

THOMAS CATHEY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SERVICE EMPLOYEES)	
INTERNATIONAL, INCORPORATED)	
)	
and)	
)	
INSURANCE COMPANY OF THE)	DATE ISSUED: 12/26/2012
STATE OF PENNSYLVANIA)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT OF)	
LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Summary Decision Dismissing a Challenge to the Application of the War Hazards Compensation Act of Stuart A. Levin, Administrative Law Judge, United States Department of Labor.

John M. Schwartz (Blumenthal, Schwartz & Saxe, P.A.), Titusville, Florida, for claimant.

Grover E. Asmus (Asmus & Gaddy, L.L.C.), Mobile, Alabama, for employer/carrier.

Matthew W. Boyle (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Summary Decision Dismissing a Challenge to the Application of the War Hazards Compensation Act (2012-LDA-00064) of Administrative Law Judge Stuart A. Levin 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.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *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).

Claimant was injured in Iraq in 2004 when a rocket-propelled grenade exploded above the truck he was driving. He sustained physical and psychological injuries as a result, and there is no dispute that the injuries are compensable under the Act, pursuant to the Defense Base Act (the DBA). Employer voluntarily paid claimant temporary total disability and medical benefits, totaling over \$340,000, and the parties settled the claim in 2009 for disability benefits under Section 8(i) of the Act, 33 U.S.C. §908(i), for an additional lump sum of over \$300,000. The settlement did not include medical benefits. On July 7, 2011, claimant's doctor recommended he undergo neck surgery, and on July 14, 2011, claimant's counsel requested an informal conference concerning this issue. Counsel received a return letter from the Office of Workers' Compensation Programs (OWCP) dated July 25, 2011, stating that the claim had been accepted under the War Hazards Compensation Act (WHCA), 42 U.S.C. §1701 *et seq.* On July 28, 2011, the OWCP informed claimant that, "effective immediately," his medical treatment and bills would be processed in accordance with the WHCA, and, therefore, the Federal Employees' Compensation Act, 5 U.S.C. §101 *et seq.* (FECA). *See* 20 C.F.R. §61.105(d).

Claimant requested that the district director refer his DBA claim to the Office of Administrative Law Judges (OALJ) for a hearing on the matter of employer's liability under the Act for his medical treatment and surgery. In response, on October 27, 2011, the district director acknowledged counsel's request and stated there were no issues in dispute, as medical care is available to claimant under the provisions of the FECA.

Nonetheless, pursuant to claimant's request, the district director transferred this case to the OALJ.¹

Based on the evidence attached to employer's motion for summary decision, the administrative law judge found there is no genuine issue of material fact in this case and claimant has not shown there has been a diminution of his rights under the Act. Order at 5.² The administrative law judge also rejected claimant's contention that the WHCA applies only to employers' reimbursement claims, as it expressly provides as well for the direct payment to claimants. See 20 C.F.R. §61.105(a). Accordingly, acceptance of a claim under the WHCA by the OWCP relieves employers of liability regardless of the decision to reimburse the employers or to pay the claimants directly; the OWCP has the authority to control the method of payment in a WHCA case. Order at 5. Therefore, the administrative law judge found that employer in this case has been relieved of liability for claimant's medical benefits. As he found that claimant failed to demonstrate a genuine issue of material fact and that employer is entitled to a decision in its favor as a matter of law, the administrative law judge granted employer's motion for summary decision and dismissed claimant's claim. Order at 7-8.

Claimant appeals the administrative law judge's summary decision in favor of employer. He contends the administrative law judge erred in making findings of fact without holding a hearing and in stating that claimant's claim cannot proceed under the Act; claimant avers employer must continue processing requests for medical benefits pursuant to the Act.³ Employer and the Director, OWCP (the Director), respond, urging affirmance. Claimant has filed reply briefs.

In determining whether to grant a party's motion for summary decision, the 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. *Morgan v. Cascade General, Inc.*, 40 BRBS 9 (2006); see also *O'Hara v. Weeks Marine, Inc.*,

¹Meanwhile, on October 24, 2011, the district director also sent a letter to claimant's doctor informing him that he should contact the OWCP for authorization of treatment.

²The administrative law judge specifically stated that 20 C.F.R. §61.105(e) "dismantles" claimant's argument as it explains that his rights under the Act are preserved if he is denied authorization for treatment or payment of medical expenses. Order at 5; see *infra*.

³Claimant argues that he is without any source of relief, and he has no "recognizable method under the law" of getting his surgical authorization if the administrative law judge's summary decision is affirmed.

294 F.3d 55 (2^d Cir. 2002); *Brockington v. Certified Electric, Inc.*, 903 F.2d 1523 (11th Cir. 1990), *cert. denied*, 498 U.S. 1026 (1991); *Buck v. General Dynamics Corp.*, 37 BRBS 53 (2003); *Hall v. Newport News Shipbuilding & Dry Dock Co.*, 24 BRBS 1 (1990); 29 C.F.R. §§18.40(c), 18.41(a). We affirm the administrative law judge's order granting summary decision, as there are no factual issues in dispute, including no dispute as to claimant's entitlement to medical benefits; claimant has raised legal issues, not factual ones. That is, he challenges the transfer of the administration of his claim for medical benefits from the Act to the WHCA. As the administrative law judge correctly decided the legal issues before him, employer is entitled to summary decision as a matter of law. See *Smith v. Labor Finders*, 46 BRBS 35 (2012); *R.V. [Villaverde] v. J. D'Annunzio & Sons*, 42 BRBS 63 (2008), *aff'd mem. sub nom. Villaverde v. Director, OWCP*, 335 F.App'x 79 (2^d Cir. 2009); *B.E. [Ellis] v. Electric Boat Corp.*, 42 BRBS 35 (2008).

Claimant contends that the transfer of liability for his medical benefits from employer to the Federal Government under the WHCA was improper. As the administrative law judge properly found, claimant has no basis to challenge this transfer pursuant to any provisions of the Longshore or Defense Base Acts. When a claimant's work injury is caused by a "war risk hazard," the employer may apply under the WHCA for reimbursement of disability and medical benefits paid to the claimant. 42 U.S.C. §1701. If the claim is accepted, liability for payment of the claim is transferred from the employer to the Federal Government, to be paid from the Employees' Compensation Fund, 5 U.S.C. §8147. 42 U.S.C. §§1704, 1711; 20 C.F.R. §61.200(b). The WHCA gives authority to administer the WHCA to the Secretary of Labor. 42 U.S.C. §1706. Pursuant to 20 C.F.R. §61.2, administration of the WHCA has been delegated to the Director; specifically, the Division of Federal Employees' Compensation (DFEC). See 20 C.F.R. §1.2. Agency decisions are final; there is no mechanism for review of an agency decision by any other official of the United States or by any court. 42 U.S.C. §1715; see DFEC Procedure Manual at Part 4-0300 para. 9(c).⁴ Thus, we reject claimant's challenge to the transfer of his claim under the WHCA. 42 U.S.C. §1715.

Once, as here, the DFEC has accepted the claim, then payment of compensation and medical benefits is made from the fund established under the FECA. 42 U.S.C. §1704(a); 5 U.S.C. §8147; 20 C.F.R. §61.204. The DFEC Procedure Manual explains that the WHCA

supplements the Defense Base Act (42 U.S.C. 1651), which is an extension of the [Longshore Act]. The WHCA completes the protection provided to Federal contractors' employees and certain other selected employees

⁴<http://www.dol.gov/owcp/dfec/procedure-manual.htm>

performing work outside the United States. All liability for injury, death and detention benefits under the WHCA is assumed by the Federal Government, and is paid from the Employees' Compensation Fund established by 5 U.S.C. 8147.

Procedure Manual at Part 4-0300 para. 6(a). Upon acceptance of the claim, the DFEC may decide to either reimburse the DBA employer/carrier or pay the claimant directly. 42 U.S.C. §1704; 20 C.F.R. §61.105; OWCP Bulletin No. 12-01 (Oct. 6, 2011); OWCP Bulletin No. 05-01 (Oct. 18, 2004). Therefore, we reject claimant's contention that the WHCA does not provide for direct payment to claimants.

With respect to a claim for medical benefits in a case accepted under the WHCA, the applicable regulation expressly provides that, "In cases transferred to the [OWCP] for direct payment, medical care for the effects of a war-risk injury may be furnished in a manner consistent with the regulations governing the furnishing of medical care under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101, et seq.)." 20 C.F.R. §61.105(d).⁵ Thus, in order to obtain medical benefits, claimant must comply with the

⁵The Procedure Manual explains:

The administrative procedures of the Federal Employees' Compensation Act (FECA) are generally applicable to claims filed under Section 101 of the WHCA, with the exception that computation of disability and death benefits, and determination of pay rate and beneficiaries, are made in accordance with the provisions of the [Longshore Act]. The minimum provisions of the [Longshore Act] for computing disability compensation (Section 6b) and death benefits (Section 9e) do not apply to these claims or to cases paid under the Defense Base Act. *Medical treatment and care are furnished under the applicable sections of the FECA.*

Procedure Manual at Part 4-0300 para. 6(c) (emphasis added). The regulation at 20 C.F.R. §61.204 states:

All medical services, appliances, drugs and supplies which in the opinion of the Office are necessary for the treatment of an injury coming within the purview of [Section 1701 of the WHCA] shall be furnished to the same extent, and wherever practicable in the same manner and under the same regulations, as are prescribed for the furnishing of medical treatment under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 et seq.).

procedures outlined under the FECA and its implementing regulations.⁶ Nonetheless, regardless of the transfer of payments to DFEC, a claimant retains his procedural rights under the Act if a dispute in the DBA claim arises. 20 C.F.R. §61.105(e). If DFEC were to deny recommended treatment or surgery, claimant could request a hearing before the OALJ under the Act for a decision on the necessity, reasonableness, etc., of the requested treatment. *Id.* Thus, we reject claimant's contention that he has lost his rights under the Act by virtue of the transfer of payment of benefits pursuant to the WHCA.

In this case, employer applied for, and DFEC approved, reimbursement of payments made to claimant for his war hazard injuries. Therefore, employer has been relieved of liability for claimant's medical benefits. *See* 20 C.F.R. §61.100(c). In addition to approving employer's claim for reimbursement, DFEC thereafter opted to make direct payments to claimant for his continuing medical care, as it is permitted to do by the statute and regulations. 42 U.S.C. §1704(a); 20 C.F.R. §61.105. The DFEC has not disputed claimant's entitlement to any medical benefits, and the OWCP has informed claimant, his counsel and his doctor of the procedures for seeking authorization and payment for medical treatment. According to the Director, claimant has not requested authorization for neck surgery; thus, the DFEC has neither authorized nor rejected this treatment.⁷ Under such circumstances, there is no factual dispute surrounding the proposed surgery.

Consequently, we reject claimant's contention that the administrative law judge's grant of summary decision in employer's favor was improper. Once the claim was accepted under the WHCA, and the Federal Government assumed liability for claimant's medical benefits, employer was relieved of liability for those benefits. Claimant does not have any legal basis for challenging the transfer of liability pursuant to the WHCA, and he must follow the FECA procedures in order to have his medical treatment authorized and recompensed. Moreover, there exist no genuine issues of material fact under the Act that require the administrative law judge to hold a hearing. Therefore, employer is entitled to summary decision as a matter of law, and we affirm the administrative law judge's dismissal of this claim. *See Smith*, 46 BRBS 35; *Ellis*, 42 BRBS 35; *see also Villaverde*, 42 BRBS 63.

⁶We note that, contrary to claimant's implication that proceeding under the FECA is more onerous than proceeding under the Act, the Act also contains procedural requirements for securing the payment of medical benefits. 33 U.S.C. §907; *see Maryland Shipbuilding & Dry Dock Co. v. Jenkins*, 594 F.2d 404, 10 BRBS 1 (4th Cir. 1979).

⁷Indeed, claimant does not assert that treatment has been denied.

Accordingly, the administrative law judge's Summary Decision Dismissing a Challenge to the Application of the War Hazards Compensation Act is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge