BRB No. 03-0322

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| VERNON J. BELLAMY | ) | |
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| Claimant-Petitioner | ) | |
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| v. | ) | |
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| INTERMARINE USA | ) | DATE ISSUED: Jan. 13, 2004 |
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| and | ) | |
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| SIGNAL MUTUAL INDEMNITY ASSOCIATION | ) | |
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| Employer/Carrier-Respondents | ) | DECISION and ORDER |

Appeal of the Decision and Order and Decision and Order Denying The Claimant's Motion for Reconsideration of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Vernon J. Bellamy, Soperton, Georgia, *pro se*.

G. Mason White and James D. Kreyenbuhl (Brennan, Harris & Rominger LLP), Savannah, Georgia, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order and Decision and Order Denying The Claimant's Motion for Reconsideration (2002-LHC-0493 and 2002-LHC-0494) of Richard K. Malamphy 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). In an appeal filed by a claimant without representation, we will review the administrative law judge's decision to determine if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are 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, a machinist, was injured at work on July 24, 1995. Employer voluntarily paid claimant temporary total disability benefits for certain periods from the date of injury until November 13, 1995; employer also paid medical bills, including those incurred for surgery on October 26, 1995. Claimant's surgeon returned him to work on November 13, 1995, and again on February 14, 1996. Emp. Exs. 2, 5 at 10-12. Claimant testified that he attempted to return to work post-surgery but that it was too painful for him to work. 1998 Tr. at 33-37. Claimant was terminated from employment on April 19, 1996, after failing to respond to two letters from employer requesting information concerning his medical or family leave of absence. 1998 Tr. at 69-70. Claimant sought temporary total disability benefits from November 13, 1995, and reimbursement for certain medical bills incurred at the Veterans' Administration Hospital. Administrative Law Judge Holmes, in a 1998 decision, awarded claimant temporary total disability benefits from the date of injury until February 16, 1996, but denied reimbursement for certain medical bills from the Veterans' Administration Hospital since claimant did not establish their work-relatedness. Emp. Ex. 7. Administrative Law Judge Holmes, however, held employer liable for all work-related medical expenses, finding that claimant established he could no longer expect authorization from employer for further medical treatment.

On January 28, 1999, employer made its last payment of compensation on the above award. 2002 Tr. at 50-51. On September 21, 2001, claimant filed a motion for modification of the prior award, contending he is entitled to additional disability benefits. Administrative Law Judge Malamphy (the administrative law judge), in a 2002 decision, found that claimant's motion was untimely filed as it was filed after the one year applicable statute of limitations. Assuming, *arguendo*, that claimant's request for modification was timely filed, the administrative law judge held that claimant failed to establish a physical change in his condition. The administrative law judge denied claimant's motion for reconsideration.

On appeal, claimant challenges the administrative law judge's denial of his request for modification. Employer responds in support of the administrative law judge's decision.

Section 22 of the Act, 33 U.S.C. §922, provides the only means for changing otherwise final decisions. Modification pursuant to this section is permitted based on a mistake of fact in the initial decision or on a change in claimant's physical or economic condition. *See Metropolitan Stevedore Co. v. Rambo [Rambo I]*, 515 U.S. 291, 30 BRBS 1(CRT)(1995). Under Section 22, an application to reopen a claim need not meet any formal criteria. Rather, it need only be a writing from which a reasonable person would conclude that a modification request has been made. *Fireman's Fund Ins. Co. v. Bergeron*, 493 F.2d 545 (5th Cir. 1974); *Madrid v. Coast Marine Constr. Co.*, 22 BRBS 148 (1989). A request for modification must be made prior to one year after the date of the last payment of compensation or the denial of the claim. 33 U.S.C. §922; *see*

*Alexander v. Avondale Indus., Inc.*, 36 BRBS 142 (2002); *Raimer v. Willamette Iron & Steel Co.*, 21 BRBS 98 (1988).

Upon consideration of the evidence of record, we affirm the administrative law judge's decisions denying claimant's request for modification. Employer's last payment of compensation was made on January 28, 1999, and claimant's request for modification should have been filed on or prior to January 28, 2000, because of the applicable one year statute of limitations. As claimant's formal request for modification was not filed until September 21, 2001, it was untimely.[1] Thus, the administrative law judge properly denied claimant's request for modification. *See Alexander*, 36 BRBS 142; *Raimer*, 21 BRBS 98; 2002 Decision and Order at 6; 2002 Tr. at 50-51. The record also contains letters and telephone call reports between claimant and the district director indicating that claimant may have been requesting modification as early as August 2000. However, the district director notified claimant by letter dated August 29, 2000, that further benefits were time-barred in that claimant did not petition for modification within one year after the date of employer's last payment of compensation on January 28, 1999. Thus, even if claimant's August 2000 letters or telephone calls were construed as requests for modification, they would be untimely as well since the earliest letter and telephone call occurred approximately seven months after the applicable one year statute of limitations expired. *See Bergeron*, 493 F.2d 545; *Alexander*, 36 BRBS 142; *Madrid*, 22 BRBS 148; *Raimer*, 21 BRBS 98.

The record also contains post-1998 hearing medical evidence which was reviewed to determine whether claimant filed a document with the district director prior to January 28, 2000, which could be construed as a timely request for modification. Most, if not all, of the post-1998 hearing medical evidence of record indicates that it was received by the district director on November 15, 2001, after claimant filed his September 18, 2001 request for modification, beyond the applicable one year statute of limitations. Because the post-1998 hearing medical evidence bears no proof that it was submitted to the district director within the allotted time frame and does not evince an intent to seek additional compensation, it cannot constitute a timely request for modification. *See Bergeron*, 493 F.2d 545; *Madrid*, 22 BRBS 148; *Raimer*, 21 BRBS 98; Cl. Exs. 3, 6 on modification. Thus, as it is rational, supported by substantial evidence, and in accordance with law, we affirm the administrative law judge's finding that claimant is not entitled to additional disability compensation for his 1995 injury.

We note, however, that claimant's request for modification also appears to contain a request for additional medical benefits. At the 2002 hearing, claimant testified that in addition to seeking temporary total disability benefits from February 1996, he was seeking the payment of all medical bills. 2002 Tr. at 12. A claim for medical benefits is

[1] Claimant also requested modification in writing again on October 2 and 8, November 8, and December 3 and 10, 2001. Cl. Ex. 6. These requests similarly were untimely filed.

never time-barred. *See Marshall v. Pletz,* 317 U.S. 383 (1943). Attached to claimant's modification request are approximately 40 pages of medical records, primarily from the Veterans' Administration Hospitals in Dublin and Atlanta, Georgia. The last three pages of claimant's letter itemizes costs that claimant asserts amount to $179.11 for his out-of-pocket expenses for prescription drugs from August 26, 2000, through August 21, 2001. Claimant identified the prescription medicines he takes and acknowledged that all of the medications were prescribed to him by the Veterans' Administration. 2002 Tr. at 36.

In order for a medical expense to be assessed against employer, claimant must comply with the requirements of Section 7 of the Act, 33 U.S.C. §907, and establish that the expense is work-related and reasonable and necessary for the treatment of his work injury. *Romeike v. Kaiser Shipyards,* 22 BRBS 57 (1989). In this case, the administrative law judge did not address whether claimant is entitled to reimbursement for additional medical expenses. We therefore remand the case to the administrative law judge to make these determinations.

Accordingly, the administrative law judge's Decision and Order and Decision and Order Denying The Claimant's Motion for Reconsideration are affirmed insofar as claimant's motion for modification was found to be untimely filed. The case is remanded for the administrative law judge to address claimant's claim for medical expenses.

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