BRB No. 05-0695

LARRY SIMMONS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY	)	DATE ISSUED: 03/28/2006
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

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

John H. Klein (Montagna Klein Camden, L.L.P.), Norfolk, Virginia, for claimant.

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

PER CURIAM:

Claimant appeals the Decision and Order (2004-LHC-02405) 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 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).

Claimant injured his neck driving a forklift on July 2, 1996, during the course of his employment for employer. An MRI revealed a bulging disc at C3-4 and C-4-5, and spondylosis at C5-6 and C6-7 consistent with disc degeneration. Claimant continued working for employer in its shipping department but he missed work for various periods from August 1996 to October 1997 due to his neck injury. Claimant's treating physician, Dr. Stiles, opined in January 1997 that claimant has a 15 percent permanent neck impairment, and he assigned permanent work restrictions. Dr. Stiles reported in December 2003 that claimant's neck condition had worsened and that he may require

surgery. Dr. Stiles opined that the worsening of claimant's neck symptomatology is attributable to his employment, which aggravated his pre-existing neck condition. CX 2. Claimant thereafter filed a claim under the Act alleging a second work-related neck injury, for which claimant sought medical benefits. Claimant acknowledged at the hearing that employer was paying the medical bills for his neck condition, pursuant to the claim for the July 1996 work injury.

In his decision, the administrative law judge addressed whether the case is ripe for adjudication inasmuch as there is no disability compensation at issue and employer is paying claimant's medical expenses for his neck condition. Decision and Order at 3-5. The administrative law judge found that the claim is not ripe because claimant does not allege a current or potential future loss of wage-earning capacity, there are no outstanding medical expenses, and no indication that claimant will undergo surgery or that employer objects to such treatment. The administrative law judge also found that claimant would not incur any hardship if his claim is dismissed without prejudice. The administrative law judge determined that the statute of limitations for filing a claim does not began to run until claimant is aware that his neck condition impairs his capacity to work, *see* 33 U.S.C. §913(a), and that claimant will have an opportunity to re-file a claim if, or when, his neck condition results in additional disability. Finally, the administrative law judge found that it is in claimant's best interest to dismiss the claim inasmuch as claimant would have only a year to file for modification should he issue a decision denying benefits. *See* 33 U.S.C. §922. Accordingly the administrative law judge dismissed the claim without prejudice.

On appeal, claimant challenges the dismissal of the claim, alleging that the administrative law judge has the authority to decide the factual dispute as to the cause of claimant's neck condition. Employer has not responded to this appeal.

In *Chavez v. Director, OWCP*, 961 F.2d 1409, 25 BRBS 134(CRT) (9th Cir. 1992), the United States Court of Appeals for the Ninth Circuit concluded that the doctrine of ripeness has a justifiable place in longshore cases, and it discussed the "traditional ripeness analysis." *Chavez*, 961 F.2d at 1414, 25 BRBS at 141(CRT). The court explained that the first prong of the test, the fitness of issues, is determined by whether the issues are "purely legal" and "sufficiently developed factually," and the second prong, the hardship on the parties, is determined by whether there is a "direct and immediate hardship [which] would entail more than possible financial loss." *Id.*, 961 F.2d at 1414-1415, 25 BRBS at 141-142(CRT).

In this case, claimant submitted office notes from Dr. Stiles's medical records in 2004 and correspondence with claimant's counsel as evidence that his continued work for employer aggravated his prior neck condition. CXs 1-3. Employer submitted, *inter alia*, Dr. Stiles's records from August 1996 to July 2004, and the report of Dr. Caravazo, who

examined claimant at employer's request on November 18, 2004, and claimant's medical records, including the results of three MRI tests. EXs 4, 9. Both doctors opined on the cause of claimant's current neck symptomatology. CXs 2, 3; EX 9 at 9. Thus, the first prong of the ripeness test is met inasmuch as causation is a legal issue that was sufficiently developed factually such that the administrative law judge had the authority to render a finding.

However, there is no hardship to claimant resulting from the administrative law judge's dismissal of his claim without prejudice. Claimant's counsel conceded at the hearing that he is not alleging any period of disability, and that employer is paying medical benefits for Dr. Stiles's treatment of claimant's neck condition. Tr. at 9, 11. Moreover, in finding that the claim is not ripe for adjudication, the administrative law judge properly relied on the fact that there is no indication that claimant intends to undergo neck surgery, or that employer would refuse such a request for medical treatment. In the absence of any outstanding or even prospective claim for compensation or medical benefits, there can be no hardship to claimant that outweighs the interest in postponing adjudication of a claim until there are actual issues involving disputed entitlement to compensation or medical benefits for claimant's neck condition. *See Chavez*, 961 F.2d at 1415-1416, 25 BRBS at 142-143(CRT); *see also Green v. Ingalls Shipbuilding, Inc.*, 29 BRBS 81 (1995); *Parker v. Ingalls Shipbuilding, Inc.*, 28 BRBS 339 (1994)(where disability claim was settled pursuant to Section 8(i) and no claim for medical benefits was made, employer's Section 33(g) argument is not ripe). Accordingly, we affirm the administrative law judge's finding that the claim alleging a second work-related neck injury is not ripe for review and his dismissal of the claim without prejudice.

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