

FILED: April 2, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-2021
(17-0106)

MYRA TYLER

Petitioner

v.

MAIN INDUSTRIES, INCORPORATED; SIGNAL MUTUAL INDEMNITY
ASSOCIATION, LIMITED, c/o Abercrombie, Simmons, & Gillette; DIRECTOR,
OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES
DEPARTMENT OF LABOR

Respondents

JUDGMENT

In accordance with the decision of this court, the petition for review is denied.

This judgment shall take effect upon issuance of this court's mandate in
accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-2021

MYRA TYLER,

Petitioner,

v.

MAIN INDUSTRIES, INCORPORATED; SIGNAL MUTUAL INDEMNITY ASSOCIATION, LIMITED, c/o Abercrombie, Simmons, & Gillette; DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,

Respondents.

On Petition for Review of an Order of the Benefits Review Board. (17-0106)

Submitted: March 29, 2018

Decided: April 2, 2018

Before AGEE and DIAZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Petition denied by unpublished per curiam opinion.

Myra Tyler, Petitioner Pro Se. Frank Nash Bilisoly, W. Thomas Chappell, Brian Louis Sykes, Kimberly Herson Timms, VANDEVENTER BLACK, LLP, Norfolk, Virginia, for Respondents Main Industries, Incorporated and Signal Mutual Indemnity Association, Limited. Betty English, Jeffery Steven Goldberg, Mark A. Reinalter, Office of the Solicitor General, Maia Simone Fisher, Washington, D.C., Theresa Magyar, UNITED STATES DEPARTMENT OF LABOR, Jacksonville, Florida, for Respondent Director,

Office of Workers' Compensation Programs, United States Department of Labor.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Myra Tyler petitions for review of the Benefits Review Board's (Board) decision and order affirming the administrative law judge's (ALJ) dismissal of her request for a modification of a prior order denying her claim for benefits under the Longshore and Harbor Workers' Compensation Act. *See* 33 U.S.C. §§ 901-950 (2012). The ALJ found that Tyler's request for a modification was untimely, and the Board concluded that the ALJ's decision was rational, supported by substantial evidence, and in accordance with law.

"We review the Board's decision for errors of law and to determine whether the Board adhered to its standard of review. The Board's standard of review requires that the ALJ's findings of fact be considered conclusive if supported by substantial evidence in the record considered as a whole." *Metro Mach. Corp. v. Dir., Office of Workers' Comp. Programs*, 846 F.3d 680, 687 (4th Cir. 2017) (citation and internal quotation marks omitted). "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252 (4th Cir. 2016) (internal quotation marks omitted).

Our review of the record discloses that the Board's decision is based upon substantial evidence and is without reversible error. *See* 33 U.S.C. § 922; *Wheeler v. Newport News Shipbuilding & Dry Dock Co.*, 637 F.3d 280, 286-87 (4th Cir. 2011). Accordingly, we deny Tyler leave to proceed in forma pauperis and deny the petition for review for the reasons stated by the Board. *Tyler v. Main Indus., Inc.*, No. 17-0106 (B.R.B.

Aug. 15, 2017). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DENIED

U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601



BRB No. 17-0106

MYRA TYLER

Claimant-Petitioner

v.

MAIN INDUSTRIES, INCORPORATED

and

SIGNAL MUTUAL INDEMNITY
ASSOCIATION, c/o AMBERCROMBIE,
SIMMONS & GILLETTE

Employer/Carrier-
Respondents

) DATE ISSUED: _____

) DECISION and ORDER

AUG 15 2017

NOT PUBLISHED

Appeal of Order Dismissing Case of Paul C. Johnson, Jr., Administrative Law Judge, United States Department of Labor.

Myra Tyler, Winton, North Carolina.

F. Nash Bilisoly and Kimberley Herson Timms (Vandeventer Black, LLP), Norfolk, Virginia, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Claimant, appearing without representation, appeals the Decision and Order (2015-LHC-00769) of Administrative Law Judge Paul C. Johnson, Jr., rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). In an appeal by a claimant without legal representation, the Board will review the administrative law judge's findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and in accordance with law. If they are, they must be affirmed. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

motion for modification, concluded that claimant's motion was untimely filed, and consequently dismissed claimant's motion for modification.

On appeal, claimant challenges the administrative law judge's dismissal of her motion for modification. Employer responds, urging affirmance.

Section 22 of the Act provides in relevant part:

Upon his own initiative, or upon the application of any party in interest ... on the ground of a change in conditions or because of a mistake in a determination of fact by the [administrative law judge], the [administrative law judge] may, *at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim,* review a compensation case ... and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. . . .

33 U.S.C. §922 (emphasis added). Thus, a request for modification under Section 22 must occur within one year of the last payment of compensation. *Wheeler v. Newport News Shipbuilding & Dry Dock Co.*, 43 BRBS 179 (2010), *aff'd*, 637 F.3d 280, 45 BRBS 9(CRT) (4th Cir.), *cert. denied*, 565 U.S. 1058 (2011). If a claim is denied, the one year begins to run on the date the decision becomes final; thus a modification request must be filed within one year after the conclusion of the appellate process. *Id.*; *see also Alexander v. Avondale Industries, Inc.*, 36 BRBS 142 (2002).

Our review of the administrative file indicates that the administrative law judge's findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. Specifically, on August 21, 2008, claimant filed a claim for injuries she allegedly sustained to her back and tailbone while working for employer on July 31, 2008. Claimant's back and tailbone claim was addressed in Judge Krantz's December 12, 2011 Decision and Order. Judge Krantz concluded that claimant's injuries were work-related, but that employer had already paid claimant all of the disability benefits to which she was entitled for those conditions. Therefore, Judge Krantz denied additional benefits. The Board affirmed Judge Krantz's denial of additional disability benefits for claimant's work-related tailbone and back conditions in a decision issued on December 17, 2012. *Tyler*, slip op. at 7-8. Thus, claimant had to file her motion for modification with regard to this claim within one year after the last rejection of that claim. *See Alexander*, 36 BRBS at 146. Claimant, however, took no further action with regard to her tailbone/back claim until she filed her motion for modification on January 26, 2015, approximately two years after the denial of that claim became final. Based on these undisputed facts, the administrative law judge properly found that claimant's

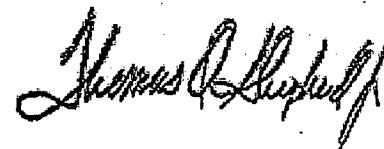
CERTIFICATE OF SERVICE

2017-0106-LHCA Ms. Myra Tyler v. Main Industries, Inc., Signal Mutual Indemnity Assn. Ltd. c/o Abercrombie, Simmons & Gillette, (Case No. 15-LHCA-0769) (OWCP No. 05127867)

I certify that the parties below were served this day.

08/15/2017

(DATE)



I.D.

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from this filing is
available in the
Clerk's Office.**