U.S. Department of Labor

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

BRB No. 15-0012

PATRICK OZENNE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LOUISIANA VALVE SOURCE, INCORPORATED	)	DATE ISSUED: Aug. 28, 2015
	)	
and	)	
	)	
LOUISIANA WORKERS' COMPENSATION CORPORATION	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Larry W. Price, Administrative Law Judge, United Sates Department of Labor.

Patrick Ozenne, Opelousas, Louisiana, *pro se*.

David K. Johnson (Johnson, Rahman & Thomas), Baton Rouge, Louisiana, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (2013-LHC-01387) of Administrative Law Judge Larry W. Price rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq*., as extended by the Outer Continental Shelf Lands Act, 43 U.S.C. §1301 *et seq.* (the Act). In an appeal by a claimant without representation by counsel, 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. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant alleges that a specific incident occurred on August 7, 2012, while he was working for employer as a valve technician which caused his current lower back condition.[1] Specifically, claimant alleges that while using a rope to lift 100 pounds of equipment to an elevated deck, he felt a sharp, stabbing pain in his lower back.[2] Tr. at 12. He did not immediately report the incident. Claimant testified he had hoped that the lower back pain would improve; however, the pain continued in duration and worsened with activity. Tr. at 19. Upon returning to shore on August 8, 2012, claimant met with Susan Guidry, employer's Human Resources Manager, to request Family Medical Leave Act paperwork, but did not report an accident or a work-related injury at that time. Tr. at 17-18, 33-34. By August 17, 2012, claimant knew something was wrong as the pain had not subsided, and he requested a full-spine MRI from Dr. Mayeaux, his treating physician.[3] Tr. at 39. Claimant underwent the MRIs on August 23, 2012,[4] and upon receiving the results the same day, claimant reported the August 7, 2012, work injury to Ms. Guidry. Claimant's last day of work was August 17, 2012, and he has not been able to return to work for any employer because of his back condition. Claimant underwent fusion surgery in June 2013. CX 15 at 55-72.

The administrative law judge found that claimant established a harm, as there was no dispute that claimant suffers from a lumbar condition for which he sought medical treatment after August 7, 2012. However, the administrative law judge found claimant did not establish that an accident occurred at work on August 7, 2012, that could have

[1]Claimant has a history of back and neck problems. Specifically, claimant suffered a cervical injury in 2004, for which he had a discectomy and fusion, and he suffered a thoracic injury in a 2009 motor vehicle accident, for which he had rods placed along his thoracic spine. Tr. at 15; CX 17 at 6-8. Claimant testified that just prior to the alleged work accident, he was treating with Dr. Mayeaux for thoracic pain, and that he had experienced flare-ups of lower back pain in the past which always improved within a short period of time. Tr. at 16, 19, 52.

[2]Claimant stated he was lifting a pneumatic grease gun and a five-gallon bucket of grease with a plunger attachment. Tr. at 12.

[3]Claimant requested the MRIs so that he could treat with Dr. Williams, an orthopedic surgeon. CX 17 at 25; Tr. at 19-20.

[4]Claimant had MRIs taken of his cervical spine, thoracic spine, and lumbar spine. Minimal bulging was noted at L2-3 and L3-4. Moderate and severe degenerative disc disease changes were noted at L4-5 and L5-S1. CX 12 at 2.

caused that harm.[5] Decision and Order at 14. Accordingly, the administrative law judge found that claimant did not establish his prima facie case of compensability, and he denied the claim for benefits. Claimant, without the benefit of counsel, appeals the administrative law judge's denial of benefits, and employer responds, urging affirmance.[6]

Claimant bears the burden of proving that he has an injury or harm, and that a work-related accident occurred or working conditions existed which could have caused or contributed to the harm, in order to establish a prima facie case relating his injury to the employment incident.[7] *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *see* 33 U.S.C. §920(a); *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). Before the administrative law judge, claimant asserted that a definitive work incident occurred on August 7, 2012, which caused or contributed to his present lower back condition. He testified to experiencing a sharp, stabbing pain in his back while lifting equipment with a rope to an elevated deck. The administrative law judge found no corroborating support for claimant's testimony. Specifically, although Vernon Broussard, claimant's coworker, confirmed that claimant complained of pain in his back during their lunch break on August 7, 2012, the administrative law judge found that claimant did not relate the pain to work activities at that time, as Mr. Broussard's sworn statement does not indicate that claimant informed him of the occurrence of any incident during the work day, and claimant told Mr. Broussard that he would not report the pain. CX 2. Moreover, the administrative law

[5]Assuming, arguendo, that claimant established a prima facie case, the administrative law judge found that employer rebutted the Section 20(a) presumption with evidence that claimant's condition resulted from the natural progression of his preexisting back injury. Weighing the record as a whole, the administrative law judge found that claimant did not establish that his worsening lower back condition was causally related to a work accident because Dr. Williams, claimant's orthopedic surgeon, stated that claimant's condition could have been caused by a work accident or by a natural progression of preexisting conditions. Decision and Order at 17; CX 18 at 29-30.

[6]We acknowledge the corrections claimant wishes to make to the administrative law judge's recitation of the facts. These alleged errors, however, are not material to the administrative law judge's finding that claimant failed to establish that an accident occurred at work.

[7]Claimant was represented by counsel before the administrative law judge, and he did not argue that general working conditions caused or aggravated claimant's lower back condition.

judge also found that Dr. Williams's opinion, attributing claimant's lumbar pain to a work accident, did not establish that the work incident actually occurred, because the opinion was based solely on claimant's self-reported medical history that his pain and problems developed after the alleged accident. However, the administrative law judge found that, contrary to the history claimant gave Dr. Williams, claimant had been treating regularly with Dr. Mayeaux for chronic lumbar pain from December 2011 to July 2012.[8] Decision and Order at 14; CX 15 at 8; EX 2 at 14, 18-19. Further, the administrative law judge found claimant's testimony regarding the occurrence of the alleged incident belied by his failure to immediately report any work-related injury or pain to employer or Dr. Mayeaux, despite having several opportunities to do so.[9]

It is well established that, in arriving at a decision, the administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence. *See Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 29 BRBS 79(CRT) (5th Cir. 1995); *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991); *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). Given claimant's delay in reporting the accident and the absence of evidence corroborating that an incident occurred, the administrative law judge rationally declined to credit claimant's testimony and concluded that claimant did not establish that a work accident occurred on August 7, 2012. Claimant thus failed to establish an essential element of his prima facie case, and we affirm the administrative law judge's denial of benefits. *See Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21

[8]Dr. Williams also acknowledged claimant's condition could be due to the natural progression of his preexisting conditions. Decision and Order at 17; EX 2 at 18-26.

[9]Claimant alleges that the administrative law judge mischaracterized his testimony regarding his familiarity with the workers' compensation system. Cl. Br. at 3. However, the administrative law judge accurately noted claimant's acknowledgement that, at the time of the accident, he was aware of employer's policy to immediately report any accident or injury no matter how minor. Tr. at 13-14. The administrative law judge observed that, despite claimant's awareness of this policy, in the ten days following the claimed injury, claimant was contacted by his supervisors on three occasions and was assigned to work three jobs for employer, and claimant accepted each job assignment without reporting an injury or any back pain. Decision and Order at 14; Tr. at 34-39. Similarly, the administrative law judge found that, although claimant testified that he informed Dr. Mayeaux's nurse that he suffered a work-related injury when he called Dr. Mayeaux's office to request a full-spine MRI on August 17, 2012, claimant treated with Dr. Mayeaux on August 21 and 24, 2012, and there was no notation of a work injury in Dr. Mayeaux's records on these dates. Decision and Order at 15.

BRBS 27(CRT) (9th Cir. 1988); *Bolden*, 30 BRBS 71; *Hartman v. Avondale Shipyard, Inc.*, 23 BRBS 201 (1990), *vacated on other grounds on recon.*, 24 BRBS 63 (1990).

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

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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GREG J. BUZZARD
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge