ALBERTO GAMES	)	BRB Nos. 04-0622 and
	)	04-0622A
Claimant-Respondent	)	
Cross-Petitioner	)	
	)	
v.	)	
	)	
TODD SHIPYARDS CORPORATION	)	
	)	
and	)	
	)	
TRAVELERS PROPERTY & CASUALTY CORPORATION	)	DATE ISSUED: 04/27/2005
	)	
Employer/Carrier-Petitioners	)	
Cross-Respondents	)	
	)	
ALBERTO GAMES	)	BRB No. 04-0784
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TODD SHIPYARDS CORPORATION	)	
	)	
and	)	
	)	
TRAVELERS PROPERTY & CASUALTY CORPORATION	)	DATE ISSUED:
	)	
Employer/Carrier-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeals of the Decision and Order Awarding Benefits of Russell D. Pulver, Administrative Law Judge, United States Department of Labor, and the Supplementary Order Denying Section 14(f) Penalties and Declaration of Default of Eric Richardson, District Director, United States Department of Labor.

William C. Saacke (McNulty & Saacke), Torrance, California, for claimant.

Roger A. Levy (Laughlin, Falbo, Levy & Moresi LLP), San Francisco, California, for employer.

Peter B. Silvain, Jr. (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: , , and , Administrative Appeals Judges.

PER CURIAM:

Employer appeals,[1] and claimant cross-appeals, the Decision and Order Awarding Benefits (2001-LHC-2340) of Administrative Law Judge Russell D. Pulver (the administrative law judge) 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). Claimant appeals the Supplementary Order Denying Section 14(f) Penalties and Declaration of Default (OWCP No. 13-31267) of District Director Eric Richardson. 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). We must affirm the findings of the district director unless they are shown to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *See Carter v. Merritt Ship Repair*, 19 BRBS 94 (1986).

1We note that employer's appeal of the administrative law judge's Supplementary Decision and Order Awarding Attorney's Fees dated January 6, 2005, BRB No. 05-0426, is presently pending before the Board.

Claimant, while working for employer on October 21, 1974, sustained a severe crush injury to his head and shoulder. Employer concedes that claimant is permanently totally disabled. Nevertheless, disputes arose regarding the scope of employer's liability for medical care related to claimant's work injuries. On August 13, 1981, Administrative Law Judge Alexander Karst issued a Decision and Order Awarding Benefits, in which claimant was found entitled to medical benefits for treatment related to his work injuries. Claimant was ordered to comply with the pertinent regulatory criteria for requesting medical benefits, and Judge Karst directed also claimant to "notify in writing [employer's carrier and the district director] of any request for medical or nursing care, or changes in the medical personnel providing such care."[2] Employer's Exhibit (EX) 1, Karst Decision and Order at 5-6. Additional disputes arose regarding past and future attendant care and medical treatment for conditions which became manifest after claimant had been declared permanent and stationary with regard to the work injuries. In particular, claimant sought reimbursement for home attendant care provided by his family (hereafter referred to as the Games Family Partnership (GFP)) from the date of injury, and medical benefits for the treatment of his diabetes, hypertension, and coronary problems, as well as other medical expenses, allegedly stemming from the work injury.

In his decision, the administrative law judge first ordered employer to reimburse the GFP for past home attendant care provided to claimant. The administrative law

2 Claimant's appeal of Judge Karst's decision was dismissed by Board Order dated July 23, 1982, pursuant to claimant's motion. *Games v. Todd Shipyards*, BRB No. 81-1820 (July 23, 1982) (unpub. Order). The findings of Judge Karst are therefore not subject to review in this case.

judge, however, granted reimbursement for such care only from October 31, 1997, the date upon which he found that claimant first made a written request for home attendant care in compliance with Judge Karst's decision, until November 3, 2003, the date of commencement, pursuant to the parties' agreement, of home attendant care by a third party professional. The administrative law judge further determined that employer is liable for the medical treatment of claimant's diabetes, hypertension, and coronary heart disease as those conditions were aggravated and accelerated by the effects of the industrial injury. Moreover, the administrative law judge ordered employer to pay for the other medical benefits which claimant requested.

Employer appeals the administrative law judge's award of benefits, BRB No. 04-0622, and claimant cross-appeals, BRB No. 04-0622A.[3] Claimant's subsequent request before the district director for a Section 14(f) assessment, 33 U.S.C. §914(f), and declaration of default under Section 18(a), 33 U.S.C. §918(a), with regard to certain medical bills was denied by the Board in an Order dated June 18, 2004. Claimant appeals the district director's order, BRB No. 04-0784.

On appeal, employer asserts that the administrative law judge's findings that claimant's diabetes, hypertension and coronary artery disease are work-related is not in accordance with the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A). In response, claimant urges rejection of employer's contentions. In his cross-appeal, claimant challenges the administrative law judge's denial of reimbursement

3 Additionally, employer filed a motion before the Board for a stay of payment of medical benefits pursuant to Section 21(b)(3) of the Act, 33 U.S.C. §921(b)(3), which was denied by Order dated May 26, 2004.

to GFP for attendant care prior to October 31, 1997, as well as his calculation of interest on the subsequent award. Employer responds, urging affirmance of the administrative law judge's decision on these issues. In his appeal of the district director's order dated June 18, 2004, claimant challenges the denial of a Section 14(f) assessment. The Director, Office of Workers' Compensation Programs (the Director), and employer respond to claimant's appeal, urging affirmance of the district director's order.

Employer contends that the administrative law judge's decision does not comport with the requirements of the APA, as it does not contain a sufficient rationale to support the administrative law judge's findings that claimant's diabetes, hypertension, and coronary artery disease are caused or aggravated by the 1974 work injury. Employer argues that the administrative law judge did not accurately or completely explain the basis for his crediting the opinions of Drs. Dimmick, Jay, and Dickstein.

The APA requires that a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record" accompany every adjudicatory decision. 5 U.S.C. §557(c)(3)(A). An administrative law judge must independently analyze and discuss the evidence, and must adequately detail the rationale behind his decision and specify the evidence upon which he relied. *Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988); *Williams v. Newport News Shipbuilding & Dry Dock Co.*, 17 BRBS 61 (1985). An award of medical benefits is contingent upon a finding of a causal relationship between the condition for which medical benefits are being sought and the employment. *See Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989); *Ballesteros*, 20 BRBS 184; see *Duhagon v. Metropolitan Stevedore*

Co., 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999). The aggravation rule provides that where an injury at work aggravates, accelerates or combines with a prior condition, the entire resultant disability is compensable. *Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966); *Kubin v. Pro-Football, Inc.*, 29 BRBS 117, 119 (1995). This rule applies not only where the underlying condition itself is affected but also where the injury "aggravates the symptoms of the process." *Pittman v. Jeffboat, Inc.*, 18 BRBS 212, 214 (1986).

In resolving the conflicting evidence regarding causation, the administrative law judge permissibly accorded greatest weight to the opinions of Drs. Dimmick and Jay, who opined that claimant's diabetes and coronary artery disease were aggravated and accelerated by his work-related injuries, and of Drs. Dimmick and Dickstein, who opined that stress and high blood pressure, incurred as a result of claimant's work injury, played a role in claimant's development of hypertension, over the opinions of Drs. Grodan and Gross,[4] as they are better supported by the evidence of record as a whole. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). In particular, the administrative law judge found that the evidence overwhelmingly indicates that claimant's diabetes, hypertension, and

4 Drs. Grodan and Gross opined that claimant's diabetes is not due to his work injury but rather to his genetics and alcohol abuse, and that claimant's hypertension is due to a combination of factors, *i.e.*, obesity, alcohol abuse, tobacco use, diabetes, vascular disease and genetics, which have no connection to the industrial injury. EX 7 at 109, 113; EX 22 at 31; HT at 217, 206, 299. Drs. Grodan and Gross also refuted the effect of stress on claimant's condition. EX 22 at 51; HT at 224.

coronary artery disease each stem, in part, from an onset of stress and obesity in claimant which occurred as a direct result of his industrial accident. As the administrative law judge's findings are supported by substantial evidence, they are affirmed. *Duhagon*, 169 F.3d 615, 33 BRBS 1(CRT). Moreover, contrary to employer's contention, the administrative law judge's decision contains a thorough analysis and discussion of the evidence of record, Decision and Order at 3-15, as well as the rationale for each of his determinations on causation, Decision and Order at 19-20. Thus, we hold that his analysis in this case comports with the APA. 5 U.S.C. §557(c)(3)(A); *Ballesteros* , 20 BRBS 184; *Williams*, 17 BRBS 61 (1985). Consequently, as it is rational and supported by substantial evidence, we affirm the administrative law judge's findings that claimant's diabetes, hypertension, and coronary artery disease were aggravated and accelerated by his industrial disease, and thus that employer is liable for medical benefits associated with the treatment of those conditions. *O'Leary*, 357 F.2d 812; *Kubin,* 29 BRBS at 119; *Romeike*, 22 BRBS 57; *Ballesteros,* 20 BRBS 184.

Claimant argues that the administrative law judge erred in denying reimbursement for the attendant care provided to claimant by the GFP prior to October 31, 1997. Claimant argues that in contrast to the administrative law judge's finding, the 1981 decision of Judge Karst did not apply to a request for reimbursement for nursing care, as the carrier was already aware that claimant's spouse, Adda Games, was providing such care and wished to receive payment for such services. Claimant maintains that Mrs. Games had made a written request for payment for her services prior to the hearing associated with the 1981 case, and thus, in contrast to the administrative law judge's

finding, carrier was cognizant of this request prior to the issuance of Judge Karst's decision. Alternatively, claimant asserts that even if the pertinent language of Judge Karst's decision is applicable to Mrs. Games services, the record establishes that she substantially complied with said order as she sent a letter to employer's carrier, with a carbon copy to the district director, seeking attendant care as directed by Judge Karst.

An employer is liable under Section 7 of the Act for attendant care "for such period as the nature of the injury . . . may require." 33 U.S.C. §907(a); *Carroll v. M. Cutter Co., Inc.*, 37 BRBS 134 (2003) (Smith, J., dissenting in part), *aff'd on recon. en banc*, 38 BRBS 53 (2004) (Dolder, C.J., and Smith, J., dissenting); *Falcone v. General Dynamics Corp.*, 21 BRBS 145 (1988); *Gilliam v. The Western Union Telegraph Co.*, 8 BRBS 278 (1978); *Timmons v. Jacksonville Shipyards, Inc.*, 2 BRBS 125 (1975); *see also Edwards v. Zapata Offshore Co.*, 5 BRBS 429 (1977); *Director, OWCP v. Gibbs Corp. [Elliott]*, 1 BRBS 40 (1974); 20 C.F.R. §702.412(b).

The administrative law judge determined that employer's liability to GFP for attendant care commenced as of October 31, 1997, the date on which Mrs. Games complied with Judge Karst's 1981 decision. The administrative law judge interpreted Judge Karst's decision as an express direction to claimant to notify employer's carrier and the district director "in writing" of any request for medical or nursing care, or changes in the medical personnel providing such care. The administrative law judge further observed that the decision also specified mailing addresses to send any requests, and that the decision was signed on August 13, 1981, and served by the district director on August 24, 1981.

