

L.C.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
HOLT CARGO SYSTEMS,)	DATE ISSUED: 08/17/2007
INCORPORATED)	
)	
and)	
)	
LUMBERMAN'S MUTUAL)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Brian R. Steiner (Steiner, Segal, Muller & Donan), Philadelphia, Pennsylvania, for claimant.

John E. Kawczynski (Field Womack & Kawczynski, LLC), South Amboy, New Jersey, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand (2003-LHC-01358) of Administrative Law Judge Ralph A. Romano 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). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

This case is before the Board for a second time. To briefly recapitulate the facts, claimant worked for employer driving yard hustlers and forklifts. On April 1, 2001, he sustained an injury to his lower back while attempting to hook a truck to a container. He was unable to work, and employer paid temporary total disability benefits from April 2 through December 12, 2002. Claimant filed a claim for additional disability benefits. In his original decision, the administrative law judge discredited claimant's testimony that he could not return to his usual work and relied on doctors' opinions that he could do so. Thus, the administrative law judge denied additional disability benefits. In addition, the administrative law judge found that claimant did not establish that employer consented to a change in claimant's treating physician. Consequently, the administrative law judge determined that the claimed medical expenses are not the liability of employer.

Claimant appealed this decision to the Board. *[L.C.] v. Holt Cargo Systems, Inc.*, BRB No. 04-0846 (July 28, 2005). The Board held that the administrative law judge did not discuss the entirety of the credited doctors' opinions on the aggravation issue, and thus remanded the case to the administrative law judge to address the evidence fully and to render findings on claimant's disability status after December 12, 2002. In addition, the Board held that the administrative law judge did not determine whether claimant requested authorization for a change in physician, and instructed the administrative law judge on remand to reconsider this issue.

On remand, the administrative law judge considered the additional statements of Drs. Trager and Lee and found that they are insufficient, when considered against the entirety of the doctors' opinions, to change the weight due their opinions that claimant was able to resume his previous work. In addition, the administrative law judge found that claimant did not establish that he had properly requested authorization for a change in physician and thus employer is not responsible for the medical expenses claimant incurred as a result of treatment with the physicians at the Medical Rehabilitation Centers of Pennsylvania (MRCP).

On appeal, claimant contends that the administrative law judge erred in finding that he could return to his usual work. He also asserts that the administrative law judge erred in finding that claimant failed to seek authorization for a change in physician. Employer responds, urging affirmance of the administrative law judge's decision on remand.

Claimant contends that the administrative law judge erred in finding that the evidence is insufficient to establish that claimant could not return to his former employment after December 12, 2002. To be entitled to total disability benefits, the claimant bears the initial burden of establishing his inability to perform his usual work as a result of his work injury. *McCabe v. Sun Shipbuilding & Dry Dock Co.*, 602 F.2d 59, 10 BRBS 614 (3^d Cir. 1979); *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56

(1980). In the present case, the administrative law judge was instructed on remand to consider the statements of Drs. Trager and Lee with regard to the extent of claimant's disability. Dr. Trager stated that he was uncertain whether claimant's acute back injury affected his degenerative arthritic condition. *See* Emp. Ex. 15 at 38. However, he also stated that regardless of the origin of claimant's arthritic condition, he could return to work without restrictions. *Id.* at 35. The administrative law judge concluded on remand that this opinion, when considered in its entirety, is insufficient to establish that claimant could not return to work after December 12, 2002. The administrative law judge also addressed Dr. Lee's statement that he would like to reexamine claimant before deciding whether claimant could return to his usual work. Dr. Lee had testified that after reviewing the surveillance videotape, he agreed with Dr. Trager that claimant could go back to work as of December 12, 2002. Emp. Ex. 14 at 21. On cross-examination, Dr. Lee conceded that it would not be fair to make conclusions regarding claimant's physical capacity to perform the tasks seen in the videotape without questioning claimant regarding how he felt following the activity. *Id.* at 28. The administrative law judge found on remand that, as he discredited claimant's complaints of pain, any change in Dr. Lee's opinion based on claimant's reports of pain would not be credited. Therefore, he reinstated his finding that claimant did not establish that he was unable to return to his usual work after December 12, 2002.

The Board is not empowered to reweigh the medical evidence but must accept the administrative law judge's findings of fact, and rational inferences drawn therefrom, which are supported by substantial evidence. *See, e.g., Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991). We affirm the administrative law judge's finding that claimant failed to establish a *prima facie* case of total disability after December 12, 2002, as it is rational and supported by substantial evidence. *See generally Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd mem. sub nom. Chong v. Director, OWCP*, 909 F.2d 1488 (9th Cir. 1990). On remand, the administrative law judge addressed the additional statements made by Drs. Trager and Lee and rationally found that they are insufficient to establish that claimant could not return to his former duties after December 12, 2002. Claimant has failed to demonstrate reversible error in the administrative law judge's decision.

Claimant also contends that the administrative law judge erred in finding that he did not seek authorization for a change in physicians. An employer's liability for a claimant's medical treatment is governed by Section 7 of the Act. 33 U.S.C. §907. A claimant is entitled to his initial free choice of physician; thereafter claimant may not change physicians without the prior written approval of the employer, carrier or district director. 33 U.S.C. §907(b), (c); *Jackson v. Universal Maritime Services Corp.*, 31 BRBS 103 (1997)(Brown, J., concurring); *Hunt v. Newport News Shipbuilding & Dry Dock Co.*, 28 BRBS 364, *aff'd mem.*, 61 F.3d 900 (4th Cir. 1995); 20 C.F.R. §702.406. The Board instructed the administrative law judge to determine whether claimant

requested authorization to change his physician.¹ The only evidence presented regarding claimant's request for a change in medical providers is claimant's testimony that he told his supervisor by telephone that he "was going to another doctor." Tr. at 47-48. Once employer received the medical bills from MRCP dated from May 16, 2002 to June 5, 2002, it notified claimant that the change was not authorized. Cl. Ex. 4. The administrative law judge rationally found that claimant's uncorroborated testimony is insufficient to establish that he sought authorization for a change in physicians from an appropriate person. See *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). As the administrative law judge's finding that claimant did not seek authorization to change physicians is rational and supported by substantial evidence, we affirm the findings that employer is not liable for the costs incurred for the unauthorized treatment by MRCP. See *Maryland Shipbuilding & Dry Dock Co. v. Jenkins*, 594 F.2d 404, 10 BRBS 1 (4th Cir. 1979); *Ranks v. Bath Iron Works Corp.*, 22 BRBS 301 (1989).

¹ If a claimant does request authorization, which is denied, but obtains medical treatment in spite of the lack of authorization, employer may be liable for the treatment if claimant demonstrates that it was reasonable and necessary for the work injury. *Roger's Terminal & Shipping Corp. v. Director, OWCP*, 784 F.2d 687, 18 BRBS 79(CRT) (5th Cir.), *cert. denied*, 479 U.S. 826 (1986). The administrative law judge was instructed to consider whether the treatment claimant obtained in the instant case was reasonable and necessary for his work if he concluded that claimant had sought authorization for a change in physicians which was denied by employer. See [*L.C.*], slip op. at 5.

Accordingly, the administrative law judge's Decision and Order on Remand is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge