BRB No. 10-0421

HAROLD J. HILL, JR.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
NORTHROP GRUMMAN SHIPBUILDING, INCORPORATED	)	DATE ISSUED: 09/30/2010
	)	
	)	
Self-Insured Employer-Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order and the Order of Clarification of Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Montagna Klein Camden, LLP), Norfolk, Virginia, for claimant.

Benjamin M. Mason (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Employer appeals the Decision and Order and the Order of Clarification (2009-LHC-1288) of Administrative Law Judge Daniel A. Sarno, Jr., 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).

Claimant, a deck electrician, suffered a work-related injury on June 6, 2009, when he hit his head while moving some cables. He reported the injury to employer and sought treatment at Patient First where he was given medication for neck pain. Cl. Ex. 5. On the following day, claimant went to employer's clinic, due to increased pain. Cl. Exs. 7-8.

After employer denied liability for the claim, claimant began treatment with Dr. Wardell on July 24, 2008, who prescribed physical therapy and medication. Cl. Ex. 9. Dr. Wardell noted that claimant continued to show some improvement following the initial ten physical therapy sessions, but that claimant still had pain and restriction in his movements. Thus, Dr. Wardell recommended another twelve physical therapy sessions. After an examination on September 5, 2008, Dr. Wardell recommended both that claimant continue physical therapy, and return to work in a light-duty capacity with restrictions against overhead work. However, in October 2008, claimant reported that his injury was aggravated by lifting at work, whereupon claimant stopped working for five weeks. During this period, claimant continued physical therapy. On December 1, 2008, Dr. Wardell noted that claimant reported that his neck was improving; the doctor released him to return to light duty and recommended that claimant continue physical therapy for work hardening. After an examination on December 29, 2008, Dr. Wardell recommended that claimant finish physical therapy and return to his regular duties on January 12, 2009. Claimant sought payment by employer for the medical treatment, including physical therapy, provided by Dr. Wardell.

In his decision, the administrative law judge found that claimant established that his physical therapy sessions were necessary for the treatment of his work injury, and ordered employer to pay for the sessions at Wardell Orthopedics, P.C. 33 U.S.C. §907(a). In addition, the administrative law judge ordered employer to reimburse claimant for the co-payments he made for the physical therapy sessions and found that employer is entitled to a credit for any medical bills which have already been paid. Decision and Order at 11-12; 33 U.S.C. §907(d)(1). In his Order of Clarification, the administrative law judge clarified his decision by stating that employer is entitled to a credit for claimant's co-payments against its liability for medical benefits.

On appeal, employer contends that the administrative law judge erred in finding that forty-seven physical therapy sessions were reasonable and necessary, averring that the number of compensable sessions should have been limited to twelve. In the alternative, employer contends that if the Board affirms the administrative law judge's finding that all the physical therapy sessions were necessary treatment, the award should be modified because the administrative law judge erred in ordering employer to pay the medical provider in full, as well to reimburse the co-payments to claimant. Claimant responds, urging affirmance of the administrative law judge's decision.

Employer contends that the administrative law judge erred in finding that the forty-seven sessions of physical therapy were reasonable and necessary treatment for

claimant's work-related injury.[1] Section 7(a) requires an employer to pay for all reasonable and necessary medical expenses arising from a work-related injury. 33 U.S.C. §907(a). Claimant establishes a *prima facie* case for compensable medical treatment where a qualified physician indicates treatment is necessary for a work-related condition. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993). In order for a medical expense to be assessed against employer, therefore, the expense must be both reasonable and necessary, and must be related to the work injury. *See Pardee v. Army & Air Force Exch. Serv.*, 13 BRBS 1130 (1981); 20 C.F.R. §702.402. Whether a particular medical expense is necessary is a factual issue within the administrative law judge's authority to resolve. *See Weikert v. Universal Maritime Service Corp.*, 36 BRBS 38 (2002).

The administrative law judge found that claimant established a *prima facie* case that all the physical therapy he received between August 1, 2008 and December 29, 2008, was reasonable and necessary based on the recommendation of Dr. Wardell. The administrative law judge rejected the opinions of Drs. Skidmore and Lakin that claimant's injury required only twelve physical therapy sessions, as they did not examine claimant throughout his course of treatment and based their opinions on a review of the medical record. Cl. Exs. 2, 13. The administrative law judge also found that Drs. Skidmore and Lakin offered no support for their opinions other than *The Official Disability Guidelines* (ODG) (Phillip L. Denniston, ed., Work Loss Data Institution, 2009). Cl. Ex. 12 at 6. The administrative law judge concluded that the ODG provides physicians a guide to determining appropriate treatment but does not usurp the physician's ability to prescribe additional treatment. Dr. Wardell recommended two additional sets of physical therapy sessions after he examined claimant and determined that claimant was responding to that therapy. Following the therapy, claimant was able to return to his former duties without restrictions. The administrative law judge concluded that the evidence establishes that the treatment rendered to claimant was reasonable and necessary. This finding is rational and supported by substantial evidence of record. Consequently, we affirm the administrative law judge's finding that employer is liable for all the physical therapy treatment provided in association with claimant's work-related injury. *See* 33 U.S.C. §907(a); *Pozos v. Army & Air Force Exch. Serv.*, 31 BRBS 173 (1997).

[1] To the extent that employer contends that claimant needed to request authorization for more than twelve physical therapy sessions, we note that the administrative law judge rationally found that employer's denial of the claim obviated claimant's need to seek approval for additional treatment. *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).

Employer also contends the administrative law judge's decision results in an overpayment to the medical provider. In his initial decision, the administrative law judge ordered employer to reimburse claimant for the co-payments he made for the physical therapy sessions and to pay the medical bills of the provider for all the physical therapy sessions. The administrative law judge also found that employer is entitled to a credit for any medical bills which have already been paid. Decision and Order at 11; 33 U.S.C. §907(d)(1). In his subsequent Order, the administrative law judge clarified his decision, stating that employer should directly reimburse claimant for his co-payments and that employer is entitled to a credit for the amount of claimant's co-payments against the balance owed to the provider for the physical therapy sessions. As the administrative law judge has already provided for the payments to the medical provider to be reduced by the amount of the co-payments made by claimant, and for the co-payments to be directly reimbursed to claimant, we reject employer's contention that the medical provider has been overpaid.

Accordingly, the administrative law judge's Decision and Order and Order of Clarification are affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge