

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-5047
Summary Calendar

CHAPPARRAL STEVEDORING CO., and
AETNA CASUALTY & SURETY COMPANY,

Petitioners,

versus

CLARENCE G. KIRBY and DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Respondents.

Petition for Review of an Order of the
Benefits Review Board
(BRB #91-1487)

(December 30, 1993)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.

PER CURIAM:*

Chapparral Stevedoring Co. ("Chapparral") and Aetna Casualty & Surety Company ("Aetna") petition this Court for review of an Order of the Benefits Review Board dated May 28, 1993. Clarence G.

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Kirby ("Kirby") slipped on a ladder during his employment by Chapparral and sustained injuries which aggravated pre-existing arthritic conditions. Ultimately, Kirby had both hips replaced and even after maximum recovery was diagnosed as being unable to return to stevedoring work or to perform any work which required standing or lifting. Aetna paid benefits to Kirby on the basis of temporary total disability from the date of the accident until September 15, 1986 and for permanent total disability thereafter. The critical issue in the case is whether Chapparral and Aetna satisfied the requirements of § 8(f) of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 908(f), so that their liability may be limited to the first 104 weeks of compensation, and whether payments thereafter would be transferred to the special fund providing relief in cases where employees with pre-existing partial disability sustain additional injuries. The Administrative Law Judge ("ALJ") to whom the controversy was referred found that Chapparral and Aetna had not satisfied the requirements of § 8(f), and the Benefits Review Board affirmed.

We have carefully reviewed the petition for review, the briefs, the reply brief, the record excerpts and pertinent portions of the record. Given the limited scope of our appellate review, the clarity of the statutory language requiring a § 8(f) claim to be asserted before consideration of the compensation claimed by the Director, the clarity of the legislative history as to the reasons for the § 8(f) timeliness requirement, the severity of Kirby's medical procedures, and the prior holding of this court in *Cajun*

Tubing Testors, Inc. v. Hargrave, 951 F.2d 72 (5th Cir. 1992), we are satisfied that the ALJ reached an appropriate conclusion and that the Benefits Review Board correctly affirmed the ALJ's decision.

Accordingly, we DISMISS the petition for review.