335 to Mr. Courtney for Dr. Carlson's May 21, 1998, report notwithstanding that this report was withdrawn from evidence pursuant to the parties' stipulation that references to changes in claimant's physical condition after April 1998 would not be submitted into evidence. *See* Order Approving Stipulation. The administrative law

[6]We also affirm as reasonable and within the administrative law judge's discretion the allowance of 6 hours for time spent by Ms. Lutz preparing a 25 page response to employer's objections to her fee petition. *See Hill v. Avondale Industries, Inc.*, 32 BRBS 186 (1998), *aff'd sub nom. Hill v. Director, OWCP*, 195 F.3d 790, 33 BRBS 184(CRT) (5th Cir. 1999), *cert. denied*, 120 S.Ct. 2215 (2000).

judge found that Dr. Carlson was a necessary witness, and that his other reports and deposition were relied on in awarding benefits. Moreover, employer has failed to show that the cost of the withdrawn report was unreasonable at the time it was incurred. *See generally O'Kelley v. Dept. of the Army/NAF*, 34 BRBS 39 (2000). Accordingly, we affirm the administrative law judge's attorney's fee awards.[7]

Accordingly the Decision and Order Granting Benefits, and Supplemental Decision and Order Denying Reconsideration and Awarding Attorney Fees of the administrative law judge are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief

[7]We decline to address claimant's challenge to the administrative law judge's denial of the $822.50 cost for the expert witness fee of William Reynolds/Vocational Assessment Services, as this issue should have been raised in an appeal filed by claimant. *See Story v. Navy Exchange Service Center*, 33 BRBS 111 (1999). Ms. Lutz's request that she be allowed to file for an additional fee for time expended preparing the fee petitions submitted to the administrative law judge and for an enhanced fee are properly addressed to the administrative law judge. *See generally Johnson v. Director, OWCP*, 183 F.3d 1169, 33 BRBS 112(CRT) (9th Cir. 1999)*; Bellmer v. Jones Oregon Stevedoring Co.*, 32 BRBS 245 (1998).

Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

J. DAVITT McATEER
Administrative Appeals Judge