

PASQUALE SCOGNAMILLO	)	
	)	
Claimant	)	
	)	
v.	)	
	)	
LONG BEACH CONTAINER	)	DATE ISSUED:
TERMINAL	)	
	)	
and	)	
	)	
SIGNAL ADMINISTRATORS,	)	
INCORPORATED	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
ORTHOPEDIC SURGERY MEDICAL	)	
GROUP OF LONG BEACH,	)	
INCORPORATED	)	
	)	
Petitioner	)	DECISION AND ORDER

Appeal of the Decision and Order - Denying Benefits of Ellin M. O'Shea, Administrative Law Judge, United States Department of Labor.

Kathleen E. Skeber (Administrator of Orthopedic Surgery Medical Group of Long Beach, Inc.), Long Beach, California, for petitioner.

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

PER CURIAM:

Orthopedic Surgery Medical Group (petitioner) appeals the Decision and Order Denying Benefits (90-LHC-2338) of Administrative Law Judge Ellin M. O'Shea 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 findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

While working for employer as a longshoreman, claimant injured his right ankle on October 28, 1989. Employer voluntarily paid claimant temporary total disability benefits from October 28, 1989 through April 4, 1990. The administrative law judge found that claimant could return to his usual longshore work on April 4, 1990, and that as of July 23, 1990, claimant did not require additional medical treatment.

Subsequent to the issuance of the administrative law judge's Decision and Order, carrier's risk management firm submitted a letter to claimant's treating physician, Dr. Roe, a member of the Orthopedic Medical Group of Long Beach, requesting that he reimburse carrier \$576 for treatment rendered after July 23, 1990. On February 21, 1992, petitioner submitted a letter to the Board, which the Board accepted as a Petition for Review, protesting the carrier's request. *See* Order dated February 7, 1994. In the letter, petitioner requests clarification of its responsibility, stating that Dr. Roe had obtained authorization from carrier to treat claimant before he started treating claimant, and it was not until June 1991, that carrier, by letter to Dr. Roe, indicated it was rescinding its authorization as of May 24, 1991.<sup>1</sup> Petitioner states that it is unreasonable for it to have to refund carrier for treatment carrier authorized. Moreover, petitioner queries whether it, in turn, is to retroactively demand reimbursement from claimant for the previously authorized medical services. Carrier has not responded to this letter.

Initially, we note that the administrative law judge did not order petitioner to reimburse carrier. Furthermore, there is no provision in the Act allowing an employer to obtain reimbursement of overpayments of compensation from a claimant. *See Stevedoring Services of America, Inc. v. Eggert*, 953 F.2d 552, 25 BRBS 92 (CRT)(9th Cir. 1992), *cert. denied*, 112 S.Ct. 3056 (1992);<sup>2</sup> *see also Ceres Gulf v. Cooper*, 957 F.2d 1199, 25 BRBS 125 (CRT)(9th Cir. 1992);<sup>3</sup> *Vitola v. Navy Resale & Services Support Office*, 26 BRBS 88 (1993). The Act provides only for a credit of excess payments against unpaid compensation due. *See Eggert*, 953 F.2d at 556-557, 25 BRBS at 97-99 (CRT); 33 U.S.C. §§908(j), 914(j), 922. It follows, therefore, that carrier cannot obtain reimbursement from a physician for paid medical expenses that are subsequently found to be unnecessary. We therefore hold that petitioner is not required to reimburse carrier for authorized services rendered after July 23, 1990.

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<sup>1</sup>The services in question cover the period from September 24, 1990 through March 7, 1991.

<sup>2</sup>The court also noted that "it appears likely that Congress has expressed its intent to preempt state common law claims by employers against claimants for *repayment* of alleged overpayments of disability compensation." *Eggert*, 953 F.2d at 558 n. 7, 25 BRBS at 100 n.7 (CRT) (emphasis in original).

<sup>3</sup>The court in *Ceres Gulf* also rejected the employer's attempt to recoup overpayments under the general federal question statute, 28 U.S.C. §1331.

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

SO ORDERED.

BETTY JEAN HALL, Chief

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Administrative Appeals Judge

NANCY S. DOLDER

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Administrative Appeals Judge

REGINA C. McGRANERY

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Administrative Appeals Judge