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Ceres Marine Terminal v. Hinton 243 F.3d 222 (5th Cir. 2001) (Decided March 8, 2001)

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UNTIMELY FILING PRECLUDED EMPLOYER FROM ELIGIBILITY FOR 8(f) RELIEF IN ACTION UNDER LONGSHORE AND HARBOR WORKER'S COMPENSATION ACT

Employer is unable to limit liability through §8(f) of the LHWCA because claim was filed in untimely manner and no special circumstances existed; Administrative Law Judge's decision will stand unless the findings were supported by substantial evidence based in the record as a whole

Ceres Marine Terminal v. Hinton
243 F.3d 222 (5th Cir. 2001)
(Decided March 8, 2001)

Claimant, David Hinton, is a 72 year old longshoreman. Having only a third grade education, he worked in the field of manual labor all his life. On December 3, 1992 Hinton was crushed between two containers while working for Ceres Marine Terminals ("Employer") on the Houston waterfront. As a result, he suffered a dislocation and tear of the cartilage from the sternum, leading to his hospitalization, for one month, and the reception of total disability payments from December 4, 1992 until May 6, 1993.

In a dispute against total permanent disability compensation before an Administrative Law Judge ("ALJ"), the Employer contended that: a) Hinton could obtain alternative employment or return to work, and b) if liable, he (Employer) was entitled to partial relief for the payment of Hinton's benefits under 33 USC §908(f) ("§8(f) relief"), due to the fact that Hinton had back pain related to an 18 to 20 foot fall in 1988 and back surgery in 1978 (both of which occurred prior to his employment with the Employer). This claim for §8(f) relief was made after the ALJ's decision.

The ALJ looked at all the evidence and found for the Claimant concluding that: a)The Employer did not establish jobs that Hinton could work at when taking into account Hinton's age, physical impairment and education, and b)that the Employer was not entitled to §8(f) relief because he filed the application in an untimely manner. The Department of Labor Benefits Review Board ("the Board")

agreed with the ALJ's decision causing the Employer to appeal this decision to the United States Court of Appeals for the Fifth Circuit.

The Fifth Circuit first determined the standard of review by stating that: 1)"findings of fact in the decision under review by the board shall be conclusive if supported by substantial evidence in the record considered as a whole" 33 USC §921(b)(3), and 2)the §8(f) issue was a procedural legal matter, not a question of fact. As such, the court will allow the ALJ's interpretations of the Act to control unless it was contrary to clear legislative intent.

The court then looked at the two issues which were raised on appeal: 1) whether the determinations made by the ALJ on Hinton's job disability and availability were supported by substantial evidence in the record as a whole; and 2) whether a claim for §8(f) relief is timely when initially introduced after the ALJ's initial decision.

The Employer disagreed with the credibility given to the testimony of Hinton's physician, Dr. Gold, by the ALJ over that of the Independent Medical Examiner, as being based on Hinton's objective complaints. After looking at the record, the court determined that the ALJ's findings were supported by substantial evidence in the record as a whole, thus satisfying 33 USC §921(b)(3).

In addition, the Employer argues that the 1993 labor market survey, which was prepared by an expert, established alternative employment for Hinton, and that the ALJ's factual determination on this matter was wrong. The ALJ felt that the Employer's expert did not take into consideration Hinton's age, limited education, and life long employment solely in the field of heavy manual labor when forming the survey. Thus, he found the survey unsuitable. The court concluded that in this instance as well, the substantial evidence in the record as a whole test was met. Thus, the court struck down the Employer's argument as lacking merit.

To prevent discrimination against handicapped employees, §8(f) of the Longshore and Harbor Workers Compensation Act ("LHWCA") was created. It has an aggravation rule that basically states if an employment injury aggravates, or accelerates a previous infirmity, condition etc., the employer will be liable for the total disability of the employee. Under certain conditions however, the employer's compensation payment liability can be limited through the use of a special fund established by §44 under 33 USC §944.

One such condition is that the request for §8(f) relief must be made to the District Director of the Office of Worker's Compensation Program ("OWCP") either before or during the initial disability hearings taking place with the ALJ. 20 CFR §702.321(b)(3) provides for the most part that: a) if no claim for permanent disability is being made by the date the case is referred to the office of the ALJ, the employer does not have to submit an application in order to protect his future §8(f) relief rights should that be raised as an issue; and b)should an application not be filed in a timely manner for all other cases (excluding special circumstances), the Director has an affirmative defense which he must raise and plead in not granting the relief.

Employer initially brought his claim for §8(f) relief during his move for modification of the ALJ's decision. He contends that the Director's failure to raise the affirmative defense of untimeliness should have led the ALJ to allow the §8(f) relief. The court on the other hand stated that even though the Employer is correct in stating that the affirmative defense is not applicable to the current case, that still does not excuse the Employer's obligation under 20 CFR §702.321(b)(3) in applying for the relief before the initial hearing by the ALJ if no special circumstances existed. As a result, the court concluded that the ALJ did not err in his decision in rejecting Employer's claim.

The Court of Appeals for the Fifth Circuit accordingly enforced the Board's order which ruled in favor of Hinton.

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