

U.S. Department of Labor

Benefits Review Board  
200 Constitution Ave. NW  
Washington, DC 20210-0001



BRB No. 21-0356

ALLEN B. FLORES	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
PACIFIC CRANE MAINTENANCE	)	
COMPANY, L.P.	)	
	)	
and	)	DATE ISSUED: 07/27/2021
	)	
SIGNAL MUTUAL INDEMNITY	)	
ASSOCIATION, LIMITED	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
ILWU-PMA WELFARE PLAN	)	
	)	
Intervenor	)	ORDER

Claimant, who is without legal representation, appeals Administrative Law Judge Richard M. Clark’s Order Regarding Request for Modification Proceedings and Order Regarding Motion for Reconsideration and Request for Judicial Notice (2017-LHC-00773). Employer has not responded to Claimant’s appeal.

This case has previously been before the Benefits Review Board. The Board affirmed the administrative law judge’s Decision and Order Denying Benefits for Claimant’s alleged cumulative trauma orthopedic injuries and lung conditions. *Flores v. Pacific Crane Maint. Co., L.P.*, BRB No. 19-0386 (Jan. 14, 2020) (unpub.), *recon. denied*, Mar. 13, 2020). Claimant appealed the Board’s decision to the United States Court of Appeals for the Ninth Circuit; that appeal remains pending (Docket No. 20-71297).

Claimant also filed a motion for modification under Section 22 of the Act, 33 U.S.C. §922, with the Board, which the Board denied because it is not authorized to address motions for modification in the first instance. The Board advised that Claimant should initiate his motion for modification with the district director. *Flores v. Pacific Crane Maint. Co., L.P.*, BRB No. 19-0386 (May 27, 2020) (Order). The Board subsequently denied as moot Claimant's motion for reconsideration of the Board's Order denying Claimant's motion for modification, as Claimant informed the Board he had filed a motion for modification with the administrative law judge based on the advice of the Office of Workers' Compensation Programs. *Flores v. Pacific Crane Maint. Co., L.P.*, BRB No. 19-0386 (July 30, 2020) (Order).

On October 2, 2020, the administrative law judge issued an order suspending his taking any action on Claimant's motion for modification while Claimant's appeal remains pending before the Ninth Circuit. Claimant filed a motion for reconsideration of the administrative law judge's Order and further requested the administrative law judge take judicial notice of a stay that the Ninth Circuit granted in his appeal on the basis of his pending motions before the Board. The administrative law judge denied Claimant's motion for reconsideration and also declined to give effect to the Ninth Circuit's stay because the basis for the stay was already resolved by virtue of the Board's July 30, 2020 Order.<sup>1</sup> The administrative law judge further clarified that Claimant's motion for modification remains pending before the Office of Administrative Law Judges (OALJ) but noted it will not be acted upon until the Ninth Circuit either decides Claimant's pending appeal or issues a stay of the appeal pending the OALJ's resolution of Claimant's motion for modification.

Claimant now appeals the administrative law judge's Order denying his motion for reconsideration. The administrative law judge correctly stated that jurisdiction of Claimant's case remains only with the Ninth Circuit while his appeal is pending there, 33 U.S.C. §921(c), and any relief can be granted only by that court, i.e., Claimant may seek a stay of his appeal before the Ninth Circuit in order to proceed with his motion for modification before the OALJ. Alternatively, the OALJ will address Claimant's motion for modification once the Ninth Circuit issues a decision on Claimant's appeal.

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<sup>1</sup> The Ninth Circuit lifted the stay on April 16, 2021.

Accordingly, we affirm the administrative law judge's Order Regarding Request for Modification Proceedings and Order Regarding Motion for Reconsideration and Request for Judicial Notice, and dismiss Claimant's appeal.<sup>2</sup>

SO ORDERED.

JUDITH S. BOGGS, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

DANIEL T. GRESH  
Administrative Appeals Judge

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<sup>2</sup> Thus, we decline to address Claimant's contentions in support of his motion for modification.