U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

File Number:

LHWCA BULLETIN No. 97- 2

Issue Date: August 2, 1997

Expiration Date: August 1, 1998

SUBJECT: Hearing Loss and Section 8(f) Relief

Background: It is now apparent that the Benefits Review Board is taking a consistent approach with respect to claims involving hearing loss and Section 8(f) relief. Absent anything to the contrary from the courts of appeals, we are bound to follow these decisions. Therefore, we can no longer sustain the long-standing position to grant Section 8(f) relief on the basis of the oldest certified audiogram v. the most recent audiogram of record. The two most recent audiograms can be utilized for asserting a claim for Section 8(f) relief. Only in the absence of additional exposure between these two audiograms will the Associate Solicitor be able to offer any defense. You should advise your examiners to review the decisions outlined in this memorandum and to use them for precedential value when evaluating Section 8(f) hearing loss applications.

In *Skelton v. Bath Iron Works,* 27 BRBS 28, the Board held that the fact that the employer has concealed the results of the prior audiograms on which it relies as the demonstration of the claimant's manifest existing permanent partial disability is not a ground for denying section 8(f) relief. The Director contended that section 8(f) "should not apply in cases where the employer administers audiograms to a claimant and allegedly does not inform him of the results or file an injury report with the district director." However, the Board held that there is no duty for the employer to file a first report of injury unless there is a loss of one or more shifts of work. In addition, since no claims were filed as a result of these audiograms, "the employer cannot be denied Section 8(f) relief merely because the Director alleges that the employer concealed the results of prior audiograms for the purpose of later obtaining Section 8(f) relief."

In *Risch v. General Dynamics,* 22 BRBS 251, the Board held that there is no persuasive reason for viewing hearing loss any different from other injuries. The Associate Solicitor argued that the Special Fund should only be responsible for the hearing loss prior to employment as a result of a pre-employment audiogram. The Director contended that prior to the 1984 amendments, Section 8(f) was rarely an issue in hearing loss

cases. This was due to the 104 week limitation which rarely resulted in an award under Section 8(f). Congress amended the provisions in 1984 to read "lesser" for "greater" for cases involving hearing loss. However, the Board held that this change "did not require that an employer produce a pre-hire audiogram to be entitled to Section 8(f) relief in a hearing loss case." The Board pointed out that this one change did not bring about separate criteria for Section 8(f) hearing loss cases. The Board went on to state that there is nothing in the legislative history to suggest that Congress intended that Section 8(f) hearing loss cases are subject to different criteria than any other injury or occupational disease case.

In summary, we can no longer sustain our long standing position of comparing the oldest certified audiogram of record with the most recent audiogram. This has and will continue to result in the Special Fund paying the major portion of a hearing loss claim when a number of audiograms have been performed and only the two most recent audiograms are submitted for the claim by the employee and in the petition for section 8(f) relief by the employer/carrier.

Purpose: To alert all Longshore district offices to this policy change.

Disposition: This Bulletin should be retained until the indicated expiration date or until the necessary changes have been made to the Longshore (LHWCA) Procedure Manual.

JOSEPH F. OLIMPIO
Director, Division of
Longshore and Harbor
Worker's Compensation

Distribution List: List No. 1

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

File Number:

LHWCA BULLETIN NO. 99-1

Issue date: October 1, 1998

Expiration Date: September 30, 1999

Subject: National Average Weekly Wage, Minimum/Maximum Rates, and Annual Adjustment Under Section 10(f), Effective October 1, 1998.

Background: Under Section 6(b)(3) of the LHWCA, the Secretary has determined that the national average weekly wage (NAWW) for the three consecutive calendar quarters ending June 30, 1998 is $435.88. This amount is the applicable NAWW for the period October 1, 1998 through September 30, 1999.

In accordance with Section 2(19) of the Act, the NAWW of $435.88 is based on the national average earnings of production or nonsupervisory workers on private nonagricultural payrolls. Such earnings during the three consecutive calendar quarters ending June 30, 1998, as obtained from the Bureau of Labor Statistics, are $434.70, $435.36 and $437.57. The average of these three quarterly figures is $435.88.

Under Section 6(b)(1) of the Act, the maximum compensation for disability or death is "200 per centum of the applicable national average weekly wage." Given the NAWW of $435.88, the maximum compensation rate for the 12-month period beginning October 1, 1998, is $871.76 per week.

The minimum compensation rate under Section 6(b)(2) is "50 per centum of the applicable national average weekly wage," or $217.94 per week for the period October 1, 1998 through September 30, 1999.

Section 10(f) provides that, effective October 1 of each year, compensation for permanent total disability or death shall be increased by (1) a percentage equal to the percentage by which the current NAWW exceeds the preceding NAWW or (2) 5 percent, whichever is less. The NAWW of $435.88 exceeds the preceding NAWW of $417.87 by 4.31 percent. Therefore, the increase provided by Section 10(f) for October 1, 1998, is 4.31 percent.

In summary, the following amounts and percentage are applicable during the period October 1, 1998 through September 30, 1999:

2. LHWCA BULLETIN NO. 99-1

National Average Weekly Wage.	$435.88
Maximum Compensation Rate	$871.76
Minimum Compensation Rate	$217.94
Adjustment Under Sections 10(f) and 10(h)	4.31%

Purpose: To provide the national average weekly wage, the minimum and maximum compensation rates, and the percent of adjustment under Section 10(f) applicable to the period beginning October 1, 1998, and to provide information and guidance on their application.

References: Chapters 3-202 and 3-203 of the Longshore (LHWCA) Procedure Manual.

Applicability: All District Directors, Claims Examiners, and Claims Clerks in the DLHWC District Offices.

Action:

1. Effective October 1, 1998, compensation for disability incurred during the period 10/1/98 - 9/30/99 is to be computed at 66 2/3% of the employee's average weekly wage as determined under Section 10, subject to the maximum compensation rate of $871.76. The minimum compensation rate in total disability cases is $217.94. However, if an employee's average weekly wage is less than this amount, compensation should be paid at 100% of the employee's average weekly wage.

2. In computing death benefits, the average weekly wage of the deceased employee should not be less than $435.88, and the total weekly death benefit should not initially exceed the maximum compensation rate of $871.76. Death benefits can subsequently exceed the initial maximum limitations by virtue of Section 10(f) adjustments.

3. Form LS-557, copy attached, has been revised to reflect the current minimum and maximum limitations applicable where the injury occurred on or after October 1, 1998. A supply of the revised Form LS-557 is being sent under separate cover. A small supply of the previous edition of the LS-557 should be retained for use in those cases where the injury occurred prior to October 1, 1998.

4. In accordance with the provisions of Section 10(f) of the LHWCA, the compensation being paid in cases of permanent total disability or death arising out of injuries subject to the Act which existed prior to October 1, 1998, is to be increased by 4.31 percent.

The adjusted weekly amount will be fixed at the nearest dollar. Figures ending in $.50 or more will be raised to the next whole dollar; figures ending in less than $.50 will be rounded to the preceding dollar amount. No adjustment of less than $1.00 will be made. Therefore, in any case where the weekly award is $23.08 per week or less, there will be no adjustment of compensation. If the award is $23.09 per week or more, there will be an adjustment.

5. Form LS-521 has been revised to reflect the percentage of adjustment for October 1, 1998. A supply of Form LS-521 is being sent under separate cover to those district offices using this pre-printed form. Those offices using word processing or other programs to generate the LS-521 should make appropriate revisions to that document. A copy of the revised LS-521 is attached for information purposes. Any previous editions of the form are obsolete and should be destroyed.

6. Examples of computations of Section 10 adjustments for October 1, 1998, are as follows:

Example 1. Cases currently being paid at the maximum compensation rate:

$835.74 (Weekly compensation payment)

$835.74 x 4.31% (.0431) = $36.0203 ($36.02 rounded to the nearest cent)

$835.74 + $36.02 = $871.76 or $872.00 rounded to the nearest dollar, but held to $871.76 by the maximum limitation.

NOTE: If application of a Section 10 adjustment results in compensation above the maximum amount because of rounding to the nearest dollar, the compensation must be reduced to the maximum rate.

Example 2. Section 10(h)(1) cases currently being paid at the highest rate:

$278.00 (Weekly compensation payment)

$278.00 x 4.31% (.0431) = $11.9818 ($11.98 rounded to the nearest cent)

$278.00 + $11.98 = $289.98 or $290.00 rounded to the nearest dollar

Example 3. Cases in which no adjustment is to be made:

$23.08 (Weekly compensation payment)

$23.08 x 4.31% (.0431) = $.9947 ($.99 rounded to the nearest cent)

Section 10(g) states in such case that there is no adjustment in compensation. This example indicates that in any case where the weekly award is $23.08 or less there shall be no adjustment to compensation. If the award is $23.09 per week or greater, there will be an adjustment.

Disposition: This Bulletin should be retained until the indicated expiration date or until the necessary changes have been made to the Longshore (LHWCA) Procedure Manual.

JOSEPH F. OLIMPIO
Director, Division of
Longshore and Harbor
Workers' Compensation

Attachments

Distribution: List No. 1
(Regional Directors, OWCP; District Directors, DLHWC; All Claims Examiners; Rehabilitation Specialists; Mail and File Section; National Office DLHWC Professional Staff; Director, OWCP; Director, DFEC; Director, DCMWC, Rehabilitation Division; Solicitor's Office, Division of Employee Benefits)

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation

OWCP Case No. _____

Carrier Case No. _____

Claimant/Chief Beneficiary _____

Amount of Weekly Increase	$
Amount of Adjusted Weekly Award	$

NOTICE TO INSURANCE CARRIER OR SELF INSURED EMPLOYER

Pursuant to Section 10(f) of the Longshore and Harbor Workers' Compensation Act, your company should increase payment of weekly compensation to the named beneficiary or payee by the amount shown in the upper box at the top of this letter, effective October 1, 1998. This increase reflects a 4.31 percent adjustment in the weekly compensation benefits. Under the amended Section 10(f), the claimant/beneficiary is entitled to an increase reflecting the percentage increase in the national average weekly wage (NAWW) under Section 6 (b)(3) from the NAWW of the previous year or 5 percent, whichever is less. The increase in the NAWW was 4.31 percent, therefore, the adjustment reflects the lesser increase. As indicated in Section 10(f), the adjusted weekly amount is to be fixed at the nearest dollar. Figures ending in $.50 or over are to be raised to the next whole dollar; figures ending in less than $.50 are to be rounded to the preceding dollar amount. After increasing payment by this amount, the adjusted weekly award should be the same as indicated in the lower box at the top of this letter.

See Reverse

After the first adjustment payment has been made, you are requested to sign and date the certification contained below. A copy of the letter should then be returned to the Office of Workers' Compensation Programs' district office at the address printed on the envelope. (The paragraph below is intended for the beneficiary or payee to whom a copy of this letter is being sent as notification of the adjustment.)

NOTICE TO BENEFICIARY OR PAYEE

By copy of this letter you are notified of the weekly increase under Section 10(f). Do not return this letter or copy to the district office. The instructions above are directed to the company presently making payments to you. If you have any questions or if the notice of the increase is not received from the insurance carrier or employer within three weeks of the date of this letter, please contact this Office at the address on the envelope.

BENEFITS FOR UNRELATED DEATH

The 1984 amendments to the Longshore Act amended section 9 and eliminated the unrelated death provisions for all deaths occurring after September 28, 1984. In 1972, Section 9 was amended to provided for death benefits "if the employee who sustains permanent total disability due to the injury thereafter dies from causes other than the injury." In 1984, section 9 was again amended. The language which is now applicable to all deaths occurring after September 28, 1984, reads: "If the injury causes death, the compensation shall be known as a death benefit..." The reference to benefits for death due to causes other than the employment injury was eliminated.

District Director

cc: Beneficiary/Payee

CERTIFICATION *(To Be Completed by Insurance Carrier or Self-Insured Employer)*

I hereby certify that benefits have been adjusted in this case in accordance with the amounts shown on the reverse of this letter.

Authorized Signature _____ Date Adjustment Paid _____

Name and Title of Person Whose Signature Appears Above
(Please Print or Type)

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation

NOTICE TO EMPLOYEE OF COMPENSATION RATE UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, AS EXTENDED [1]

Injuries Between October 1, 1998 and September 30, 1999

Your work-related injury has been reported to this Office under one of the laws listed at the bottom of this notice. Your correct compensation rate may be different from that which you have received from the insurance carrier or employer, if the employer is self-insured.

Under the provisions of the Longshore and Harbor Workers' Compensation Act and related laws, an injured employee's compensation is based on his or her average weekly wage (AWW) for the year prior to the injury. To estimate your AWW, add all your earnings for the year prior to the injury and divide the total by 52 weeks. This will represent a close approximation of your AWW. You may then estimate your compensation rate by applying your AWW to the chart below:

IF YOUR AVERAGE WEEKLY WAGE IS	YOUR COMPENSATION RATE IS
Less than $217.94	Equal to your AWW
Between $217.94 and $326.91	$217.94 per week
Between $326.92 and $1307.64	66 2/3% of your AWW
$1307.65 or more	A maximum of $871.76

If you think you have not received the correct compensation rate, please send a copy of your earnings record, such as W-2 Income Tax Form, or other data for the one-year period immediately prior to your injury, to the address shown on the envelope.

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[1] Acts Extending the Longshore Act:
District of Columbia Compensation Act
Outer Continental Shelf Lands Act
Defense Base Act
Nonappropriated Fund Instrumentalities Act

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

LHWCA BULLETIN NO. 00-1

Issue date: October 1, 1999

Expiration Date: September 30, 2000

Subject: National Average Weekly Wage, Minimum/Maximum Rates, and Annual Adjustment Under Section 10(f), Effective October 1, 1999.

Background: Under Section 6(b)(3) of the LHWCA, the Secretary has determined that the national average weekly wage (NAWW) for the three consecutive calendar quarters ending June 30, 1999 is $450.64. This amount is the applicable NAWW for the period October 1, 1999 through September 30, 2000.

In accordance with Section 2(19) of the Act, the NAWW of $450.64 is based on the national average earnings of production or nonsupervisory workers on private nonagricultural payrolls. Such earnings during the three consecutive calendar quarters ending June 30, 1999, as obtained from the Bureau of Labor Statistics, are $449.86, $447.92 and $454.13. The average of these three quarterly figures is $450.64.

Under Section 6(b)(1) of the Act, the maximum compensation for disability or death is "200 per centum of the applicable national average weekly wage." Given the NAWW of $450.64, the maximum compensation rate for the 12-month period beginning October 1, 1999, is $901.28 per week.

The minimum compensation rate under Section 6(b)(2) is "50 per centum of the applicable national average weekly wage," or $225.32 per week for the period October 1, 1999 through September 30, 2000.

Section 10(f) provides that, effective October 1 of each year, compensation for permanent total disability or death shall be increased by (1) a percentage equal to the percentage by which the current NAWW exceeds the preceding NAWW or (2) 5 percent, whichever is less. The NAWW of $450.64 exceeds the preceding NAWW of $435.88 by 3.39 percent. Therefore, the increase provided by Section 10(f) for October 1, 1999, is 3.39 percent.

In summary, the following amounts and percentage are applicable during the period October 1, 1999 through September 30, 2000:

2. LHWCA BULLETIN NO. 00-1

National Average Weekly Wage	$450.64
Maximum Compensation Rate	$901.28
Minimum Compensation Rate	$225.32
Adjustment Under Sections 10(f) and 10(h)	3.39%

Purpose: To provide the national average weekly wage, the minimum and maximum compensation rates, and the percent of adjustment under Section 10(f) applicable to the period beginning October 1, 1999, and to provide information and guidance on their application.

References: Chapters 3-202 and 3-203 of the Longshore (LHWCA) Procedure Manual.

Applicability: All District Directors, Claims Examiners, and Claims Clerks in the DLHWC District Offices.

Action:

1. Effective October 1, 1999, compensation for disability incurred during the period 10/1/99 - 9/30/00 is to be computed at 66 2/3% of the employee's average weekly wage as determined under Section 10, subject to the maximum compensation rate of $901.28. The minimum compensation rate in total disability cases is $225.32. However, if an employee's average weekly wage is less than this amount, compensation should be paid at 100% of the employee's average weekly wage.

2. In computing death benefits, the average weekly wage of the deceased employee should not be less than $450.64, and the total weekly death benefit should not initially exceed the maximum compensation rate of $901.28. Death benefits can subsequently exceed the initial maximum limitations by virtue of Section 10(f) adjustments.

3. Form LS-557, copy attached, has been revised to reflect the current minimum and maximum limitations applicable where the injury occurred on or after October 1, 1999. A supply of the revised Form LS-557 is being sent under separate cover. A small supply of the previous edition of the LS-557 should be retained for use in those cases where the injury occurred prior to October 1, 1999.

4. In accordance with the provisions of Section 10(f) of the LHWCA, the compensation being paid in cases of permanent total disability or death arising out of injuries subject to the Act which existed prior to October 1, 1999, is to be increased by 3.39 percent.

The adjusted weekly amount will be fixed at the nearest dollar. Figures ending in $.50 or more will be raised to the next whole dollar; figures ending in less than $.50 will be rounded to the preceding dollar amount. No adjustment of less than $1.00 will be made. Therefore, in any case where the weekly award is $29.35 per week or less, there will be no adjustment of compensation. If the award is $29.36 per week or more, there will be an adjustment.

5. Form LS-521 has been revised to reflect the percentage of adjustment for October 1, 1999. A supply of Form LS-521 is being sent under separate cover to those district offices using this pre-printed form. Those offices using word processing or other programs to generate the LS-521 should make appropriate revisions to that document. A copy of the revised LS-521 is attached for information purposes. Any previous editions of the form are obsolete and should be destroyed.

6. Examples of computations of Section 10 adjustments for October 1, 1999, are as follows:

Example 1. Cases currently being paid at the maximum compensation rate:

$871.76 (Weekly compensation payment)

$871.76 x 3.39% (.0339) = $29.5527 ($29.55 rounded to the nearest cent)

$871.76 + $29.55 = $901.31 or $901.00 rounded to the nearest dollar.

NOTE: If application of a Section 10 adjustment results in compensation above the maximum amount because of rounding to the nearest dollar, the compensation must be reduced to the maximum rate. However, this has not occurred with this adjustment.

Example 2. Section 10(h)(1) cases currently being paid at the highest rate:

$290.00 (Weekly compensation payment)

$290.00 x 3.39% (.0339) = $9.8310 ($9.83 rounded to the nearest cent)

$290.00 + $9.83 = $299.83 or $300.00 rounded to the nearest dollar

Example 3. Cases in which no adjustment is to be made:

$29.35 (Weekly compensation payment)

$29.35 x 3.39% (.0339) = $.9949 ($.99 rounded to the nearest cent)

Section 10(g) states in such case that there is no adjustment in compensation. This example indicates that in any case where the weekly award is $29.35 or less there shall be no adjustment to compensation. If the award is $29.36 per week or greater, there will be an adjustment.

Disposition: This Bulletin should be retained until the indicated expiration date or until the necessary changes have been made to the Longshore (LHWCA) Procedure Manual.

MICHAEL NISS
Director, Division of
Longshore and Harbor
Workers' Compensation

Attachments

Distribution: List No. 1
(Regional Directors, OWCP; District Directors, DLHWC; All Claims Examiners; Rehabilitation Specialists; Mail and File Section; National Office DLHWC Professional Staff; Director, OWCP; Director, DFEC; Director, DCMWC, Rehabilitation Division; Solicitor's Office, Division of Employee Benefits)

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation

OWCP Case No. _____

Carrier Case No. _____

Claimant/Chief Beneficiary _____

Amount of Weekly Increase	$
Amount of Adjusted Weekly Award	$

NOTICE TO INSURANCE CARRIER OR SELF INSURED EMPLOYER

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See Reverse

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NOTICE TO BENEFICIARY OR PAYEE

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BENEFITS FOR UNRELATED DEATH

The 1984 amendments to the Longshore Act amended section 9 and eliminated the unrelated death provisions for all deaths occurring after September 28, 1984. In 1972, Section 9 was amended to provide for death benefits "if the employee who sustains permanent total disability due to the injury thereafter dies from causes other than the injury." In 1984, section 9 was again amended. The language which is now applicable to all deaths occurring after September 28, 1984, reads: "If the injury causes death, the compensation shall be known as a death benefit..." The reference to benefits for death due to causes other than the employment injury was eliminated.

District Director

cc: Beneficiary/Payee

CERTIFICATION *(To Be Completed by Insurance Carrier or Self-Insured Employer)*

I hereby certify that benefits have been adjusted in this case in accordance with the amounts shown on the reverse of this letter.

Authorized Signature _____ Date Adjustment Paid _____

Name and Title of Person Whose Signature Appears Above
(Please Print or Type)

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation

NOTICE TO EMPLOYEE OF COMPENSATION RATE UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, AS EXTENDED [1]

Injuries Between October 1, 1999 and September 30, 2000

Your work-related injury has been reported to this Office under one of the laws listed at the bottom of this notice. Your correct compensation rate may be different from that which you have received from the insurance carrier or employer, if the employer is self-insured.

Under the provisions of the Longshore and Harbor Workers' Compensation Act and related laws, an injured employee's compensation is based on his or her average weekly wage (AWW) for the year prior to the injury. To estimate your AWW, add all your earnings for the year prior to the injury and divide the total by 52 weeks. This will represent a close approximation of your AWW. You may then estimate your compensation rate by applying your AWW to the chart below:

IF YOUR AVERAGE WEEKLY WAGE IS	YOUR COMPENSATION RATE IS
Less than $225.32	Equal to your AWW
Between $225.32 and $337.98	$225.32 per week
Between $337.99 and $1351.92	66 2/3% of your AWW
$1351.93 or more	A maximum of $901.28

If you think you have not received the correct compensation rate, please send a copy of your earnings record, such as W-2 Income Tax Form, or other data for the one-year period immediately prior to your injury, to the address shown on the envelope.

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[1] Acts Extending the Longshore Act:
District of Columbia Compensation Act
Outer Continental Shelf Lands Act
Defense Base Act
Nonappropriated Fund Instrumentalities Act

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

File Number:

January 1, 1997

LHWCA CIRCULAR NO. 97-01

SUBJECT: Anderson v. Director, OWCP, No. 94-70750, 30 BRBS 67(CRT), (1996).

Under the provisions of section 28(a) of the Longshore Act the claimant's attorney, as the representative of the prevailing party in a LHWCA suit, is entitled to receive "a reasonable attorney's fee against the employer or carrier..." In the attached decision the Court of Appeals for the Ninth Circuit held that when determining reasonable attorney fees in Longshore Act cases, an attorney's hourly rate may be enhanced to account for extraordinary delay in receiving payment, and that time spent by a claimant's attorney in preparation of the fee application should be included in calculating the fee.

This decision is based on Supreme Court precedent. In Missouri v. Jenkins (1989), the Supreme Court held that "an adjustment for delay in payment is...an appropriate factor in the determination of what constitutes a reasonable attorney's fee" under the fee-shifting provisions of the Civil Rights Act. In another case, City of Burlington v. Dague (1992), the Supreme Court held that its case law construing what is a "reasonable fee" under the various fee-shifting statutes applies uniformly to all of them. The LHWCA, like the Civil Rights Act in the Jenkins decision, is a federal fee-shifting statute. Applying logic, the Ninth Circuit awarded an enhanced fee in the Anderson case. The Ninth Circuit also relied on the uniformity arguments contained in Dague to hold that attorney fee awards should include compensation for time spent in preparing fee applications, since other federal fee-shifting statutes compensate for fee application preparation time.

In this decision the Ninth Circuit also relied on the BRB's decision in Nelson v. Stevedoring Services of America, et al., 29 BRBS 90, 97 (1995) which stated, "In light of the Supreme Court's decisions in Jenkins and Dague, it is clear that enhancements for delay is appropriate in fee awards under Section 28 of the Act." We note, however, that the BRB specifically did not compensate the attorney for time spent preparing the fee application.

Current case law provides that the methodology for enhancing fees is discretionary. In Anderson the Ninth Circuit directed that the district office award attorney fees at the current hourly rate. But this is not the only means for enhancing attorney fees for delays. The decision also stated, "Under normal

circumstances, the OWCP would be entitled to exercise its discretion in selecting the method of enhancement by awarding either current rates or historic rates adjusted to reflect present values." The Supreme Court in Jenkins said it can be done "by the application of current rather than historic hourly rates or otherwise." In Nelson, the BRB stated, "...the fact-finder may adjust the fee based on historical rates to reflect its present value, apply current market rates, or employ any other reasonable means to compensate counsel for delay."

The decision in Anderson speaks only to cases of extraordinary delay. Almost ten years elapsed between the time when the attorney first began providing services and the district office awarded a fee for his services. The court determined that this ~~was an extreme delay and, therefore, enhancement was appropriate.~~ In Nelson the BRB cited cases in other fee-shifting statutes in which fee enhancements were awarded by the Court of Appeals in cases involving a three year delay and a seven year delay. Unfortunately, none of these cases answer the question of what constitutes extraordinary delay, or whether enhancements should be awarded in cases of ordinary delay.

Although certain questions remain unanswered, we agree with the Ninth Circuit's decision in Anderson since it is based on Supreme Court precedent regarding principles of general applicability. Therefore, delay enhancement and compensation for time spent in preparation of fee applications are appropriate factors to be considered in the determination of reasonable attorney fees. We anticipate that some of the unanswered questions on what time period of delay warrants a fee enhancement and which of the methods of enhancement is the most appropriate will be resolved in subsequent appeals.

This decision should be brought to the attention of all program staff who are involved in the processing of attorney fee applications.

JOSEPH F. OLIMPIO
Director, Division of
Longshore and Harbor
Workers' Compensation

Attachment

Distribution: List No. 3
(Regional Directors, OWCP; District Directors, DLHWC; All Claims Examiners; National Office Professional Staff; Solicitor's Office Division of Employee Benefits)

Henry J. ANDERSON, Petitioner v. DIRECTOR, OFFICE OF WORKERS COMPENSATION PROGRAMS; BRADY-HAMILTON STEVEDORE COMPANY; MANHATTAN RE-INSURANCE COMPANY, Respondents

No. 94-70750
BRB No. 86-2286

United States Court of Appeals for the Ninth Circuit

30 BRBS 67(CRT)

Filed: August 5, 1996

Appeal from the Decision and Order of the Benefits Review Board

Appearances:
Charles Rabinowitz, Portland, Oregon, for the petitioner

John Dudrey, Williams, Fredrickson & Stark, Portland, Oregon, for the respondent

SYLLABUS

DIGEST SECTION: 1801[2][a] Ninth Circuit Court of Appeals held OWCP abused discretion by failing to award enhanced attorney fee under § 928(a) of LHWCA when attorney fee appeal was not resolved for 10 years after services were rendered to claimant; extreme delay justified enhanced fee at attorney's current rate instead of rate at time attorney performed services.

DIGEST SECTION: 1801[2][a] Ninth Circuit Court of Appeals held attorney fee award may include time attorney spent in preparing fee application.

Before: REINHARDT, KOZINSKI, and FERNANDEZ, Circuit Judges

Opinion By: KOZINSKI, J.

Glacial is the speed with which some administrative agencies of the federal government dispose of the claims presented to them. To the extent a successful claimant is entitled to attorney's fees, the delay erodes the value of the eventual fee award and forces the lawyer to bear the cost of the agency's procrastination. The principal question presented is the extent to which the attorney's fees must be adjusted to take account of any extraordinary delay.

I

Anderson injured his back when he slipped and fell on a ship's deck on September 4, 1982. He claimed permanent total disability under the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. § 901 *et seq.* His employer disputed the claim, and on December 4, 1982, Anderson hired an attorney. A hearing was held before an Administrative Law Judge on February 26 and 28, 1985, resulting in a decision and order in favor of Anderson on July 30, 1986. The employer appealed, and the Benefits Review Board affirmed the ALJ's decision almost seven years later, on May 21, 1993. The employer appealed that decision, and we vacated and remanded with instructions to adjust the benefits in keeping with the statutory limit. *Brady-Hamilton Stevedore Company v. Director, Office of Workers' Compensation Programs*, 58 F.3d 419 [29 BRBS 101(CRT)] (9th Cir. 1995).

On August 18, 1986, following the ALJ's decision and order, Anderson filed an affidavit for attorney's fees and costs with the district director in the Office of Workers' Compensation Programs (OWCP). He requested his attorney's then-hourly rate of $125 for services provided between December 1982 and June 1984. Having received no response by January 21, 1992,

Anderson filed a supplemental affidavit, requesting an hourly rate of $150 for his lawyer's services and $50 per hour for legal assistant services. In addition, he requested reimbursement for the preparation of both of his fee applications.

On March 6, 1992, the OWCP awarded $125 per hour for attorney services through June 1984, $150 per hour for attorney services from September 1986 to January 1992, and $40 for legal assistant services. It made no adjustment for the delay in the fee award and denied compensation for time spent preparing fee applications. The BRB affirmed these determinations on May 21, 1993, and again on September 19, 1994. We now consider Anderson's appeal from the BRB's decisions concerning attorney's fees.

II

As the prevailing party in an LHWCA suit, Anderson is entitled to receive "a reasonable attorney's fee against the employer." 33 U.S.C. § 928(a). Anderson says what's reasonable is the "current rate"—the rate his lawyer charged at the time of the fee award in 1992. Respondents counter that Anderson is only entitled to the "historic rate"—the rate his lawyer charged at the time the services were rendered (primarily between 1982 and 1984), with no adjustment for inflation or the time value of money. Neither is precisely right.

The Supreme Court has held that, under the fee-shifting provisions of the Civil Rights Act, 42 U.S.C. § 1988, "[a]n adjustment for delay in payment is . . . an appropriate factor in the determination of what constitutes a reasonable attorney's fee." *Missouri v. Jenkins*, 491 U.S. 274, 284 (1989). The Court reasoned that attorney's fees "are to be based on market rates" and such rates are based on the assumption that bills will be paid reasonably promptly; delays in payment thus deprive successful litigants of the market rates. *Id.* at 283. To make up the difference, losses from delay can be compensated "by the application of current rather than historic hourly rates or otherwise." *Id.* at 284. Thus, the Court held that there may be some adjustment for the delay, but the method of adjustment is somewhat discretionary; it does not necessarily call for payment of the lawyer's current hourly rate. Because a "reasonable" fee should mean the same thing under all federal fee-shifting statutes, *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992), *Jenkins* calls for a delay enhancement under the LHWCA.

Respondents, however, argue that LHWCA cases are different because in such cases delay is a fact of life. They rely on *Hobbs v. Director*, OWCP, 820 F.2d 1528 (9th Cir. 1987), where we upheld the BRB's first attempt to address delay enhancements. We deferred to the BRB's presumption that a reasonable fee under the LHWCA did not call for a delay enhancement because attorneys for longshoremen typically factor in the likelihood of delay when they set their fees. *Id.* at 1529-30. But as the BRB recently acknowledged, *Jenkins* and *Dague* have changed the fee-shifting landscape since *Hobbs*, so that LHWCA cases may not be given special treatment; a delay enhancement is therefore appropriate under the Act. *Nelson v. Stevedoring Services of America, et al.*, 29 BRBS 90, 97 (1995) ("In light of the Supreme Court's decisions in *Jenkins* and *Dague*, it is clear that enhancement for delay is appropriate in fee awards under Section 28 of the Act."). And, as in *Hobbs*, we "will respect the Board's interpretation of the Act if that interpretation is reasonable and reflects the policy underlying the statute." *Hobbs*, 820 F.2d at 1529; *see Mesa Verde Const. Co. v. Northern Cal. Dist. Council of Laborers*, 861 F.2d 1124, 1134-35 (9th Cir. 1988) (three judge panel is free to adopt a new and reasonable agency interpretation of the law so long as "prior decisions of this court constitute[d] only deferential review"). To the extent the BRB in this case relied on *Hobbs*'s presumption against delay enhancements, ER at 46, its decision contravenes the position it took in *Nelson*.[1] Because we must defer to the Board by adopting its more recent interpretation in *Nelson*, our decision in Hobbs regarding the availability of delay awards is no longer good law in this circuit.

In addition to relying on *Hobbs*, the BRB below deferred to the OWCP district director, holding that a delay enhancement was purely discretionary in this case. Although *Nelson* appears to circumscribe the district director's discretion to deny an enhancement even in cases of ordinary

[1] *Nelson* specifically overruled as inconsistent with *Jenkins* two other decisions relied on below, *Fisher v. Todd Shipyards Corp.*, 21 BRBS 323 (1988), and *Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988).

delay,[2] Anderson's case is much stronger because it involves extreme delay: Ten years elapsed between the time services were rendered and the time a fee was awarded. There is no indication that Anderson's lawyer bears any blame for this delay; he filed his fee application in 1986 for services rendered between 1982 and 1984, but the OWCP did not rule on it until 1992, almost 6 years later.[3] It has now been 14 years since Anderson's lawyer was hired, and he still hasn't been paid. *Nelson* involved only an 11 year wait for payment. More importantly, the lawyers in *Nelson* did not have to wait almost 6 years for action on their fee petition. Nevertheless, the BRB found that it was an abuse of discretion to fail to award a delay enhancement in *Nelson.* A fortiori, the same is true here.

We therefore remand to the OWCP to award a delay enhancement. Under normal circumstances, the OWCP would be entitled to exercise its discretion in selecting the method of enhancement by awarding either current rates or historic rates adjusted to reflect present values. *See Gates v. Deukmejian,* 987 F.2d 1392, 1407 (9th Cir. 1992). However, these are extraordinary circumstances, the delay being even more egregious than in *Nelson* where the BRB approved an award of current rates. To avoid the possibility of further delay caused by yet another appeal, we order the OWCP on remand to award Anderson's attorney fees at his current hourly rates.

III

It's now well established that time spent in preparing fee applications under 42 U.S.C. § 1988 is compensable. *Clark v. City of Los Angeles,* 803 F.2d 987, 992 (9th Cir. 1986). Such compensation must be included in calculating a reasonable fee because uncompensated time spent on petitioning for a fee automatically diminishes the value of the fee eventually received. As the definition of what is a reasonable fee applies uniformly to all federal fee-shifting statutes, *Dague,* 505 U.S. at 562, *Clark* applies here as well. The BRB erred in holding otherwise.

The respondents, nevertheless, argue that the time and costs claimed for preparation of the fee petition were excessive. This argument is misplaced: If Anderson's attorney spent too much time on the fee petition, the OWCP was entitled to reduce the award. *See Hensley v. Eckerhart,* 461 U.S. 424, 434 (1983) (hours not "reasonably expended" should be excluded from the initial calculation); *D'Emanuele v. Montgomery Ward & Co.,* 904 F.2d 1379, 1384 (9th Cir. 1990) (same). But the OWCP denied fees for preparation of the application altogether, so the question on appeal is not the reasonableness of the amount claimed, but whether any compensation for preparing fee applications must be included as part of an award. Our cases say they do. Consequently, the OWCP on remand shall award Anderson's counsel reasonable compensation for time spent preparing the fee applications.

VACATED AND REMANDED.

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[2] The BRB in *Nelson* declared that "[t]o summarize, we hold that where the question of delay is timely raised, the body awarding the fee *must* consider this factor." 29 BRBS at 97 (emphasis added) (citation omitted). Because this aspect of the BRB's ruling is somewhat ambiguous, we hesitate to declare that the BRB intended to interpret the LHWCA as requiring enhancements in cases of ordinary delay.

[3] We note that Anderson's lawyers cannot recover for delay due to appeals of the fee award. As *Hobbs* explained, a fee award under the LHWCA is not a final judgment entitled to interest under 28 U.S.C. § 1961 and the Act does not otherwise provide for post-judgment interest; therefore, any enhanced recovery for the extraordinary time of taking an appeal would amount to an award of interest unauthorized by statute. 820 F.2d at 1531.

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

File Number:

May 14, 1999

LHWCA CIRCULAR NO. 99-01

SUBJECT: Modification of Compensation Orders -- Clerical Errors

We recently received a copy of a memorandum which the Associate Solicitor for Employee Benefits sent in response to a request from a Longshore District Director for a modification of an incorrect award of compensation under § 22 of the Longshore Act.

Facts:

An Administrative Law Judge had issued a Decision and Order which awarded compensation for TTD and PTD. The calculated compensation rate was $166.67. The DD correctly noted that this amount was less than the statutory minimum and asked the Regional Solicitor to file a § 22 modification petition to correct the mistake.

Response:

Associate Solicitor De Deo noted that this mistake in the compensation rate appeared to be merely clerical in nature and, therefore, it appeared appropriate and legally defensible to treat it as clerical error and simply correct it. According to Federal Rule of Civil Procedure (FRCP) 60(a), "[c]lerical mistakes in judgements, orders or other parts of the record . . . may be corrected by the court at any time."

The Benefits Review Board relied on FRCP 60(a), in a case arising under the Black Lung Benefits Act, to correct an erroneous award of attorney fees against the Department's Black Lung Trust Fund, even though the award had become final and was not subject to appeal. *Levi Coleman v. Ramey Coal Co.*, 18 BLR 1-9 (1993). Citing *Allied Materials Corp. v. Superior Products Co.*, 620 F.2d 224 (10th Cir. 1980), the Board explained that FRCP 60(a) is used to correct mistakes where the judgement as written is not what was intended. The Board characterized the ALJ's error as clerical and thus correctable in that case because there was no evidence to suggest that the ALJ intended to award attorney fees against the Trust Fund, in clear violation of the statute.

Associate Solicitor De Deo applied the Board's reasoning to the facts of the case at issue noting that there was nothing to suggest that the ALJ intended to knowingly disregard the statutory minimum. Therefore, his failure to apply section 6(b)(2) of the Longshore Act should also be viewed as a clerical oversight. Associate Solicitor De Deo suggested that the DD advise the parties of the DD's intent, under the authority of FRCP 60(a), to adjust the compensation rate to the statutory minimum. The employer/carrier would also have to be advised that, although it properly complied with the compensation order as written, it remained liable for the difference between the rate that was awarded and the applicable statutory minimum compensation rate. However, Associate Solicitor De Deo noted, if the employer/carrier objected to the correction, the matter should be referred for formal hearing.

Please bring this to the attention of your CEs. We have attached a copy of a draft letter which may be used to advise the parties.

Margaret R. Peterson

MARGARET R. PETERSON
Acting Director, Division of Longshore and
Harbor Workers' Compensation

Distribution: List 3

(Regional Directors, OWCP; District Directors, DLHWC; All Claims Examiners; National Office Professional Staff; Solicitor's Office, Division of Employee Benefits)

Dear

This letter is to advise you that a clerical mistake was made in the compensation rate awarded _____ for total disability, and of my intent to correct that error. In the _____ D & O, ALJ _____ calculated the applicable compensation rate to be $166.67 per week. That rate is below the statutory minimum rate set forth in § 6(b)(2) of the Longshore Act, which states that "[c]ompensation for total disability shall not be less than 50 per centum of the applicable national average weekly wage." 33 U.S.C. § 906(b)(2). Mr. _____ is, in fact, entitled to total disability benefits at the rate of $180.29 a week.

According to Federal Rule of Civil Procedure 60(a), "clerical mistakes in judgements, orders or other parts of the record . . . may be corrected by the court at any time." *See Levi Coleman v. Ramey Coal Co.*, 18 BLLR 1-9 (1993). Pursuant to FRCP 60(a), and with the parties' agreement, I will issue a compensation order correcting the compensation rate to reflect Mr. _____'s entitlement to the statutory minimum rate for total disability. Lastly, although the employer timely paid benefits pursuant to the ALJ's compensation order, it remains liable for the difference between the rate that was improperly awarded and the statutory minimum. Accordingly, the employer should pay the Claimant back benefits in the amount of [insert appropriate amount].

Sincerely,

District Director

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

File Number:

July 9, 1999

LHWCA CIRCULAR No. 99-02

SUBJECT: Preliminary Estimate of the National Average Weekly Wage for the Period Commencing October 1, 1999.

Based on data compiled and published by the Bureau of Labor Statistics (BLS), we are able to make a preliminary estimate of the national average weekly wage, as defined in the LHWCA, for the period commencing October 1, 1999. Estimates have also been made for the maximum and minimum compensation rates and the percentage increase from the current national average weekly wage of $435.88.

The following estimates are for the period October 1, 1999 through September 30, 2000.

National Average Weekly Wage	- $450.64
Maximum Compensation	- $901.28
Minimum Compensation	- $225.32
Percentage Increase	- 3.39%

This information may be transmitted to interested parties as preliminary information. They should be informed that a final determination cannot be made until the final data has been obtained.

This Circular should be retained until a bulletin is issued regarding the final determination as to the national average weekly wage. This will be accomplished as soon as possible after the final data is published by BLS in September.

MICHAEL NISS
Director, Division of
Longshore and Harbor
Workers' Compensation

Distribution: List No. 4
(Regional Directors, District Directors, and National Office Staff)

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

File Number:

October 22, 1999

LHWCA Circular No. 99-03

SUBJECT: Compensation Orders Combining Section 8(f) Relief With Settlement Under Section 8(i)

Some district offices have been presented with applications for section 8(f) relief for hearing loss combined with section 8(i) settlement for the employer/carrier for their portion of the hearing loss. The Associate Solicitor for Employee Benefits has reviewed this situation and advises that approval of such applications conflicts with the statute and arguments being made by the Associate Solicitor in other cases. Section 8(i)(4) precludes an employer or carrier from seeking relief from the Special Fund after reaching settlement with a claimant in a case that would ultimately be assigned to the Fund.

In enacting section 8(i) Congress expressed its specific intent to overturn the decision in Brady v. J. Young & Co., 16 BRBS 31 (ALJ) 1983 (See also 17 BRBS 46). This decision ordered the Fund to reimburse the employer for all sums paid to the claimant under the approved settlement, minus 104 weeks of compensation, finding the employer otherwise entitled to such relief. Congress added section 8(i)(4) to the statute to prohibit Special Fund contributions to section 8(i) settlements and thereby reduce the possibility of collusion or fraud between the settling parties and to ensure that the employer acknowledges its actual liability to the claimant before it requests section 8(f) relief.

Of course, an employer is always free to settle a claim. However, a section 8(i) settlement, which discharges the employer's potential liability, also discharges the potential liability of the Special Fund, which is only derivative.

The objection that may be raised when we deny these applications is that we may prevent a claimant from receiving any compensation at all, since an employer may be willing to pay a reduced amount in order to avoid litigation, but unwilling either to pay the full amount of compensation or to give up relief under section 8(f). But whether or not litigation might be avoided in a particular case, it is our role to ensure that

the statutory prohibition against fund contributions to settlements be followed. It is also our role to administer the Act in as even-handed a manner as possible, and thus to ensure both that claimants receive the benefits they are entitled to, and to ensure that claims not be improperly placed in the fund, where costs are spread over the industry rather than borne by an individual employer without the findings required by section 8(f).

Contingent Relief

Thus, if an employer applies for section 8(f) relief but is unwilling to agree to the entry of a compensation order, or to pay the full amount of benefits claimed without such an order, and it is otherwise appropriate to grant such relief, section 8(f) relief may be granted CONTINGENT ON THE ENTRY OF A COMPENSATION AWARD FOR PERMANENT DISABILITY. The following language is suggested to be used in referral letters when contingent relief is appropriate if the case is appealed to the OALJ:

> Section 8(f) has been considered and in the event the Administrative Law Judge assigned the case determines that a compensation order, awarding benefits for permanent disability (excluding a nominal award), is appropriate, the Director agrees to the application of section 8(f) relief and payment by the Special Fund. See Todd Shipyards Corp. v. Director, OWCP (Poras), 792F.2d 1489 (9th Cir. 1986) (an employer is not entitled to section 8(f) relief from a nominal award because, as a matter of law, any pre-existing permanent partial disability can not materially contribute to the current disability.) In such event, payment by the Special Fund should commence 104 weeks(or the appropriate period if a scheduled award) after the date the evidence establishes that the claimant reached maximum medical improvement. In no event does the Director agree to the application of section 8(f), or payment by the Special Fund, in any settlement of the claim. 33 U.S.C. 908(i)(4).

While it may be appropriate to determine that the requirements for such relief have been established, it is nevertheless also always necessary to defer actual approval until compensability has been determined and embodied in a compensation award, or until the employer has agreed to pay the full amount of benefits claimed. If the parties, in good faith, want to compromise on any of the findings underlying section 8(f) relief, including the nature and extent of the claimant's disability, and the

settlement is approved under section 8(i), the employer has no entitlement to section 8(f) relief.

If the parties cannot agree to the entry of a section 8(i) award, because the claimant believes he is entitled to the full-uncompromised award, the case must be referred to formal hearing. If section 8(f) would be otherwise appropriate in the absence of a section 8(i) settlement of the claim, the Solicitor's office should be alerted to inform the ALJ that the Director agrees to section 8(f) relief contingent upon an award of permanent disability.

Hearing Loss Cases

In hearing loss cases, you may enter a compensation award that grants section 8(f) relief, based upon a stipulation of facts that you approve. The award, however, should not be based on a compromised disability rating for less than the record reflects simply because one side theorizes that it can seek another audiogram which will show the compromised rating. Instead, the district office should make a factual determination, based on the evidence, regarding the appropriate level of compensation. For example, if audiogram X establishes the preexisting hearing loss; audiogram Y establishes an increased disability rating; but audiogram Z indicates a lesser amount of disability than audiogram Y, it is up to you as the fact finder to determine which of these audiograms is reflective of the degree of hearing loss or whether an amount in between may be the appropriate amount. If the parties agree with your assessment of the appropriate amount, you may then issue a compensation order which also grants section 8(f) relief, allocating the amount payable by the employer and the Special Fund. In such instance, because you have resolved the issue by findings of fact and not by approving a compromise of liability, this is not a settlement and should not be characterized as a section 8(i) order, or an approval of a section 8(i) agreement.

When the parties request approval of a settlement agreement order based upon a preexisting audiogram and a subsequent audiogram, if you determine that the stipulated amount is not adequate, deny the request for approval. Your referral to the OALJ should, of course, explain why the stipulated amount is inadequate. The referral to the OALJ should also state that although section 8(f) relief is not appropriate unless the ALJ first finds that the claimant has a compensable permanent disability, the employer met the requirements for such relief in all other respects. Further explain, explicitly, that if a

section 8(i) agreement is approved, the Fund cannot be liable and that section 8(f) relief must be denied if a section 8(i) agreement is approved. Again, the Solicitor's office should be alerted to set forth this position to the ALJ.

The Associate Solicitor has notified the Regional Solicitors of this policy. The Associate Solicitor has also advised the Regional Solicitors that a case should be referred to the Employee Benefits Division in SOL's National Office for consideration of appeal upon your request if an ALJ grants an employer's application for section 8(f) relief in conjunction with the entry of a section 8(i) order.

Section 10 (h)

For similar reasons, a section 8(i) settlement agreement that provides for continuing payments by the Special Fund of annual increases pursuant to section 10(h) should not be approved. Since a section 8(i) settlement discharges the employer's liability, it also discharges the Fund's derivative liability and continuing payments are not consistent with that discharge of liability. Section 8(i)(4) precludes the Fund from liability for "any sums paid or payable" under a section 8(i) settlement, whether the amounts agreed to are based on section 8(f) or section 10(h) of the statute.

MICHAEL NISS
Director, Division of
Longshore and Harbor
Workers' Compensation

Distribution: List No. 3
(Regional Directors, OWCP; District Directors, DLHWC; All Claims Examiners; National Office Professional Staff; Solicitor's Office Division of Employee Benefits)

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

File Number:

OCT 15 1997

MEMORANDUM FOR: ALL DISTRICT DIRECTORS, DLHWC

FROM: JOSEPH F. OLIMPIO
Director, DLHWC

SUBJECT: Special Payments Due Under ILA - Industry Agreements

Pursuant to the discussions at the District Directors' Conference in Charleston, this notice rescinds our memorandum dated March 27, 1990.

All personnel are to be instructed to follow the guidelines outlined by the Fourth Circuit in *Ceres Corporation v. Willie L. Branch*, 1996 U.S. App. LEXIS 24022, September 10, 1996, and *Sproull v. Director, Office of Workers' Compensation Programs; Stevedoring Services of America*, No. 94-70914, June 17, 1996 (9th Cir.).

Both of these decisions are contained in your handout book in the section "Recent Litigation and Policy Issues." As we discussed, the key is the contract in existence for the port.

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

October 20, 1997

Notice No. 84

NOTICE TO INSURANCE CARRIERS, SELF-INSURED EMPLOYERS UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT (LHWCA), AND OTHER INTERESTED PERSONS

SUBJECT: Increase In The Maximum Civil Penalties that May Be Assessed Under The LHWCA

On July 2, 1997, the Department of Labor published a proposal to amend various provisions of the regulations implementing the Longshore and Harbor Workers' Compensation Act (LHWCA). More specifically, the amendments, which were published in final on October 17, 1997, will increase the maximum civil penalties that may be assessed under the LHWCA as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA). This Industry Notice calls to your attention these amendments, which become effective on November 17, 1997.

The LHWCA authorizes the assessment of a civil money penalty in three situations: (1) Where an employer fails to file a report within sixteen days of the final payment of compensation, it shall be assessed a $100 civil penalty (LHWCA, section 14(g)); (2) where an employer, insurance carrier, or self-insured employer knowingly and willfully fails to file any report required by section 30, or knowingly or willfully makes a false statement or misrepresentation in any required report, the employer, insurance carrier, or self-insured employer shall be assessed a civil penalty not to exceed $10,000 (LHWCA, section 30(e)); and (3) where an employer is found to have discriminated against an employee because the employee had claimed or attempted to claim compensation, or has testified or is about to testify in proceedings under the LHWCA, the employer shall be liable for a civil penalty of not less than $1,000 or more than $5,000 (LHWCA, section 49).

The DCIA, amending the FCPIAA, requires each agency to issue regulations adjusting the amount of civil money penalties they may levy. The DCIA requires that the civil money

penalties be adjusted by a cost-of-living increase equal to the percentage, if any, by which the Department of Labor's Consumer Price Index (CPI) for all urban consumers for June of the calendar year preceding the adjustment exceeds the June CPI for the calendar year in which the civil penalty amount was last set or adjusted. Due to inflation since the LHWCA civil money penalties were last set or adjusted, the increase will, in every case, be the maximum 10% initially permitted under the DCIA.

As a result of the amendments the section 14(g) penalty will be $110; the section 30(e) maximum penalty may not exceed $11,000; and the section 49 maximum penalty will be not less than $1,100 or more than 5,500. These adjusted civil penalties apply only to violations occurring on or after November 17, 1997.

The final rule was published in the Federal Register, Vol.62, No. 201; Friday, October 17, 1997.

JOSEPH F. OLIMPIO
Director, Division of
Longshore and Harbor
Workers' Compensation

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

FEB - 2 1998

File Number:

Notice No. 85

NOTICE TO INSURANCE CARRIERS AND SELF-INSURED EMPLOYERS UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

SUBJECT: Revision of Forms LS-18, LS-206, LS-207, LS-222, LS-265 & LS-266

Enclosed are copies of the recently revised Forms LS-18, LS-206, LS-207, LS-222, LS-265 and LS-266 which are used under the Longshore and Harbor Workers' Compensation Act and its extensions, the Defense Base Act, the Nonappropriated Fund Instrumentalities Act and the Outer Continental Shelf Lands Act. These forms have been revised to comply with the new display requirements for collections of information required by 5 CFR 1320.8(b). This regulation provides, in part, that collections of information must display the OMB number; indicate the reason for the information collection and its use; advise whether the response is mandatory, required to obtain a benefit or voluntary; and to advise that persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. The reporting requirements of the forms and their general formats have not been changed.

Prior versions of these forms are now obsolete and should no longer be used. If you decide to print and stock these forms, the printed copies must conform in every respect to the enclosed originals. You may, however, purchase supplies from any of the following printing companies:

Uniform Printing and Supply, Inc.
30 Montgomery Street
Jersey City, NJ 07302

Paragon Graphics
8131 West 10th Street
Indianapolis, IN 46214

You may call this Office at Area Code (202) 219-8721 if you have any questions concerning the use or printing of these forms.

JOSEPH F. OLIMPIO
Director, Division of
Longshore and Harbor
Workers' Compensation

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

File Number:

May 1, 1998

Notice No. 86

NOTICE TO INSURANCE CARRIERS, SELF-INSURED EMPLOYERS UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, AND OTHER INTERESTED PERSONS

SUBJECT: The YEAR 2000 PROBLEM

President Clinton has told his Cabinet, in no uncertain terms, of the need to successfully prepare Federal departments and agencies for the transition to year 2000. In addition, Federal agencies need to reach out to domestic and international organizations and businesses that are part of the economic sectors in which we operate to increase awareness of the year 2000 problem.

What is the Year 2000 Problem? Many computers that use two digits to keep track of the date will, on January 1, 2000, recognize "double zero" not as 2000 but as 1900. This glitch could cause them to stop running or to start generating erroneous data.

Will the Year 2000 Problem Affect the Average American? The year 2000 problem poses a serious threat to the global economy in which Americans live and work. Our economy is dependent upon the electronic processing and exchange of financial and other data; thus, any failure -- for example, difficulties a bank may have in completing transactions, slowdowns in commuter traffic due to malfunctioning traffic signals, power companies being unable to provide electricity to some of their customers -- may cause disruptions in the lives of the American people.

Possible Impact on Beneficiaries Under the Longshore and Harbor Workers' Compensation Act. The payment of benefits under the Longshore and Harbor Workers' Compensation Act has become dependent on electronic processing and exchange of data. This obviously includes benefit payments made from the Special Fund by the Division of Longshore and Harbor Workers' Compensation. Any failure in these automated systems may cause serious disruptions in the delivery of benefits to injured workers or their survivors. We are concerned about this potential problem

and think that self-insured employers and insurance carriers should be too.

Is This a Problem Without a Solution? No. The technical "fix" is straightforward, but the complexity of many of our computer systems and their interactions with each other make it time-consuming to implement. The question is: In the time remaining, how best to marshal the resources needed to deal with the problem.

The Division of Longshore and Harbor Workers' Compensation has been working to ensure that our mission-critical systems are year 2000 compliant and that continuity of service to our customers is maintained. It is our objective to have all our mission-critical systems year 2000 compliant by December 1998. Self-insured employers and insurance carriers also have the responsibility and obligation to ensure that proper benefit payments continue to be made in a timely manner.

It is important that each self-insured employer and insurance carrier review its own situation to determine if there is a problem. If so, what is the extent of it? What is being done about it? Are there adequate institutional resources for fixing the problem? Are contingency plans being developed to ensure continuity of service in the event of system failure?

If you have already started working on the problem, you should maintain it as your highest priority. If you haven't begun to work on it yet, you need to start. Maintaining the continuity of service to injured workers or their survivors is an absolute necessity.

Helpful Information on the Year 2000 Problem. Some of the best information on the year 2000 problem is available on the Web. The year 2000 pages of the CIO Council Committee on Year 2000 (www.itpolicy.gsa.gov/mks/yr2000/y2khome.htm) and the Small Business Administration (www.sba.gov/y2k) are two excellent sources of information about the problem.

JOSEPH F. OLIMPIO
Director, Division of
Longshore and Harbor
Workers' Compensation

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

June 19, 1998

Notice No. 87

NOTICE TO INSURANCE CARRIERS, SELF-INSURED EMPLOYERS UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, AND OTHER INTERESTED PERSONS

SUBJECT: Insurance Requirements under the Longshore Act

Section 32 of the Longshore Act, 33 U.S.C. §§ 901-949, requires covered employers to secure the payment of benefits under the Act by insuring with a company that is authorized by the U.S. Department of Labor.

Section 2(4) of the Act defines the term covered "employer" as

> an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

Section 2(3) of the Act defines the term "employee" as

> any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker . . . .

The Act provides for serious legal consequences in the event an employer fails to carry proper insurance coverage. Section 38(a) states, in relevant part, that

> [a]ny employer required to secure the payment of compensation under this Act who fails to secure such compensation shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the President, Secretary, and Treasurer thereof shall be also severally liable to such fine or imprisonment as herein provided for the failure of such corporation to secure the payment of compensation; and such President, Secretary, and Treasurer shall be severally personally liable, jointly with such corporation for any compensation or other benefit which may accrue under the said Act in respect to any injury which may occur to any employee of such corporation . . . .

An uninsured employer may also be subject to civil suit by an injured employee or his legal representative pursuant to § 5 of the Act. Section 5(a) of the Act provides, in relevant part, that

> [i]f an employer fails to secure payment of compensation as required by this Act, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under the Act, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed risk of his employment, or that the injury was due to the contributory negligence of the employee."

Section 38(b) of the Act states

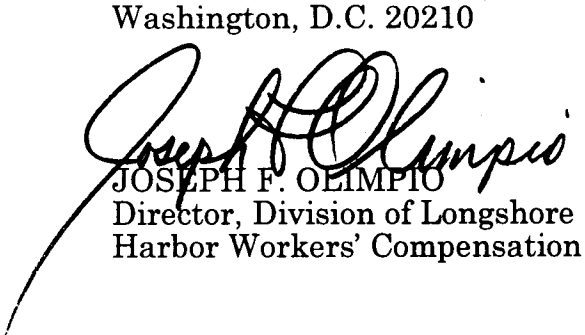
> [a]ny employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after one of his employees has been injured within the purview of this Act, and with intent to avoid the payment of compensation under this Act to such employee or his dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty or imprisonment as well as jointly liable with such corporation for such fine.

This would apply to any covered employer which is uninsured and closes its business with the intent to avoid paying the benefits required by the Act.

If an employer wishes to avoid the risk of the penalties contained in § 38(a) of the Act, as well as the loss of the limited liability protection afforded by § 5(a), it must obtain insurance coverage in accordance with § 32 of the Act.

If anyone is aware of an employer who is operating without appropriate insurance please write to the following address:

U.S. Department of Labor
ESA/OWCP/DLHWC, Room C-4315
200 Constitution Avenue, NW
Washington, D.C. 20210



JOSEPH F. OLIMPIO
Director, Division of Longshore and
Harbor Workers' Compensation

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

FEB 19 1999

File Number:

Notice No. 89

NOTICE TO INSURANCE CARRIERS AND SELF-INSURED EMPLOYERS UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

SUBJECT: Revision of Forms LS-1, LS-200, LS-201, LS-202, LS-203, LS-204, LS-205, LS-208, LS-210 & LS-262

Enclosed are copies of the above recently revised forms which are used under the Longshore and Harbor Workers' Compensation Act and its extensions, the Defense Base Act, the Nonappropriated Fund Instrumentalities Act and the Outer Continental Shelf Lands Act. These forms have been revised to comply with the new display requirements for collections of information required by 5 CFR 1320.8(b). This regulation provides, in part, that collections of information must display the OMB number; indicate the reason for the information collection and its use; advise whether the response is mandatory, required to obtain a benefit or voluntary; and to advise that persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. The reporting requirements of the forms and their general formats have not been changed.

With the exception of the multi-carbon Form LS-208, these forms have been printed on white paper. If the LS-208 is reproduced electronically, it may also be filed on white paper provided that the required number of copies are also submitted. We are unable at this time to accept direct electronic filings of any of the forms.

Prior versions of these forms are now obsolete and should no longer be used. If you decide to print and stock these forms, the printed copies must conform in every respect to the enclosed originals. You may, however, purchase supplies from any of the following printing companies:

Uniform Printing and Supply, Inc.
210 S. Progress Drive East
P.O. Box 189
Kendallville, IN 46755

Telephone: 1-800-382-2424

Paragon Graphics
8131 West 10th Street
Indianapolis, IN 46214

Telephone: (317) 271-7310

You may call this Office at Area Code (202) 693-0038 if you have any questions concerning the use or printing of these forms.

Margaret R. Peterson

MARGARET R. PETERSON
Acting Director, Division of
Longshore and Harbor
Workers' Compensation

Enclosures

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

September 14, 1998

Notice No. 88

NOTICE TO INSURANCE CARRIERS, SELF-INSURED EMPLOYERS UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, AND OTHER INTERESTED PERSONS

SUBJECT: Maximum and Minimum Compensation Rates Under the Longshore Act, Effective October 1, 1998; Adjustments of Permanent Total Disability and Death Cases

Section 6(b)(3) of the Longshore and Harbor Workers' Compensation Act provides that prior to October 1 of each year, based on the national average weekly wage for the three calendar quarters ending June 30 of that year, the Secretary of Labor shall determine the national average weekly wage (NAWW) to be applicable for the 12-month period beginning October 1. It has been determined that the applicable NAWW for the period beginning October 1, 1998, and ending September 30, 1999, is $435.88.

Minimum and Maximum Rates

Section 6(b)(1) provides that the maximum rate of compensation under this Act shall not exceed 200 percent of the national average weekly wage. Therefore, the maximum compensation rate for total disability and death is $871.76 (200 percent of $435.88). Compensation for disability subject to this maximum should be paid at 66 2/3 percent of the employee's average weekly wage, as determined under Section 10, subject to the limitation of $871.76.

The minimum compensation rate payable for disability incurred after October 1, 1998 is $217.94 per week, which is 50 percent of the NAWW. However, if an employee's average weekly wage is less than this amount, he or she receives his or her entire average weekly wage as compensation for total disability.

In computing death benefits covered by this period, the average weekly wage of the deceased employee shall not be less than $435.88 per week. In addition, under the provisions of the 1984 Amendments, the total weekly death benefits shall not exceed the lesser of (1) average weekly wages of the deceased or (2) 200 percent of the NAWW. The 200 percent maximum benefit is $871.76 per week, and is applicable to cases in which the death occurs during the period October 1, 1998 through September 30, 1999,

except for District of Columbia Compensation Act (DCCA)[1] cases which are not subject to the 1984 amendments.

The above noted maximum and minimum rates for disability and death also apply to employees covered by the Nonappropriated Fund Instrumentalities Act (NFIA).

Annual Adjustments

Under Section 10(f) and 10(h) of the amended Act, compensation or death benefits payable for permanent total disability or death cases which were incurred prior to October 1, 1998, are to be increased by the lesser of (1) a percentage equal to the percentage by which the applicable national average weekly wage for the period beginning October 1, 1998, exceeds the applicable national average weekly wage for the preceding period, or (2) 5 percent. (DCCA cases are always subject to the percentage increase in the NAWW without regard to the 5 percent limitation.) The percentage increase in the NAWW is 4.31 percent. As this figure is less than 5 percent, compensation is to be increased by 4.31 percent effective October 1, 1998.

Field or district offices of insurance carriers or self-insured employers paying benefits under the Longshore and Harbor Workers' Compensation Act and related Acts (DCCA, Defense Base Act, Outer Continental Shelf Lands Act, and Nonappropriated Fund Instrumentalities Act) will soon receive specific instructions from OWCP district offices and/or from the District of Columbia Government for making the adjustments on Section 10(f) and 10(h) cases, and should begin paying at the new benefit levels as soon as possible.

In case of questions about implementing these mandatory adjustments, any district office or the OWCP National Office, Longshore Division (Telephone: (202) 693-0038) may be contacted. For DCCA cases, contact the D.C. Government, Department of Employment Services (Telephone: (202) 576-6265).

JOSEPH F. OLIMPIO
Director, Division of
Longshore and Harbor
Workers' Compensation

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[1] District of Columbia Compensation Act of 1928 which is applicable only to injuries which occurred prior to July 26, 1982.

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

FEB 19 1999

File Number:

Notice No. 89

NOTICE TO INSURANCE CARRIERS AND SELF-INSURED EMPLOYERS UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

SUBJECT: Revision of Forms LS-1, LS-200, LS-201, LS-202, LS-203, LS-204, LS-205, LS-208, LS-210 & LS-262

Enclosed are copies of the above recently revised forms which are used under the Longshore and Harbor Workers' Compensation Act and its extensions, the Defense Base Act, the Nonappropriated Fund Instrumentalities Act and the Outer Continental Shelf Lands Act. These forms have been revised to comply with the new display requirements for collections of information required by 5 CFR 1320.8(b). This regulation provides, in part, that collections of information must display the OMB number; indicate the reason for the information collection and its use; advise whether the response is mandatory, required to obtain a benefit or voluntary; and to advise that persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. The reporting requirements of the forms and their general formats have not been changed.

With the exception of the multi-carbon Form LS-208, these forms have been printed on white paper. If the LS-208 is reproduced electronically, it may also be filed on white paper provided that the required number of copies are also submitted. We are unable at this time to accept direct electronic filings of any of the forms.

Prior versions of these forms are now obsolete and should no longer be used. If you decide to print and stock these forms, the printed copies must conform in every respect to the enclosed originals. You may, however, purchase supplies from any of the following printing companies:

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Kendallville, IN 46755

Telephone: 1-800-382-2424

Paragon Graphics
8131 West 10th Street
Indianapolis, IN 46214

Telephone: (317) 271-7310

You may call this Office at Area Code (202) 693-0038 if you have any questions concerning the use or printing of these forms.

Margaret R. Peterson

MARGARET R. PETERSON
Acting Director, Division of
Longshore and Harbor
Workers' Compensation

Enclosures

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

File Number:

SEP 17 1999

Notice No. 90

NOTICE TO INSURANCE CARRIERS AND SELF-INSURED EMPLOYERS UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

SUBJECT: Y2K Contingency Plan

The Longshore & Harbor Workers' Compensation Division has developed a detailed Business Continuity and Contingency Plan to assure that stakeholder services are minimally affected – if at all - by Y2K system compliance problems. The plan calls for certifying that our automated systems are Y2K compliant, testing for risk of failure, and devising contingency back-up plans in case any of our systems, or related systems, fail. Our systems have been certified to be Y2K compliant, rated as a low risk of failure, and we have almost completed the testing phase of the plan.

This notice is to inform you about the back-up contingencies, to solicit your suggestions for improving our plan, to offer our assistance with your own Y2K compliance plans for your benefit delivery systems, and to request a statement about your company's Y2K preparedness.

We have identified five critical functions of our office that may be impacted by a Y2K system failure. These are:

- **Paying benefits**
- **Collecting assessments**
- **Resolving disputes**
- **Monitoring reporting compliance**
- **Monitoring insurance**

Our back-up plans for each of these critical functions rely on the paper documents submitted to the District Office regarding claims, and to the National Office regarding insurance.

Paying Benefits

The final benefit period of 1999 falls in the last week of the year, so we will prepare that benefit payment run during that week and will send it to the Treasury Department before the end of the year. We have also developed an alternative to the present process of Special Fund payments, and this back-up has been tested and found to work properly. Should we encounter any system problems, future benefit periods will be processed by taking the

records from the back-up tape, adding new claims from paperwork submitted by the District Offices, and submitting the refreshed tape to the Treasury Department. We are able to operate in this "back-up mode" until any Y2K system problems are corrected.

Collecting Assessments

Assessments to the Special Fund are made in January and in July each year. The January 2000 assessment will be calculated in late December, 1999 and prepared for mailing during either the last week of December or the first week of January. In this way, the automated processing will be completed before January 1, and will not be repeated for another six months.

Resolving Disputes

The District Offices will continue to receive forms, requests for Informal Conferences, and other paper documentation. The Informal Conference process will continue to operate, and the data from the documents filed in the Claims Files will be entered into the automated Longshore Case Management System following the resolution of any Y2K problems with that system. The paperwork will serve as the back-up to the system.

Monitoring Reporting Compliance

As in the dispute resolution process, the District Offices will rely on the submission of the standard reporting forms to monitor stakeholders' compliance. The entry of the data from these documents into the automated system will be delayed until any Y2K problems in the Longshore Case Management System are resolved. Here, too, the documents serve to back up the automated system.

Monitoring Insurance

The National Office is responsible for monitoring the securities deposited by insurers and self-insured employers. This responsibility is critical during a time of potential system disruption. We have tested our systems by hiring outside vendors to certify Y2K compliance and our systems have received a low risk rating for any Y2K failures. To back up our system of monitoring and maintaining the securities, we will make tape copies of the securities data in the system, and maintain those back-up files in a secure location away from the system. We will be able to immediately restore the information from these back-up files should there be any data deterioration.

The Longshore & Harbor Workers' Compensation Program is responsible for regulating the timely delivery of benefits to injured workers. The potential for Y2K problems in automated benefit delivery systems threatens this. To ensure that Longshore and Harbor Workers' Compensation Program insurers and self-insured employers are preparing to protect the benefit delivery processes within their organizations, we are requesting that you submit a statement about your organization's Y2K compliance readiness. The attached sheet contains a number of descriptive statements about your Y2K preparedness. Please check the appropriate statement(s) indicating to us the status of your automated systems and whether you have contingency plans in place to deliver benefits and to submit reports in compliance with the statute. This statement must be signed by a corporate officer, and must include the name and telephone number of your Y2K program director.

U.S. Department of Labor
Division of Longshore and Harbor Workers' Compensation

One responsibility of the Longshore Division is the regulation of the delivery of workers' compensation benefits to injured workers covered by the Longshore and Harbor Workers' Compensation Act and its extensions. To ensure that insurers and self-insured employers are prepared to protect their claimant benefit payment systems from Y2K risk, we are asking that you submit the following information about your preparedness for the January 1, 2000 date problem.

Please check the appropriate line(s), have the form signed by a corporate officer, and return this statement by September 30, 1999 to:

U.S. Department of Labor
Longshore and Harbor Workers' Compensation Division
Office of Y2K Compliance
200 Constitution Ave. NW Suite C-4315
Washington, DC 20210

Thank you for your reply. **Please let us know if we can provide any assistance to help your company prepare for Y2K certification.**

Company name _____.

Our Y2K Compliance Officer is

Name: _____ Telephone:_____

___ Our benefit delivery system is now Y2K compliant.

___Our benefit system is not yet Y2K compliant, but will be Y2K compliant by _____,1999.

___ We have contingency plans in place in case our system should fail despite our Y2K compliance efforts.

___ We do not have contingency plans in place, but will by _____,1999.

Signed: _____ Date: _____

Printed or typed name _____ Title:_____

Contact

We will be pleased to discuss our Business Continuity and Contingency Plan with you in more detail, and to provide assistance to your company's plan development. Please call John Curley, Branch Chief, at (202) 693-0843 for additional information, to offer suggestions about our plan, or to seek our assistance with your Y2K initiatives. You should submit your Y2K compliance statement to Mr. Curley at our business address above. We request that these statements be submitted to us not later than September 30, 1999.

MICHAEL NISS
Director, Division of
Longshore and Harbor
Workers' Compensation

Attachment

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

September 14, 1999

Notice No. 91

NOTICE TO INSURANCE CARRIERS, SELF-INSURED EMPLOYERS UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, AND OTHER INTERESTED PERSONS

SUBJECT: Maximum and Minimum Compensation Rates Under the Longshore Act, Effective October 1, 1999; Adjustments of Permanent Total Disability and Death Cases

Section 6(b)(3) of the Longshore and Harbor Workers' Compensation Act provides that prior to October 1 of each year, based on the national average weekly wage for the three calendar quarters ending June 30 of that year, the Secretary of Labor shall determine the national average weekly wage (NAWW) to be applicable for the 12-month period beginning October 1. It has been determined that the applicable NAWW for the period beginning October 1, 1999, and ending September 30, 2000, is $450.64.

Minimum and Maximum Rates

Section 6(b)(1) provides that the maximum rate of compensation under this Act shall not exceed 200 percent of the national average weekly wage. Therefore, the maximum compensation rate for total disability and death is $901.28 (200 percent of $450.64). Compensation for disability subject to this maximum should be paid at 66 2/3 percent of the employee's average weekly wage, as determined under Section 10, subject to the limitation of $901.28.

The minimum compensation rate payable for disability incurred after October 1, 1999 is $225.32 per week, which is 50 percent of the NAWW. However, if an employee's average weekly wage is less than this amount, he or she receives his or her entire average weekly wage as compensation for total disability.

In computing death benefits covered by this period, the average weekly wage of the deceased employee shall not be less than $450.64 per week. In addition, under the provisions of the 1984 Amendments, the total weekly death benefits shall not exceed the lesser of (1) average weekly wages of the deceased or (2) 200 percent of the NAWW. The 200 percent maximum benefit is $901.28 per week, and is applicable to cases in which the death occurs during the period October 1, 1999 through September 30, 2000,

except for District of Columbia Compensation Act (DCCA)[1] cases which are not subject to the 1984 amendments.

The above noted maximum and minimum rates for disability and death also apply to employees covered by the Nonappropriated Fund Instrumentalities Act (NFIA).

Annual Adjustments

Under Section 10(f) and 10(h) of the amended Act, compensation or death benefits payable for permanent total disability or death cases which were incurred prior to October 1, 1999, are to be increased by the lesser of (1) a percentage equal to the percentage by which the applicable national average weekly wage for the period beginning October 1, 1999, exceeds the applicable national average weekly wage for the preceding period, or (2) 5 percent. (DCCA cases are always subject to the percentage increase in the NAWW without regard to the 5 percent limitation.) The percentage increase in the NAWW is 3.39 percent. As this figure is less than 5 percent, compensation is to be increased by 3.39 percent effective October 1, 1999.

Field or district offices of insurance carriers or self-insured employers paying benefits under the Longshore and Harbor Workers' Compensation Act and related Acts (DCCA, Defense Base Act, Outer Continental Shelf Lands Act, and Nonappropriated Fund Instrumentalities Act) will soon receive specific instructions from OWCP district offices and/or from the District of Columbia Government for making the adjustments on Section 10(f) and 10(h) cases, and should begin paying at the new benefit levels as soon as possible.

In case of questions about implementing these mandatory adjustments, any district office or the OWCP National Office, Longshore Division (Telephone: (202) 693-0038) may be contacted. For DCCA cases, contact the D.C. Government, Department of Employment Services (Telephone: (202) 576-6265).

MICHAEL NISS
Director, Division of
Longshore and Harbor
Workers' Compensation

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[1] District of Columbia Compensation Act of 1928 which is applicable only to injuries which occurred prior to July 26, 1982.

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

NOV 1 - 1999

Notice No. 92

NOTICE TO INSURANCE CARRIERS AND SELF-INSURED EMPLOYERS UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, AND OTHER INTERESTED PERSONS

SUBJECT: RESTRUCTURING OF THE LONGSHORE PROGRAM IN THE SAN FRANCISCO REGION OF OWCP

Effective January 1,2000 the operation of the Longshore program in the San Francisco Region of OWCP will be restructured. Individual district directors will be assigned to direct and oversee Longshore program operations for the 13th, San Francisco, and 18th, Long Beach, Longshore compensation districts. The district director for the 13th compensation district will also oversee and direct the operations of the 15th, Honolulu, Longshore compensation suboffice. This restructuring is in accordance with 20 CFR 702.102(c) (see 60 FR 51348 dated October 2, 1995). These changes are designed to improve service to Longshore program stakeholders and provide for a more efficient allocation of limited resources throughout the Longshore program.

No changes are being made at this time in the jurisdictional areas comprising the 13th, 15th and the 18th compensation districts and the offices will remain at their current addresses. Therefore, all forms, documents, and correspondence for claims arising in the San Francisco, Honolulu and Long Beach compensation districts should continue to be filed with those offices as is currently done.

All questions concerning the processing of claims under this restructuring should be directed to OWCP Regional Director Donna Onodera at Area Code (415) 975-4160.

MICHAEL NISS
Director, Division of
Longshore and Harbor
Workers' Compensation

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
Washington, D.C. 20210

NOV 2 1999

File Number:

INDUSTRY NOTICE NUMBER #93

SUBJECT: District of Columbia Special Fund Assessment

This notice is to advise all authorized District of Columbia insurance carriers and self-insurers that the D.C Special Fund has experienced a shortfall in calendar year 1999 collections due to erroneous initial reporting of payments by several participants. **The District of Columbia Special Fund will be unable to meet its biweekly disbursement roll to about 700 recipients in January 2000. This situation has necessitated an emergency mailing of the advance assessment for calendar year 2000.**

Bills for Collection will be mailed prior to December 1, 1999, with payment due no later than December 30, 1999.

This early collection is a manifestation of what will no doubt become a chronic problem for the D.C. Special Fund. On this occasion it has been caused by the initial erroneous filing of CY98 reports of payments by certain insurance carriers which were not corrected until after the final billing had been calculated and mailed.

There is, however, a long term problem with the District of Columbia Special Fund assessment. Assessments in D.C. are running at over 200% of paid indemnity and medical. This rate will grow as the assessment base continues to decrease in relation to the needs of the D.C. Special Fund. In fact, the divergence will accelerate in the future.

Please carefully consider the implications of this notice and consider it to be a warning of steadily increasing D.C. Special Fund assessments.

Please direct any questions or comments to Carl Abildso at (202) 693-0801. You may also fax your comments to (202) 693-1380.

MICHAEL NISS
Director, DLHWC

Working for America's Workforce