Judge Karst unambiguously ordered claimant "to notify in writing" employer's carrier and the district director "*of any request for medical or nursing care*." EX 1, Karst Decision at 5-6. Moreover, review of hearing transcript for the 1981 proceedings before Judge Karst reveals that the issue of attendant care for claimant was never brought before him. Claimant's Exhibit (CX) 15, Karst HT at 7, 11, 17, 21, 29, 35, 37-38, and 46. The administrative law judge observed that at the hearing before Judge Karst, on May 18, 1981, Mrs. Games was repeatedly asked if there were any other issues she wished to raise. *Id.* Despite these numerous opportunities, Mrs. Games did not raise the issue of attendant care. *Id.*

The administrative law judge then addressed whether claimant or his representatives complied with Judge Karst's instruction to provide carrier and the district director with written notice of a claim for home attendant care. In this regard, the administrative law judge found that no such written notice was made until October 31, 1997, when claimant's attorney, Louis Lemus, sent a written request for reimbursement. This finding is documented by the declaration of the district director, dated June 15, 2001, wherein he stated that the date of the first written communication to his office, subsequent to August 24, 1981, was the October 31, 1997, request by attorney Lemus. EX 3. This belies Mrs. Games' testimony that she sent a written request dated "Agost 17, 1981," to the appropriate parties. Moreover, Mrs. Games' testimony regarding repeated requests for reimbursement by telephone is likewise refuted by the district director's declaration in which he states that no oral requests for home attendant care were ever made to his office. EX 3. Thus, as the administrative law judge determined, Mrs.

Games' alleged verbal requests for attendant care are of no consequence. Lastly, the administrative law judge further rejected, as unpersuasive, claimant's contention that the terms of Judge Karst's decision did not apply to his family, since that decision explicitly required claimant "or those acting on his behalf," to provide the appropriate written requests.

Claimant further contends that employer should be estopped from arguing that Mrs. Games did not comply with the 1981 order since claimant relied, in detriment, on the representations of carrier's representative, Mr. Shuford, that Mrs. Games is not allowed to receive reimbursement because she is claimant's wife. Claimant contends that no claim was made for attendant care until Mrs. Games learned that Mr. Shuford's alleged statement was erroneous, at which time claimant immediately retained counsel and requested benefits for said services.

Equitable estoppel is a doctrine in equity that prevents one party from taking a position inconsistent with an earlier action such that the other party would be at a disadvantage. It typically holds a person to a representation made, or a position assumed, where it would be inequitable to another, who has in good faith relied upon that representation or position. To apply this doctrine to claims under the Act, four elements are necessary: (1) the party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the facts; and (4) he must rely on the former's conduct to his injury. *Rambo v. Director, OWCP*, 81 F.3d 840

(9th Cir. 1996), *vacated on other grounds*, 521 U.S. 121 (1997); *Porter v. Newport News Shipbuilding & Dry Dock Co.*, 36 BRBS 113 (2002).

Claimant cannot establish all of the elements necessary for application of the doctrine of equitable estoppel. First, the record contains no evidence that at the time of the alleged misrepresentation, Mr. Shuford, or, for that matter, employer and its carrier, were aware that home attendant care was medically necessary and whether Mrs. Games was capable of providing such care. The record evidence indicates that, at the time of Mr. Shuford's alleged statement in 1981, there was conflicting medical evidence on these particular issues. EX 9 at 144-47; EX 14 at 168. Moreover, Judge Karst's decision establishes that no request for attendant care was pending before him. Second, claimant has not established that Mr. Shuford intended for Mrs. Games to rely on this alleged statement. The record lacks testimony from any representative of the carrier, let alone the testimony Mr. Shuford, who allegedly made the false statement. Rather, claimant relies solely on Mrs. Games' testimony regarding an alleged telephone conversation between them. Third, claimant has not shown that Mrs. Games was unaware of her potential entitlement to reimbursement for home attendant care, or that she relied solely on the alleged contrary statement by Mr. Shuford. We therefore reject claimant's assertion that the doctrine of equitable estoppel is applicable to this case. *Porter*, 36 BRBS 113.

We thus affirm the administrative law judge's findings that claimant was required, pursuant to Judge Karst's 1981 decision, to present any request for home attendant services in writing to employer's carrier and the district director, and that claimant did not meet that prerequisite until October 31, 1997, as they are supported by substantial

evidence. Consequently, the administrative law judge's award of home attendant care from October 31, 1997, until November 3, 2003, is affirmed.

Claimant also argues that the administrative law judge's calculation of interest by using the U.S. Treasury Bill Interest Rate in effect on the date the district director filed the Decision and Order, *i.e.*, April 1, 2004, is inequitable in this case, as the average interest rate over the time period of the award was well in excess of the 1.17 percent awarded. Claimant proposes that interest in this case should be calculated by using the average of the U.S. Treasury Bill Interest Rate during the time period covered by the award, *i.e.*, for the period of October 31, 1997, to November 3, 2003, a rate of roughly 4.69 percent.

The award of interest on benefits due under the Act is not statutorily mandated but has been upheld as consistent with the Congressional purpose of fully compensating claimants for their injuries. *See Foundation Constructors, Inc. v. Director, OWCP*, 950 F.2d 621, 25 BRBS 71(CRT) (9th Cir. 1991). It is well-established that interest applies to awards of medical benefits. *Hunt v. Director, OWCP*, 999 F.2d 419, 27 BRBS 84(CRT) (9th Cir. 1993); *Ion v. Duluth Missabe & Iron Range Ry Co.*, 32 BRBS 268 (1998); *Brown v. Alabama Dry Dock and Shipbuilding Corp.*, 28 BRBS 160.

For the reasons delineated in *Grant v. Portland Stevedoring Co.*, 17 BRBS 20 (1985), we reject claimant's contention. In that decision, the employer similarly argued that an average of the various Treasury bill rates in effect over the entire period of liability during which benefits were unpaid should be employed to discern the applicable interest rate. Recognizing that the federal courts provided no clear guidance as to how to

apply Section 1961 to pre-judgment interest situations, the Board held that it was compelled to choose the rate in effect on the date the administrative law judge's decision and order is filed by the deputy commissioner.[5] The Board observed that "this date is clear and unambiguous, and the application of one certain rate to the entire period of liability will be easy to compute and thus promote administrative efficiency." *Grant*, 17 BRBS at 23. Moreover, the Board recognized that its "holding is consistent with the express language of Section 1961, which refers to the rate in effect on the date of judgment."[6] *Id.* Consequently, we affirm the administrative law judge's award of interest based on the Treasury bill rate in effect at the date his decision was filed with the district director, *i.e.*, April 1, 2004.

Claimant lastly contends that the administrative law judge erred by not figuring in the present value of the services provided by the GFP in determining his award for said services in this case. Claimant maintains that while $55,115 may have been the value of 24-hour care provided in 1998, the amounts awarded for 1999 through 2003 should be higher due to inflation.

In addressing the monetary value for home attendant care, the administrative law judge specifically considered the reports of nurses Doreen Casuto and Sally Glade, as

---

5 This is the date a compensation order becomes effective. 20 C.F.R. §§702.349, 702.350.

6 28 U.S.C. §1961 provides that "interest shall be calculated from the date of the entry of the judgment, at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment."

well as economist David Weiner's calculations regarding the present value of unpaid home attendant care. Decision and Order at 18; CX 69; EX 14. In finding that $55,115 per year for a full-time attendant is appropriate, the administrative law judge accorded greatest weight to the calculations of Doreen Casuto, whose opinion he found was well-reasoned, fair-minded and commensurate with both claimant's needs and the well being of his family. In particular, the administrative law judge found that in preparation for her report, Ms. Casuto met with claimant and his wife, reviewed claimant's medical records, and relied on the results of claimant's three-day interdisciplinary evaluation. The administrative law judge's finding of $55,115 per year for full-time home attendant care also falls within the cost range estimated by Sally Glade, a registered nurse for 33 years who served as claimant's case manager from June 12, 1998, until July 2, 1999. In particular, Ms. Glade testified that a skilled live-in attendant would cost $150-225 per day. It therefore stands to reason, as the administrative law judge found, that an annual payment of $55,115, or $151 per day for the GFP, who are not skilled home attendants, is reasonable. *See generally Carroll*, 37 BRBS 134 (Board affirms administrative law judge's order for employer to pay claimant's family, *albeit at a reduced rate* from those charged by professional caregivers, for their time in caring for claimant). We therefore affirm the administrative law judge's award of $55,115 per year in reimbursement to the GFP for home attendant care provided to claimant.

Claimant also contends that the district director erroneously denied the request for a Section 14(f) assessment against employer in this case. Claimant maintains that once the April 1, 2004, decision was filed by the district director, payment of the medical

benefits should have been made within ten days, or at the very least, within 30 days of the notification of the outstanding bills. In response, the Director and employer maintain that the district director correctly refused to require employer to pay additional compensation under Section 14(f).

Section 14(f), 33 U.S.C. §914(f), provides that compensation payable under the terms of an award must be paid within ten days after it is due. If it is not paid within ten days, an additional 20 percent assessment shall be paid unless there is a review of the award as provided in Section 21, 33 U.S.C. §921, and an order staying payments has been issued by the Board or by the court. An Order for an award cannot "become due" and is not subject to a Section 14(f) assessment until it is final. *Keen v. Exxon Corp.*, 35 F.3d 226, 28 BRBS 110(CRT) (5th Cir. 1994). To be final, an Order must "at a minimum specify the amount of compensation due or provide a means of calculating the correct amount without resort to extra-record facts which are potentially subject to genuine dispute between the parties." *Keen*, 35 F.3d at 228, 28 BRBS at 112(CRT), *quoting Severin v. Exxon Corp.*, 910 F.2d 286, 289, 24 BRBS 21, 23(CRT) (5th Cir. 1990).

As the Director suggests, the administrative law judge's decision is not, as a matter of law, "final" for purposes of Section 14(f) as it does not resolve the total amounts employer owed to the medical provider whose bills claimant singled out in his request for a Section 14(f) assessment. In particular, the amounts of the bills and the identity of the medical providers were not resolved until after the administrative law judge's decision when, by resort to extra-record facts, claimant demanded payment of sums certain to three medical providers. As such, the administrative law judge's decision

is not sufficiently final for purposes of awarding a Section 14(f) assessment in this case. *See generally Keen*, 35 F.3d at 228, 28 BRBS at 112(CRT). We therefore affirm the district director's finding that the medical providers referenced by claimant's attorney are not entitled to a Section 14(f) assessment on past due bills in this case.[7] *Id.*

[7] In *Caudill v. Sea Tac Alaska Shipbuilding*, 22 BRBS 10 (1988), *aff'd mem. sub nom. Sea Tac Alaska Shipbuilding v. Director*, OWCP, 8 F.3d 29 (9th Cir. 1993), the Board held that claimants are not entitled to a Section 14(f) assessment on medical benefits that were not timely paid because medical benefits do not constitute compensation for purposes of Section 14(f). In its decision, the Board reasoned that it "has distinguished claims for medical benefits from claims for disability benefits, holding that they are never time-barred, that they are not normally subject to interest and that they are not subject to Section 14(e) penalties." *Caudill*, [case citations omitted] 22 BRBS at 16. We note that the Board's rationale for holding that medical benefits do not constitute compensation for purposes of Section 14(f) was partially overruled by the United States Court of Appeals for the Ninth Circuit in *Hunt v. Director, OWCP*, 999 F.2d 419, 27 BRBS 84(CRT) (9th Cir. 1993), as the court held that interest may be assessed against employer on overdue medical expenses. Nevertheless, this has no impact on the case at hand for, as the Director argues, the administrative law judge's decision was insufficiently final with regard to specificity in the award of past due medical benefits to allow for an award of a Section 14(f) assessment in this case. *Keen*, 35 F.3d at 228, 28 BRBS at 112(CRT).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits, and the district director's Supplementary Order Denying Section 14(f) Penalties & Declaration of Default, are affirmed.

SO ORDERED.

_____

Administrative Appeals Judge

_____

Administrative Appeals Judge

_____

Administrative Appeals Judge