BRB No. 92-604

MARIE E. BLAKESLEY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MARINE POWER & EQUIPMENT COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
INDUSTRIAL INDEMNITY INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Edward C. Burch, Administrative Law Judge, United States Department of Labor.

James R. Walsh, Lynnwood, Washington, for claimant.

Russell A. Metz (Metz, Frol & Jorgensen, P.S.), Seattle, Washington, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (90-LHC-2685) of Administrative Law Judge Edward C. Burch 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 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 welder, claimant suffered a shoulder strain on April 9, 1984. She worked light duty from May 1, 1984 through June 4, 1984, and has not worked since that date.[1] Based on Dr. Compton's opinion, the administrative law judge found that claimant reached maximum medical improvement on May 8, 1985. He further found, based on the opinions of Drs. Brown, Compton, Clancy, Kvidera, McCollum and Verret, that claimant completely recovered from her injury as of this date, and could perform her usual work. The administrative law judge awarded claimant temporary total disability benefits from April 9, 1984 to April 29, 1984 and from June 5, 1985 to May 8, 1985. He denied claimant reimbursement for her medical expenses incurred from Drs. Steger, Brown and Patterson because claimant had not requested authorization for their treatment, and denied claimant coverage for further medical treatment because he found she had completely recovered from her work-related injury.

On appeal, claimant contends that the preponderance of the evidence establishes that she is unable to perform her usual work as a welder and was not medically stationary as of May 8, 1985. Claimant contends that many of the doctors, particularly her treating physicians, opined that claimant had spasms in her shoulder, that she required some kind of ongoing medical treatment, and either placed restrictions on her or stated she could not perform the work of a welder. Employer responds, urging affirmance of the administrative law judge's decision.

To establish a *prima facie* case of total disability, claimant must show that she cannot return to her regular or usual employment due to her work-related injury. *Louisiana Insurance Guaranty Association v. Abbott*, 40 F.3d 122, 127 (5th Cir. 1994). An employee may be considered to be permanently disabled when she reaches maximum medical improvement, the date of which is determined solely by medical evidence. *Sketoe v. Dolphin Titan International*, BRBS , BRB Nos. 93-817/A (Sept. 15, 1994)(Smith, J., dissenting on other grounds); *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56, 61 (1985).

We hold that the administrative law judge rationally determined that claimant reached maximum medical improvement on May 5, 1985, based on Dr. Compton's opinion to that effect. *Mason v. Baltimore Stevedoring Co.*, 22 BRBS 413 (1989). Moreover, the administrative law judge rationally determined that claimant completely recovered from her injury and could perform her usual work. He based this finding on the opinions of Drs. Kvidera, Clancy, and McCollum that claimant could perform her usual work, Dr. Compton's opinion that claimant had no objective symptoms of disability, Dr. Verret's opinion that claimant is not well-motivated, and claimant's testimony that she had personal reasons for not working.[2] The administrative law judge is not bound to accept the opinion or theory of claimant's treating physician; rather, he is entitled to evaluate the

[1]Employer paid benefits for temporary total disability from April 10, 1984 to April 30, 1984, from June 5, 1984 to December 27, 1985, and for permanent partial disability from December 28, 1985 to October 1, 1986.

[2]Claimant testified that after her unemployment compensation ran out, she did not look for work because her husband was making "good money" and that she stays home to care for family members. Tr. at 40-42.

credibility of all witnesses, including doctors, weigh the medical evidence, and draw his own inferences and conclusions from it. *See 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); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). Although Dr. Verret stated that claimant should be rehabilitated for lighter work, and Dr. Comptom stated claimant had a residual minimal impairment, the administrative law judge rationally concluded that their reports, in conjunction with other evidence of record, demonstrate that claimant is not precluded from performing her usual work. Inasmuch as the administrative law judge's evaluation of the medical evidence and claimant's testimony is rational, we affirm his finding that claimant is not disabled and can perform her usual work.[3] *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. 1989).

The administrative law judge also denied claimant reimbursement for her medical expenses and future medical treatment finding that claimant had completely recovered from her injury, and that she had failed to request authorization for her treatment by Drs. Steger, Brown and Patterson. The administrative law judge found that claimant's testimony at the hearing as to whether she requested authorization was vague and that claimant submitted no other evidence to establish that she had requested authorization. Claimant testified that she told employer over the phone that she would need a doctor in California (where she moved in August 1984), and that she "think[s]" she asked employer if she could see Dr. Compton. Tr. at 46.

Claimant contends the medical treatment she sought and seeks is reasonable, is related to her work injury, and is curative.[4] Section 7 of the Act, 33 U.S.C. §907(a), states that "[t]he employer shall furnish such medical, surgical, and other attendance or treatment . . . for such period as the nature of the injury or the process of recovery may require." Section 7 does not require that an injury be economically disabling in order for a claimant to be entitled to medical expenses, but only that the injury be work-related. *See Brooks v. Newport News Shipbuilding & Dry Dock Co.*, 26 BRBS 1, 7 (1993), *aff'd sub nom. Brooks v. Director, OWCP*, 2 F.3d 64, 27 BRBS 100 (CRT)(4th Cir. 1993). Section 7(d), 33 U.S.C. §907(d), requires that a claimant request employer's authorization for the medical services performed by any physician, including claimant's initial choice. Claimant's failure to request authorization for medical treatment bars her claim for reimbursement. *See Ranks v. Bath Iron Works Corp.*, 22 BRBS 301 (1989); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989).

Inasmuch as we affirm the administrative law judge's finding that claimant completely recovered from her work-related injury on May 8, 1985, we hold that the administrative law judge's denial of medical expenses for further treatment after May 8, 1985, is proper. Moreover, Drs.

[3]We therefore need not consider claimant's contention that permanent partial disability benefits should be based on the results of two labor market surveys compiled by employer.

[4]Specifically, claimant contends that the administrative law judge erred in denying her medical expenses for treatment by Dr. Steger in February 1988 for $95, by Dr. Brown in June 1988 for $400, by Dr. Patterson in February and June 1990 for $368.50, and for prescription medicine purchased under Dr. Patterson's authority in 1989 and 1990 for $586.66.

Kvidera and McCollum opined that claimant did not require further treatment, and this constitutes substantial evidence in support of the administrative law judge's finding. We also hold that the administrative law judge rationally determined that claimant's hearing testimony as to whether she requested authorization for treatment from her physicians was vague and that she failed to establish that she requested authorization. *See generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). We therefore affirm the administrative law judge's denial of medical expenses for treatment by Dr. Steger, Brown and Patterson and for prescription drugs in 1988 and 1990, and his denial of future medical treatment. *See Ranks*, 22 BRBS at 308.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge