SUPREME COURT OF THE UNITED STATES

No. 91–17

ESTATE OF FLOYD COWART, PETITIONER *v.* NICKLOS DRILLING COMPANY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 22, 1992]

JUSTICE KENNEDY delivered the opinion of the Court.

The Longshore and Harbor Workers' Compensation Act (LHWCA), 44 Stat. 1424, as amended, 33 U. S. C. §901 *et seq.*, creates a comprehensive federal scheme to compensate workers injured or killed while employed upon the navigable waters of the United States. The Act allows injured workers, without forgoing compensation under the Act, to pursue claims against third parties for their injuries. But §33(g) of the LHWCA, 33 U. S. C. §933(g), provides that under certain circumstances if a third-party claim is settled without the written approval of the worker's employer, all future benefits including medical benefits are forfeited. The question we must decide today is whether the forfeiture provision applies to a worker whose employer, at the time the worker settles with a third party, is neither paying compensation to the worker nor is yet subject to an order to pay under the Act.

The injured worker in this case was Floyd Cowart, and his estate is now the petitioner. Cowart suffered an injury to his hand on July 20, 1983, while working on an oil drilling platform owned by Transco Exploration Company (Transco). The platform was located on the Outer Continental Shelf, an area subject to the Act. 43 U. S. C. §1333(b). Cowart was an employee of the Nicklos Drilling Company

(Nicklos), who along with its insurer Compass Insurance Co. (Compass) are respondents before us. Nicklos and Compass paid Cowart temporary disability payments for 10 months following his injury. At that point Cowart's treating physician released him to return to work, though he found Cowart had a 40% permanent partial disability. App. 75. The Department of Labor notified Compass that Cowart was owed permanent disability payments in the total amount of $35,592.77, plus penalties and interest. This was an informal notice which did not constitute an award. No payments were made.

Cowart, meanwhile, had filed an action against Transco alleging that Transco's negligence caused his injury. On July 1, 1985, Cowart settled the action for $45,000, of which he received $29,350.60 after attorney's fees and expenses. Nicklos funded the entire settlement under an indemnification agreement with Transco, and it had prior notice of the settlement amount. But Cowart made a mistake: he did not secure from Nicklos a formal, prior, written approval of the Transco settlement.

After settling, Cowart filed an administrative claim with the Department of Labor seeking disability payments from Nicklos. Nicklos denied liability on the grounds that under the terms of §33(g)(2) of the LHWCA, Cowart had forfeited his benefits by failing to secure approval from Nicklos and Compass of his settlement with Transco, in the manner required by §33(g)(1).

Section 33(g) provides in pertinent part:

> "(g)Compromise obtained by person entitled to compensation
>
> "(1) If the person entitled to compensation (or the person's representative) enters into a settlement with a third person referred to in subsection (a) of this section for an amount less than the compensation to which the person (or the person's representative) would be entitled under this chapter, the employer shall be liable for compensation as determined under subsection (f) of this section only if written approval of the settlement is obtained from the employer and the employer's carrier, before the settlement is executed, and by the person entitled to compensation (or the person's representative). The approval shall be made on a form provided by the Secretary and shall be filed in the office of the deputy commissioner within thirty days after the settlement is entered into.
>
> "(2) If no written approval of the settlement is

> obtained and filed as required by paragraph (1), or if the employee fails to notify the employer of any settlement obtained from or judgment rendered against a third person, all rights to compensation and medical benefits under this chapter shall be terminated, regardless of whether the employer or the employer's insurer has made payments or acknowledged entitlement to benefits under this chapter." 33 U. S. C. §933(g).

The Administrative Law Judge rejected Nicklos' argument on the basis of prior interpretations of §33(g) by the Benefits Review Board (Board or BRB). In the first of those decisions, *O'Leary* v. *Southeast Stevedoring Co.*, 7 BRBS 144 (1977), aff'd mem., 622 F. 2d 595 (CA9 1980), the Board held that in an earlier version of §33(g) the words "person entitled to compensation" referred only to injured employees whose employers were making compensation payments, whether voluntary or pursuant to an award. The *O'Leary* decision held that a person not yet receiving benefits was not a "person entitled to compensation," even though the person had a valid claim for benefits.

The statute was amended to its present form, the form we have quoted, in 1984. In that year Congress redesignated then subsection (g) to what is now (g)(1) and modified its language somewhat, but did not change the phrase "person entitled to compensation." Congress also added the current subsection (g)(2), as well as other provisions. Following the 1984 amendments the Board decided *Dorsey* v. *Cooper Stevedoring Co.*, 18 BRBS 25 (1986), app. dism'd 826 F. 2d 1011 (CA11 1987). The Board reaffirmed its interpretation in *O'Leary* of the phrase "person entitled to compensation," saying that because the 1984 amendments had not changed the specific language, Congress was presumed to

have adopted the Board's previous interpretation. It noted that nothing in the 1984 legislative history disclosed an intent to overrule the Board's interpretations. The Board decided that the forfeiture provisions of subsection (g)(2), including the final phrase providing that forfeiture occurs "regardless of whether the employer . . . has made payments or acknowledged entitlement to benefits," was a "separate provisio[n] applicable to separate situations." 18 BRBS, at 29.

The ALJ in this case held that under the reasoning of *O'Leary* and *Dorsey*, Cowart was not a person entitled to compensation because he was not receiving payments at the time of the Transco settlement. Thus, the written-approval provision did not apply and Cowart was entitled to benefits. Cowart's total disability award was for $35,592.77, less Cowart's net recovery from Transco of $29,350.60, for a net award of $6242.17. In addition, Cowart was awarded interest, attorney's fees, and future medical benefits, the last constituting, we think, a matter of great potential consequence. The Board affirmed in reliance on *Dorsey*. 23 BRBS 42 (1989) (*per curiam*).

On review, a panel of the Court of Appeals for the Fifth Circuit reversed. 907 F.2d 1552 (1990). Without addressing the Board's specific statutory interpretation, it held that §33(g) contains no exceptions to its written-approval requirement. Because this holding, and a decision by a panel in a different case, *Petroleum Helicopters, Inc.* v. *Barger*, 910 F. 2d 276 (CA5 1990), conflicted with a previous unpublished decision in the same Circuit, *Kahny* v. *O.W.C.P.*, 729 F. 2d 777 (CA5 1984), the Court of Appeals granted rehearing en banc. The Director of the Office of Workers' Compensation Programs (OWCP), a part of the Department of Labor, 20 CFR §701.201 (1991), appeared as a respondent before the full Court of Appeals to defend the interpretation and decision of the Board.

In a *per curiam* opinion, the en banc Court of Appeals confirmed the panel's decision reversing the BRB in its *Cowart* case. 927 F.2d 828 (CA5 1991). The Court of Appeals' majority held that §33(g) is unambiguous in providing for forfeiture whenever an LHWCA claimant fails to get written approval from his employer of a third-party settlement. The majority acknowledged the well-established principle requiring judicial deference to reasonable interpretations by an agency of the statute it administers, but concluded that the plain language of §33(g) leaves no room for interpretation. Judge Politz, joined by Judges King and Johnson, dissented on the ground that the OWCP's was a reasonable agency interpretation of the phrase "person entitled to compensation," to which the Court of Appeals should have deferred.

We granted certiorari because of the large number of LHWCA claimants who might be affected by the Court of Appeals' decision. 502 U. S. ___ (1991). We now affirm.

In a statutory construction case, the beginning point must be the language of the statute, and when a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished. *Demarest* v. *Manspeaker*, 498 U. S. ___, ___ (1991) (slip op., at 6). The question is whether Cowart, at the time of the Transco settlement, was a "person entitled to compensation" under the terms of §33(g)(1) of the LHWCA. Cowart concedes that he did not comply with the written-approval requirements of the statute, while Nicklos and Compass do not claim that they lacked notice of the Transco settlement. By the terms of §33(g)(2), Cowart would have forfeited his LHWCA benefits if, and only if, he was subject to the written-approval provisions of §33(g)(1). Cowart claims that he is not subject to the approval requirement because in his view the phrase "person entitled to compen-

sation," as long interpreted by both the BRB and the OWCP, limits the reach of §33(g)(1) to injured workers who are either already receiving compensation payments from their employer, or in whose favor an award of compensation has been entered. Nicklos and Compass, supported by the United States, defend the holding of the Court of Appeals that §33(g) cannot support that reading. We agree with these respondents and hold that under the plain language of §33(g), Cowart forfeited his right to further LHWCA benefits by failing to obtain the written approval of Nicklos and Compass prior to settling with Transco.

The controlling principle in this case is the basic and unexceptional rule that courts must give effect to the clear meaning of statutes as written. The principle can at times come into some tension with another fundamental principle of our law, one requiring judicial deference to a reasonable statutory interpretation by an administering agency. *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984); *National R. Passenger Corp.* v. *Boston & Maine Corp.*, 503 U. S. ___, ___ (1992) (slip op., at 9). Of course, a reviewing court should not defer to an agency position which is contrary to an intent of Congress expressed in unambiguous terms. *K mart Corp.* v. *Cartier, Inc.*, 486 U. S. 281, 291 (1988); *Chevron*, *supra*, at 842–843. In any event, we need not resolve any tension of that sort here, because the Director of the OWCP and the Department of Labor have altered their position regarding the best interpretation of §33(g). The Director appears as a respondent before us, arguing in favor of the Court of Appeals' statutory interpretation, and contrary to his previous position. See Brief for Federal Respondent 8, n. 6. If the Director asked us to defer to his *new* statutory interpretation, this case might present a difficult question regarding whether and under what circumstances deference is due to an interpretation formulated during litigation. See

Bowen v. *Georgetown University Hospital*, 488 U. S. 204, 212–213 (1988); *Martin* v. *Occupational Safety and Health Review Comm'n*, 499 U. S. ___, ___ (1991) (slip op., at 11–12). The agency does not ask this, however. Instead, the federal respondent argues that the Court of Appeals was correct in saying the language §33(g) is plain and cannot support the interpretation given it by the Board. Because we agree with the federal respondent and the Court of Appeals, and because Cowart concedes that the position of the BRB is not entitled to any special deference, see Brief for Petitioner 25; see also *Potomac Electric Power Co.* v. *Director, Office of Worker's Compensation Programs*, 449 U. S. 268, 278, n. 18 (1980); *Martin* v. *Occupational Safety and Health Review Comm'n, supra*, we need not resolve the difficult issues regarding deference which would be lurking in other circumstances.

As a preliminary matter, the natural reading of the statute supports the Court of Appeals' conclusion that a person entitled to compensation need not be receiving compensation or have had an adjudication in his favor. Both in legal and general usage, the normal meaning of entitlement includes a right or benefit for which a person qualifies, and it does not depend upon whether the right has been acknowledged or adjudicated. It means only that the person satisfies the prerequisites attached to the right. See generally *Board of Regents of State Colleges* v. *Roth*, 408 U. S. 564, 577 (1972) (discussing property interests protected by the Due Process Clause and contrasting an entitlement to an expectancy); Black's Law Dictionary 532 (6th ed. 1990) (defining "entitle" as "To qualify for; to furnish with proper grounds for seeking or claiming"). Cowart suffered an injury which by the terms of the LHWCA gave him a right to compensation from his employer. He became a person entitled to compensation at the moment his right to recovery vested, not

when his employer admitted liability, an event even yet to happen.

If the language of §33(g)(1), in isolation, left any doubt, the structure of the statute would remove all ambiguity. First, and perhaps most important, when Congress amended §33(g) in 1984, it added the explicit forfeiture features of §33(g)(2), which specify that forfeiture occurs "regardless of whether the employer or the employer's insurer has made payments or acknowledged entitlement to benefits under this chapter." We read that phrase to modify the entirety of subsection (g)(2), including the beginning part discussing the written-approval requirement of paragraph (1). The BRB did not find this amendment controlling because the quoted language is not an explicit modification of subsection (1). This is a strained reading of what Congress intended. Subsection (g)(2) leaves little doubt that the contemplated forfeiture will occur whether or not the employer has made payments or acknowledged liability.

The addition of subsection (g)(2) in 1984 also precludes the primary argument made by the BRB in favor of its decisions in *Dorsey* and this case, and repeated by Cowart to us: That Congress in 1984, by reenacting the phrase "person entitled to compensation," adopted the Board's reading of that language in *O'Leary*. The argument might have had some force if §33(g) had been reenacted without changes, but that was not the case. In 1984 Congress did more than reenact §33(g); it added new provisions and new language which on their face appear to have the specific purpose of overruling the prior administrative interpretation. In light of the clear import of §33(g)(2), the Board erred in relying on the purported lack of legislative history showing an explicit intent to reject the *O'Leary* decision. Even were it relevant, the Board's reading of the legislative history is suspect because as the federal respondent

demonstrates, the legislative history of predecessor bills to the eventual 1984 enactment do indicate an intent to overturn *O'Leary*. See Longshoremen's and Harbor Workers' Compensation Act Amendments of 1981: Hearings on S. 1182 before the Subcommittee on Labor of the Senate Committee on Labor and Human Resources, 97th Cong., 1st Sess. 209, 210–211, 396 (1981). In any event, administrative interpretation followed by congressional reenactment cannot overcome the plain language of a statute. *Demarest* v. *Manspeaker*, 498 U. S., at ___ (slip op., at 6). And the language of §33(g) is plain.

Our interpretation of §33(g) is reinforced by the fact that the phrase "person entitled to compensation" appears elsewhere in the statute in contexts in which it cannot bear the meaning placed on it by Cowart. For example, §14(h) of the LHWCA, 33 U. S. C. §914(h), requires an official to conduct an investigation upon the request of a person entitled to compensation when, *inter alia*, the claim is controverted and payments are not being made. For that provision, the interpretation championed by Cowart would be nonsensical. Another difficulty would be presented for the provision preceding §33(g), §33(f). It mandates that an employer's liability be reduced by the net amount a person entitled to compensation recovers from a third party. Under Cowart's reading, the reduction would not be available to employers who had not yet begun payment at the time of the third-party recovery. That result makes no sense under the LHWCA structure. Indeed, when a litigant before the BRB made this argument, the Board rejected it, acknowledging in so doing that it had adopted differing interpretations of the identical language in sections 33(f) and 33(g). *Force* v. *Kaiser Aluminum and Chemical Corp.*, 23 BRBS 1, 4–5 (1989). This result is contrary to the basic canon of statutory construction that identical terms within an Act bear the same meaning. *Sullivan*

v. *Stroop*, 496 U. S. 478, 484 (1990); *Sorenson* v. *Secretary of Treasury*, 475 U. S. 851, 860 (1986). The Board's willingness to adopt such a forced and unconventional approach does not convince us we should do the same. And we owe no deference to the BRB, see *supra*, at __.

Yet another reason why we are not convinced by the Board's position is that the Board's interpretation of "person entitled to compensation" has not been altogether consistent; and Cowart's interpretation may not be the same as the Board's in precise respects. At times the Board has said this language refers to an employee whose "employer is actually paying compensation either pursuant to an award or voluntarily when claimant enters into a third party settlement." *Dorsey*, 18 BRBS, at 28; 23 BRBS, at 44 (case below). At other times, sometimes within the same opinion, the Board has spoken in terms of the employer either making payments *or* acknowledging liability. *O'Leary*, 7 BRBS, at 147–149; *Dorsey*, 18 BRBS, at 29; see also *In re Wilson*, 17 BRBS 471, 480 (ALJ 1985). Cowart, on the other hand, would include within the phrase both employees receiving compensation benefits and employees who have a judicial award of compensation but are not receiving benefits. Brief for Petitioner 6. This distinction is an important part of Cowart's response to the position of the United States. Reply Brief for Petitioner 8. It may be that the gap between the Board's and Cowart's positions can be explained by the Board's inconsistency; but that in itself weakens any argument that the Board's interpretation is entitled to some weight.

We do not believe that Congress' use of the word "employee" in subsection (g)(2), rather than the phrase "person entitled to compensation," undercuts our reading of the statute. The plain meaning of subsection (g)(1) cannot be altered by the use of a somewhat different term in another part of the statute. Subsection (g)(2) does not purport to speak

to the question of who is required under subsection (g)(1) to obtain prior written approval.

Cowart's strongest argument to the Court of Appeals was that any ambiguity in the statute favors him because of the deference due the OWCP Director's statutory construction, a deference which Nicklos and Compass concede is appropriate. Brief for Respondents 7. As we have said, we are not faced with this difficult issue because the views of the Director, OWCP, have changed since we granted certiorari. *Supra*, at __. It seems apparent to us that it would be quite inappropriate to defer to an interpretation which has been abandoned by the policymaking agency itself. It is noteworthy, moreover, that even prior to this case the position of the Department of Labor has not been altogether consistent. It is true that the Director has twice, albeit in a somewhat equivocal manner, endorsed the Board's rulings in *O'Leary* and *Dorsey*. First, in a 1986 circular discussing the Board's *Dorsey* case a subordinate of the Director stated: "While the Board's position may not be totally consistent with the amended language of Section 33(g), we think it is a rational approach and have advised the Associate Solicitor that we will support this position." United States Dept. of Labor, LHWCA Circular No. 86–3, p. 1 (May 30, 1986). Next, in a Manual published in 1989 the Director again adopted the Board's position that written approval of a settlement is required only from employers who are paying compensation; but the statement ends with a qualifying comment, that "[t]he issue of consent to a settlement can be a complex matter. Judicial interpretation may be necessary to resolve the issue. (See LHWCA CIRCULAR 86–03, 5–30–86)." United States Dept. of Labor, Longshore and Harbor Workers' Compensation Act (LHWCA) Procedure Manual, ch. 3–600, ¶9 (Sept. 1989). On the other hand, the Department of Labor has issued regulations (effective in their current form

since 1986) which are explicit that the written-approval requirement of §33(g) applies to a settlement for less than the amount of compensation due under the LHWCA, "regardless of whether the employer or carrier has made payments of *[sic]* acknowledged entitlement to benefits under the Act." 20 CFR §702.281(b) (1991). So the Department of Labor has not been speaking with one voice on this issue. This further diminishes the persuasive power of the Director's earlier decision to endorse the BRB's questionable interpretation, a decision he has since reconsidered.

The history of the Department of Labor regulation goes far toward confirming our view of the significance of the 1984 amendments. The original § 702.281, proposed in 1976 and enacted in final form in 1977, required only that an employee notify his employer and the Department of any third-party claim, settlement, or judgment. 41 Fed. Reg. 34297 (1976); 42 Fed. Reg. 45303 (1977). The sole reference to the forfeiture provisions was a closing parenthetical: "Caution: See 33 U. S. C. §933(g)." In 1985, in response to the 1984 congressional amendments, the Department proposed to amend §702.281 by replacing the closing parenthetical with a subsection (b), stating that failure to obtain written approval of settlements for amounts less than the compensation due under the Act would lead to forfeiture of future benefits. 50 Fed. Reg. 400 (1985). In response to comments, the final rulemaking modified §702.281(b) to clarify that the forfeiture provision applied regardless of whether the employer was paying compensation. 51 Fed. Reg. 4284–4285 (1986). Thus the evolution of §702.281 suggests that at least some elements within the Department of Labor read the 1984 statutory amendments to adopt a rule different from the Board's previous decisions.

We also reject Cowart's argument that our interpretation of §33(g) leaves the notification

requirements of §33(g)(2) without meaning. An employee is required to provide notification to his employer, but is not required to obtain written approval, in two instances: (1) Where the employee obtains a judgment, rather than a settlement, against a third party; and (2) Where the employee settles for an amount greater than or equal to the employer's total liability. Under our construction the written approval requirement of §33(g)(1) is inapplicable in those instances, but the notification requirement of §33(g)(2) remains in force. That is why subsection (g)(2) mandates that an employer be notified of "any settlement."

This view comports with the purposes and structure of §33. Section 33(f) provides that the net amount of damages recovered from any third party for the injuries sustained reduces the compensation owed by the employer. So the employer is a real party in interest with respect to any settlement that might reduce but not extinguish the employer's liability. The written-approval requirement of §33(g) "protects the employer against his employee's accepting too little for his cause of action against a third party." *Banks* v. *Chicago Grain Trimmers*, 390 U. S. 459, 467 (1968). In cases where a judgment is entered, however, the employee does not determine the amount of his recovery, and employer approval, even if somehow feasible, would serve no purpose. And in cases where the employee settles for greater than the employer's liability, the employer is protected regardless of the precise amount of the settlement because his liability for compensation is wiped out. Notification provides full protection to the employer in these situations because it ensures against fraudulent double recovery by the employee.

As a final line of defense, Cowart's attorney suggested at oral argument that Nicklos' participation in the Transco settlement brought this case outside the terms of §33(g)(1). Tr. of Oral Arg. 4–7. Relying

on the recent decision of the Court of Appeals for the Fourth Circuit in *I.T.O. Corporation of Baltimore* v. *Sellman*, 954 F. 2d 239, 242–243 (1992), counsel argued that §33(g)(1) requires written approval only of "settlement[s] with a third person," and that Nicklos' participation in the Transco settlement meant it was not with a *third person*. Without indicating any view on the merits of this contention, we do not address it because it is not fairly included within the question on which certiorari was granted. See this Court's Rule 14.1(a).

We need not today decide the retroactive effect of our decision, nor the relevance of res judicata principles for other LHWCA beneficiaries who may be affected by our decision. Compare *Pittston Coal Group* v. *Sebben*, 488 U. S. 105, 121–123 (1988). We do recognize the stark and troubling possibility that significant numbers of injured workers or their families may be stripped of their LHWCA benefits by this statute, and that its forfeiture penalty creates a trap for the unwary. It also provides a powerful tool to employers who resist liability under the Act. Counsel for respondents stated during oral argument that he had used the Transco settlement as a means of avoiding Nicklos' liability under the LHWCA. Tr. of Oral Arg. 23–26. These harsh effects of §33(g) may be exacerbated by the inconsistent course followed over the years by the federal agencies charged with enforcing the Act. But Congress has spoken with great clarity to the precise question raised by this case. It is the duty of the courts to enforce the judgment of the Legislature, however much we might question its wisdom or fairness. Often we have urged the Congress to speak with greater clarity, and in this statute it has done so. If the effects of the law are to be alleviated, that is within the province of the Legislature. It is Congress that has the authority to change the statute, not the courts.

For the reasons stated, the judgment of the Court of

Appeals is

Affirmed.