

**Norfolk Shipbuilding & Drydock Corp. v. Campbell United States
Court of Appeals for the Fourth Circuit 59 Fed. Appx. 568
(Decided March II, 2003)**

Carl Benincasa '05

Follow this and additional works at: https://scholarship.law.stjohns.edu/admiralty_practicum



Part of the [Admiralty Commons](#)

This Recent Admiralty Cases is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in Admiralty Practicum by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

it remanded the issue back to the district court for an explanation of the lower court's rationale.

Nicole Oversier
Class of 2006

**THE PROPRIETY OF AN ADMINISTRATIVE LAW JUDGE CONSIDERING
AN INDIVIDUAL'S MOTION FOR MODIFICATION OF A DISABILITY
CLAIM**

A claim of mistake in a motion to modify disability benefits based on medical reports created after the initial decision is a factual, rather than legal issue. Thus it is proper for an Administrative Law Judge to consider the motion.

Norfolk Shipbuilding & Drydock Corp. v. Campbell
United States Court of Appeals for the Fourth Circuit
59 Fed. Appx. 568
(Decided March 11, 2003)

In 1987, appellee Terry Campbell injured his head, neck, and back while working for appellant Norfolk Shipbuilding and Drydock Corporation ("Norshipco"). After the incident, Campbell continued to work for Norshipco from May 1987 to January 1993 receiving differing amounts of disability compensation. In response, Campbell filed a claim for temporary total disability under the Longshore and Harbor Worker's Compensation Act ("LHWCA"). After reviewing Campbell's claim, the Administrative Law Judge ("ALJ") concluded that: (1) Campbell was not fired in retaliation for filing a disability claim, (2) suitable alternate employment existed despite Campbell's limitations, and (3) Campbell was fired from the suitable alternate employment for willful misconduct. Accordingly, the ALJ rejected Campbell's claim for temporary total disability.

Campbell filed a request for modification pursuant to Section 22 of the LHWCA, which allows a compensation decision to be modified based on a change of condition or a mistake of fact. Campbell alleged a change in condition and a mistake of fact with regard to his ability to perform the light duty employment offered by Norshipco. After a second hearing, the ALJ concluded that there had been no change in condition nor had there been a mistake of fact. Campbell appealed this decision to the Department of Labor's Benefits Review Board ("BRB"). The BRB affirmed the ALJ's decision that there had been no change in condition, but remanded for further consideration on the issue of whether there had been a mistake of fact regarding the alternate employment offered to Campbell. On remand, the ALJ concluded that the alternate work offered by Norshipco was outside Campbell's abilities and awarded him permanent partial disability benefits. After subsequent appeals by Norshipco to the BRB, the ALJ issued a final order awarding limited benefits to Campbell. After the BRB affirmed this decision, Norshipco appealed to the Fourth Circuit.

On appeal, Norshipco first argued that the ALJ erred in considering Campbell's modification motion since it was based on a legal, rather than factual, contention. Furthermore, Norshipco argued the BRB erred when it rejected the ALJ's decision on the merits rather than concluding that the ALJ exceeded its authority in reconsidering a legal issue.

In addressing Norshipco's contentions, the court first ruled that Campbell's motion for modification was based on a factual contention. The court held that as Campbell's claim was based on a disagreement as to the interpretation of medical evidence, it was factual in nature. Furthermore, the court found that the BRB did not reweigh the merits and substitute its own judgment for the ALJ's, but rather, remanded the case for further consideration on an issue. Indeed, the court found that all the BRB required was that the ALJ consider all the available evidence.

Norshipco next argued that the BRB erred in its findings regarding the available alternate employment. The court found that no such errors existed as the BRB in fact made no findings with regard to alternated employment. Again, the court alluded to the fact that the BRB simply remanded the case for reconsideration on whether, when fully considering all the available medical evidence, Campbell could perform the alternate employment offered by Norshipco.

Finally, Norshipco argued that Campbell's appeal to the BRB was untimely filed. In addressing this issue, the court looked to 22 C.F.R. § 802.217(a), which puts extensions of time for such appeals within BRB discretion. The court reasoned that, as Norshipco made no allegations that the BRB abused its discretion, Campbell's brief was properly received by the BRB.

Ultimately, the court affirmed the decisions of the two lower bodies and granted Campbell limited benefits for his disability.

Carl Benincasa
Class of 2005