

ARTHUR D. PALMA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
PACORD, INCOPORATED/L-3	)	DATE ISSUED: 10/24/2011
COMMUNICATIONS	)	
	)	
and	)	
	)	
ACE AMERICAN INSURANCE	)	
COMPANY	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Order Denying Motion for Summary Judgment and Remanding Matter to District Director, OWCP of Richard M. Clark, Administrative Law Judge, United States Department of Labor.

Jeffrey Winter, San Diego, California, for claimant.

Alan G. Brackett, Jon B. Robinson, and Patrick J. Babin (Mouledoux, Bland, LeGrand & Brackett, LLC), New Orleans, Louisiana, for employer/carrier.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Order Denying Motion for Summary Judgment and Remanding Matter to District Director, OWCP (2009-LHC-1484) of Administrative Law Judge Richard M. Clark 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant injured his knees while working for employer as a shipfitter/welder in San Diego, California, for which claimant filed a claim. Although employer initially controverted the claim, after its investigation, and after the claim had been referred to the Office of Administrative Law Judges, employer began paying claimant temporary total disability benefits on September 22, 2009; employer also paid additional compensation pursuant to 33 U.S.C. §914(e). Upon payment of the additional compensation, the only issue remaining between the parties was the amount of an attorney's fee due claimant's counsel payable by employer, and the parties agreed that a hearing on the matter was unnecessary. As no dispute on the merits remained, employer withdrew its controversion of the claim and requested the case be remanded to the district director for disposal of the case. Claimant filed a motion for summary decision with the administrative law judge because there were no genuine issues of material fact, arguing that remand was inappropriate and that the administrative law judge must issue a compensation order documenting the resolution of the case.

The administrative law judge denied claimant's motion for summary decision, finding that the "moving papers are inadequate to make any factual findings." He also concluded that the legal precedent cited by claimant in support of his motion for summary decision was distinguishable, as those cases had proceeded to formal hearing before the parties had agreed to resolve their cases. Pursuant to 20 C.F.R. §702.351, the administrative law judge found that remand to the district director is appropriate, and he granted employer's motion to remand. Order at 3-4. Claimant challenges the administrative law judge's denial of his motion for summary decision and his granting of employer's motion for remand. Employer responds, urging affirmance of the order of remand.<sup>1</sup>

Claimant contends the administrative law judge erred in remanding this case to the district director. Specifically, claimant asserts that the parties agree there are no genuine issues of material fact and the only issue remaining is counsel's entitlement to an attorney's fee, which they agree does not need a hearing to resolve. Thus, upon his motion for summary decision, claimant argues that the administrative law judge should have issued a compensation order setting forth claimant's entitlement to benefits based on the lack of any dispute.<sup>2</sup> In order to grant a party's motion for summary decision, the

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<sup>1</sup>Employer also argues that the Board should dismiss this appeal because it is an appeal of an interlocutory order. Employer filed no separate motion to dismiss. 20 C.F.R. §802.219(b). This case is properly before the Board because the issue raised is the propriety of the remand order itself.

<sup>2</sup>Contrary to employer's argument, the administrative law judge may issue a compensation order without holding a formal oral hearing. *See, e.g., Aitmbarek v. L-3*

administrative law judge must determine, after viewing the evidence in the light most favorable to the non-moving party, whether there are any genuine issues of material fact and whether the moving party is entitled to summary decision as matter of law. *See generally Morgan v. Cascade General, Inc.*, 40 BRBS 9 (2006). Here, the administrative law judge found that the papers attached to claimant's motion are "inadequate to make" factual findings. Thus, he denied claimant's motion. Order at 3-4. As we conclude the administrative law judge properly granted employer's motion to remand, we affirm the denial of claimant's motion for summary decision.

The administrative law judge applied Section 702.351 of the regulations to this case which provides:

Whenever a party withdraws his controversion of the issues set for a formal hearing, the administrative law judge shall halt the proceedings upon receipt from said party of a signed statement to that effect and forthwith notify the district director who shall then proceed to dispose of the case as provided for in §702.315.

20 C.F.R. §702.351. Thus, upon receipt of an employer's withdrawal of its controversion of claimant's claim, the administrative law judge is required by the regulation to halt the proceedings and remand the case to the district director for disposal of the case. Section 702.351, which refers to Section 702.315, 20 C.F.R. §702.315, presupposes the agreement of the parties as to the merits.<sup>3</sup> If there is no agreement between the parties, the district director cannot issue a compensation order, pursuant to Section 702.316. *Irby v. Blackwater Security Consulting, LLC*, 41 BRBS 21 (2007) (dispute on the merits remained); *Falcone v. General Dynamics Corp.*, 21 BRBS 145 (1988) (same); *Edwards v. Willamette W. Corp.*, 13 BRBS 800 (1981) (same); 20 C.F.R. §702.316. As there was no dispute between the parties in this case, the administrative law judge granted employer's motion to remand pursuant to Section 702.351.

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*Communications*, 44 BRBS 115 (2010) (stipulations); *Tisdale v. American Logistics Services*, 44 BRBS 29 (2010); (motion for summary decision); *J.H. [Hodge] v. Oceanic Stevedoring Co.*, 41 BRBS 135 (2008) (settlement); 20 C.F.R. §702.346 (waiver of hearing).

<sup>3</sup>Section 702.315 permits the district director to issue a compensation order if the parties agree on all issues.

Claimant has not demonstrated that the administrative law judge erred in applying this regulation. Claimant and employer agreed there were no factual disputes between them and that employer withdrew its controversion of the case. Thus, there are no factual or legal disputes between the parties that would prevent the district director from issuing a compensation order contemplated by Sections 702.315 and 702.351. Therefore, we affirm the administrative law judge's application of Section 702.351 and his order remanding the case to the district director. *See generally Lundy v. Atlantic Marine, Inc.*, 9 BRBS 391, 393 (1978).

Accordingly, the administrative law judge's Order Denying Motion for Summary Judgment and Remanding Matter to District Director, OWCP, is affirmed.

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge