TOPIC 30 REPORTS

30.1 GENERALLY

Section 30 of the LHWCA provides:

> **(a) Within ten days from the date of any injury, which causes loss of one or more shifts of work, or death or from the date that the employer has knowledge of a disease or infection in respect of such injury, the employer shall send to the Secretary a report setting forth (1) the name, address, and business of the employer; (2) the name, address, and occupation of the employee; (3) the cause and nature of the injury or death; (4) the year, month, day, and hour when and the particular locality where the injury or death occurred; and (5) such other information as the Secretary may require. A copy of such report shall be sent at the same time to the deputy commissioner in the compensation district in which the injury occurred. Notwithstanding the requirements of this subsection, each employer shall keep a record of each and every injury regardless of whether such injury results in the loss of one or more shifts of work.**
>
> **(b) Additional reports in respect of such injury and of the condition of such employee shall be sent by the employer to the Secretary and to such deputy commissioner at such times and in such manner as the Secretary may prescribe.**
>
> **(c) Any report provided for in subdivision (a) or (b) shall not be evidence of any fact stated in such report in any proceeding in respect of any such injury or death on account of which the report is made.**
>
> **(d) The mailing of any such report and a copy in a stamped envelope, within the time prescribed in subdivision (a) or (b), to the Secretary and deputy Commissioner, respectively, shall be a compliance with this section.**
>
> **(e) Any employer, insurance carrier, or self-insured employer who knowingly and willfully fails or refuses to send any report required by this section or knowingly or willfully makes a false statement or misrepresentation in any such report shall be subject to a civil penalty not to exceed $10,000 for each such failure, refusal, false statement, or misrepresentation.**

(f) Where the employer or the carrier has been given notice, or the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier has knowledge, of any injury or death of any employee and fails, neglects, or refuses to file report thereof as required by the provisions of subdivision (a) of the section, the limitations in subdivision (a) of section 13 of this Act shall not begin to run against the claim of the injured employee or his dependents entitled to compensation, or in favor of either the employer or the carrier, until such report shall have been furnished as required by the provisions of subdivision (a) of this section.

33 U.S.C. § 930.

The employer is required to file a report of the injury or death with the Secretary within ten (10) days or be subject to a possible civil penalty up to $10,000.00 if such failure is willful.

Section 30(a) sets forth the time and informational requirements for submitting the report, and Section 30(e) sets forth the civil penalty for failure or refusal to submit such report.

Where the employer or carrier has knowledge of the injury or death and does not file the requisite report, the claimant's one-year filing limitation under Section 13(a) will not become operative until such report is filed by the employer or carrier. Bustillo v. Southwest Marine, Inc., 33 BRBS 15 (1999). Section 20(b) provides a presumption that the claim was timely filed and to overcome the presumption, an employer must prove that it never gained knowledge or received notice of the injury for Section 30 purposes. Knowledge of the work-relatedness of an injury may be imputed where an employer knows of the injury and has facts that would lead a reasonable person to conclude that compensation liability is possible so that further investigation is warranted.

30.2 EMPLOYER MUST REPORT INJURY WITHIN 10 DAYS

The employer with knowledge of the injury must file a report within 10 days under Section 30(a); otherwise, the statute of limitations under Section 13 of the LHWCA will be tolled pursuant to Section 30(f). Fortier v. General Dynamics Corp., 15 BRBS 4 (1982), aff'd mem., 729 F.2d 1441 (**2d Cir.** 1983).

The purpose of the LS-202 form ("First Report of Injury") is to provide the district director with information regarding an alleged injury, pursuant to Section 30(a) of the LHWCA. The reverse side of the LS-202 form cites to Section 30 of the LHWCA and states that filing this form is not an admission of liability or evidence of any fact with respect to any injury on account of which it is made. Snowden v. Ingalls Shipbuilding, Inc., 25 BRBS 346 (1992) (en banc) (A LS-202 does not take the place of a LS- 207 Notice of Controversion).

The Board has held, however, that an employer's filing of an LS-202 where the claimant has not lost time from work cannot commence the running of the Section 13(a) time period. Nelson v. Stevens Shipping & Terminal Co., 25 BRBS 277 (1992) (employer's report did not specify any loss of time from work as none had yet occurred and the employer did not amend its existing LS-202 or file another LS-202 to correct these omissions once the injury resulted in lost time). See Jones v. Navy Exch., 26 BRBS 10 (CRT) (**4th Cir.** 1992) (unpublished **Fourth Circuit** opinion, wherein the claimant neither left work the day of the accident or missed any subsequent time from work).

It is incumbent upon the judge, under 20 C.F.R. § 702.338, to ascertain evidence as to whether a report under Section 30(a) has been filed. Peterson v. Washington Metro. Area Transit Auth., 13 BRBS 891 (1981), aff'd after remand, 17 BRBS 114 (1984).

The report which the employer files must be reasonably accurate in order to toll the running of the one-year limitation period. A report which was inaccurate as to the average weekly wage of the claimant was not a reasonably accurate one. Belton v. Traynor, 381 F.2d 82 (**4th Cir.** 1967).

The employer's failure to file a report under Section 30(e) will not be excused because the employer believed that California law, rather than federal law, applied. Castro v. McLean Indus., 12 BRBS 911 (1980).

Where a claims examiner testified that a "no lost time" injury report was destroyed after two years when no claim was filed and the administrative law judge admitted into evidence a copy of the report sent to the carrier, which was stamped nine days after the work accident by carrier's stamp, substantial evidence indicated that employer complied with Section 30(a). Aurelio v. Louisiana Stevedores, 22 BRBS 418 (1989).

The employer had sufficient knowledge of the work-related nature of the claimant's condition, which required the employer to file a report of accident or occupational disease under Section 30(a), where the claimant's chest x-rays were taken on the employer's premises and read to

show a spot on his lungs and claimant's duties included sandblasting. Glover v. Aerojet-General Shipyard, 6 BRBS 559 (1977). The employer also had sufficient knowledge of the injury necessitating the filing of a report of injury where the claimant testified that she advised two supervisory employees of her injury on the date of its occurrence. Cain v. Fort Lee Officers' Open Mess, 1 BRBS 372 (1975).

Hearing Loss Cases: Pre-1984 Amendments

The employer was deemed to have knowledge of hearing loss injuries and should have filed a report with the Secretary where the employer's doctor had examined the claimants for the employer an had found hearing losses. McCabe v. Sun Shipbuilding & Dry Dock Co., 1 BRBS 509 (1975), dismissed for lack of jurisdiction sub nom. Sun Shipbuilding & Dry Dock Co. v. Benefits Review Bd., 4 BRBS 32 (**3d Cir.** 1976), aff'd after remand, 7 BRBS 333 (1978). General knowledge that hearing loss may result from exposure to certain working conditions, however, is not sufficient to constitute knowledge for purposes of Section 30(a). Killmer v. Todd Shipyards Corp., 9 BRBS 534 (1978).

Hearing Loss Cases: Post-1984 Amendments

In Skelton v. Bath Iron Works Corp., 27 BRBS 28, 31-32 (1993), the Board states:

> [E]mployer had no duty under Section 30(a) of the Act, 33 U.S.C. § 930(a) (1988), to report the 1984 hearing loss to the district director. Pursuant to Section 30(a), employer need only file a report of injury with the district director if an injury causes the loss of one or more shifts of work. See Nelson v. Stevens Shipping and Terminal Co., 25 BRBS 277 (1992).

30.3 ADDITIONAL REPORTS DUE AS SECRETARY INDICATES

No cases.

30.4 INFORMATION IN REPORT IS NOT EVIDENCE

No cases.

30.5 MAILING FIRST REPORT MEETS REQUIREMENT

No cases.

30.6 FINE FOR FAILURE TO FILE FIRST REPORT

Jurisdiction over the case lay with the administrative law judge where assessment of a Section 30(e) penalty would involve factual determinations as to whether the employer failed to comply with the LHWCA's requirements pertaining to filing of the injury-related reports in subsections (a) through (d) of Section 30. Anweiler v. Avondale Shipyards, Inc., 21 BRBS 271 (1988).

In Jones v. Navy Exchange, 966 F.2d 1442 (Table) (**4th Cir.** 1992), the court found that Section 30(a) did not toll the filing period since the employer did not know of the claimant's injury until after the limitations period expired. When an employer does not know of an injury, the employer has no reason to file an injury report. Additionally in Jones, the court noted that, "Mere knowledge of an accident at work does not satisfy the knowledge requirement of Section 30(a). Rather, the [LHWCA] requires knowledge of the injury and of facts that would lead a reasonable man to conclude that compensation liability is possible and there is a need to investigate further." See Stevenson v. Linens of the Week, 688 F.2d 93 (**D.C. Cir.** 1982); Williams v. Nicole Enterprises, Inc., 19 BRBS 66 (1988).

30.7 EMPLOYER'S KNOWLEDGE OF INJURY

Section 30(f) cannot be used to save a claim in a case where the claimant had knowledge of the work-relatedness of his injury, but the employer did not receive notice, or otherwise obtain knowledge, by the end of the one-year filing period. Keatts v. Horne Bros., Inc., 14 BRBS 605 (1982). See Stark v. Washington Star Co., 833 F.2d 1025, 20 BRBS 40 (CRT) (**D.C. Cir.** 1987); Nasem v. Singer Business Machs., 2 BRBS 37 (1975), aff'd sub nom. Nasem v. Director, OWCP, 535 F.2d 1250, 3 BRBS 395 (**4th Cir.** 1976).

The Section 20(b) presumption of an employer's knowledge of the work-relatedness of an injury does not apply to the knowledge requirement contained in Section 30(f), where the employer must obtain actual knowledge or have reasonable grounds to conclude that a claimant's illness is work-related before the Section 30(a) report must be filed. The mere fact that the employer had knowledge of the claimant's breathing problems was insufficient to show that the employer had knowledge that these problems were work-related. Speedy v. General Dynamics Corp., 15 BRBS 352 (1983).

The employer neither had any imputed knowledge of a work-related injury nor a duty to further investigate the claim where the claimant applied for disability coverage under a non-occupational insurance policy available through employer which certified that her illness was not work-related.

30.8 TOLLING SECTION 13(a)

The prudent employer files a Section 13(a) report of injury. In Ryan v. Alaska Constructors, Inc., 24 BRBS 65 (1990), the Board held that the one year statute of limitations under Section 13(a) was tolled pursuant to Section (f), where the employer did not file timely a Section 30 report of injury even though the claimant had entered into an agreement as to settlement with the employer six months after the injury. Where a Section 30(a) report should have been filed, and none was filed, the claim is timely as a matter of law. Steed v. Container Stevedoring Co., 25 BRBS 210 (1991).

[ED. NOTE: *However, Steed must be distinguished from the case where the employer has no knowledge of an injury. See , Keatts v. Horne Brothers, Inc., 14 BRBS 605 (1982) (Section 30(f) cannot be used to save a claim in a case where claimant had knowledge of the work-relatedness of his injury, but employer did not receive notice, or otherwise obtain knowledge, of the injury by the end of the relevant filing period.).For more examples of this, see infra.****]***

In Spears v. General Dynamics Corp., 25 BRBS 132 (1991), the claim was not barred under Section 13 where the employer did not file a first report of injury until five months after the claimant filed for benefits under the LHWCA. In Faulkner v. U.S. Navy Exchange, 2 BRBS 201 (1975), the Board held that a claim filed more than four years after a compensable injury was not time barred where the employer failed to file its report. See also, McKinney v. Rowe Machine Works, Inc., 2 BRBS 329 (1975); Silberstein v. Service Printing Co., 2 BRBS 143 (1975); Cain v. Fort Lee Officers' Open Mess, 1 BRBS 372 (1975).

The employer's report of the claimant's knee injury was sufficient to prevent tolling of the statute of limitations under Section 30(f) as to "all possible sequelae" injuries such as synovitis. The **Second Circuit** stated that the employer need not file a separate report at every stage of a developing injury. Gencarelle v. General Dynamics Corp., 892 F.2d 173, 23 BRBS 13 (CRT) (**2d Cir.** 1989).

The employer's report of his employee's accident to a state industrial commission does not satisfy the requirement of Section 30(a). Riley v. Director, OWCP, 11 BRBS 298 (1979).

Section 30(f) could not revive the claim, however, where the claimant had the requisite awareness of the relationship between her disease, employment, and disability over two years before notice was given to the employer. Wendler v. American Nat'l Red Cross, 23 BRBS 408 (1990).

In Jones v. Navy Exchange, 966 F.2d 1442 (Table) (**4th Cir.** 1992), the court found that Section 30(a) did not toll the filing period since the employer did not know of the claimant's injury until after the limitations period expired. When an employer does not know of an injury, the employer has no reason to file an injury report. Additionally in Jones, the court noted that, "Mere knowledge of an accident at work does not satisfy the knowledge requirement of Section 30(a). Rather, the [LHWCA] requires knowledge of the injury and of facts that would lead a reasonable man to conclude that compensation liability is possible and there is a need to investigate further."

See Stevenson v. Linens of the Week, 688 F.2d 93 (**D.C. Cir.** 1982); Williams v. Nicole Enterprises, Inc., 19 BRBS 66 (1988).

The Board has adhered to the view that knowledge by the employer that the employee has sustained an injury is sufficient knowledge under Section 30(f). Cooper v. John T. Clark and Son of Maryland, Inc., 11 BRBS 453 (1979), aff'd at 14 BRBS 154 (1981); . See Glover v. Aerojet-General Shipyard, Inc., 6 BRBS 559 (1977). The **Fifth** and **Third Circuits** have added the further requirement that the employer must have knowledge of the job-related nature of the injury. See United Brands v. Melson, 594 F.2d 1068 (**5th Cir.** 1979), aff'g 6 BRBS 503 (1977); Strachan Shipping Co. v. Davis, 571 F.2d 968, 8 BRBS 161 (**5th Cir.** 1978), rev'g 2 BRBS 272 (1975); Sun Shipbuilding & Dry Dock Co. v. Bowman, 507 F. 2d 146 (**3d Cir.** 1975). However, the **Fifth Circuit** left open the issue of whether an employer has a duty to conduct further investigation upon being informed of an employee's illness. See Strachan. Neither the Board nor any court has interpreted Section 30(f) so restrictively as to provide that an employer must have definite knowledge that the injury comes within the jurisdiction of the LHWCA in order for Section 30(f) to apply. See also, Jones v. Newport News Shipbuilding & Dry Dock Co., 5 BRBS 323 (1977), aff'd, 573 F.2d 167, 8 BRBS 241 (**4th Cir.** 1978).