U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 14-0280

REDELL ALLEN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: Mar. 30, 2015
HUNTINGTON INGALLS INDUSTRIES, INCORPORATED	)	
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order – Denying Benefits of Kenneth A. Krantz, Administrative Law Judge, United States Department of Labor.

Redell Allen, Newport News, Virginia, *pro se*.

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

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order – Denying Benefits (2013-LHC-01178) of Administrative Law Judge Kenneth A. Krantz 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 by a claimant without representation by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). If they are, they must be affirmed.

Claimant injured his right knee on May 19, 1993, while working for employer as a

pipefitter.[1] Claimant treated at the shipyard clinic and, outside, with an orthopedist, Dr. Prillaman. Tr. at 12-13. Dr. Prillaman noted claimant suffered a squeezing injury and diagnosed a right knee contusion. EX 4. Dr. Prillaman also noted that an MRI showed a small tear that did not appear to go through the full thickness of the meniscus. *Id*. Claimant testified that he continued having problems with his right knee; however, claimant did not seek treatment for right knee pain until 2010, when he treated with Dr. Aldridge. EX 6; Tr. at 13.

Employer terminated claimant's employment on February 13, 1999, for reasons unrelated to his injury. Tr. at 24. Claimant subsequently worked for several different employers; most recently he worked for the Lee Group from 2007 to 2010, inspecting refrigerators and freezers, a job that involved standing, walking, and heavy lifting. Tr. at 16. Upon claimant's visit in 2010 for right knee pain, Dr. Aldridge diagnosed osteoarthritis and could not say with any medical certainty whether claimant's 2010 knee pain was related to his 1993 injury. EXs 2, 6. On August 20, 2010, Dr. Aldridge imposed restrictions, limiting claimant to walking no more than 100 feet and prohibiting any climbing, crawling, kneeling, squatting, bending or twisting. EX 2. The Lee Group concluded claimant was unable to perform his job and terminated his employment based on Dr. Aldridge's restrictions. EX 3. Claimant has not worked since leaving the Lee Group. EX 7 at 5.

Claimant continued to seek treatment for his right knee pain, and on December 15, 2011, claimant visited the Lackey Free Clinic. EX 5. According to treatment notes, claimant sought treatment for the "onset of [right] knee pain about 2 weeks ago." *Id*. Upon claimant's return to the clinic on January 23, 2012, Dr. Stiles evaluated claimant and opined that his present problems were a direct continuation of his 1993 medial meniscal tear. CX 3. Similarly, based on his February 29, 2012 evaluation of claimant and a review of the February 7, 2012 MRI and February 29, 2012 x-ray, Dr. Wardell, an orthopedic surgeon, diagnosed medial meniscus tear and articular cartilage damage of the right knee resulting from the 1993 injury. CX 4.

On August 1, 2012, Dr. Cohn, an orthopedic surgeon, evaluated claimant and reviewed his medical history. EX 1. Dr. Cohn opined that claimant likely suffers from osteoarthritis but may also have a meniscal tear. *Id*. Dr. Cohn stated that claimant's medial meniscus abnormality may have progressed to a full tear, and may even be

[1] Claimant fell into a hole at the shipyard and caught his right knee between an electrical motor and the stageboard. EX 4.

symptomatic at this time, but this is "certainly not due to his 'squeeze type injury' in 1993."[2] EX 1.

The administrative law judge found the parties' stipulation that claimant injured his right knee in a work injury on May 19, 1993, supported by the medical records. Therefore, as claimant testified that his right knee remained painful since his injury, the administrative law judge found claimant entitled to the Section 20(a), 33 U.S.C. §920(a), presumption that his current knee condition was caused by the 1993 workplace accident. However, based on Dr. Cohn's opinion that claimant's current knee pain is unrelated to the 1993 injury, the administrative law judge found that employer rebutted the presumption. In weighing the evidence as a whole, the administrative law judge gave greater weight to Dr. Cohn's opinion and found that claimant did not establish that his current right knee condition is causally related to the 1993 accident. Claimant, without counsel, challenges this finding on appeal, and employer responds, urging affirmance.

In order to be entitled to the Section 20(a) presumption linking his harm to his employment, a claimant must establish a prima facie case by showing that he suffered a harm, and that either a work-related accident occurred or working conditions existed which could have caused or aggravated the harm. *Universal Maritime Corp. v. Moore,* 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *Bolden v. G.A.T.X. Terminals Corp.,* 30 BRBS 71 (1996); *see U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP,* 455 U.S. 608, 14 BRBS 631 (1982). Upon invocation of the Section 20(a) presumption, the burden shifts to the employer to rebut it with substantial evidence that the claimant's condition was not caused or aggravated by his employment. *See Newport News Shipbuilding & Dry Dock Co. v. Holiday,* 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009). If the administrative law judge finds the Section 20(a) presumption rebutted, the issue of whether claimant's injury was caused by the work accident must be resolved on the evidence of record as a whole. Claimant bears the burden of persuasion on this issue. *Moore,* 126 F.3d 256, 31 BRBS 119(CRT).

The administrative law judge found that claimant is entitled to the benefit of the Section 20(a) presumption that his current knee condition is related to the 1993 work accident. The administrative law judge found that employer rebutted the Section 20(a) presumption with the opinion of Dr. Cohn. We affirm this finding. Dr. Cohn stated that claimant's medial meniscus tear is not due to the 1993 injury, but could be due to

[2] Dr. Cohn explained that claimant's 1993 medical records were consistent with Dr. Prillaman's May 21, 1993 diagnosis of a knee contusion. EX 8 at 7. Dr. Cohn stated that a squeezing or direct blow type of injury was unlikely to cause a meniscus tear such as that seen in the 1993 MRI, and that the type of meniscus abnormality described in the MRI is not unusual. EX 8 at 9.

degenerative arthritic conditions that become more prevalent as people age. This opinion constitutes substantial evidence that claimant's 1993 accident did not cause his current harm. *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000). Thus, the Section 20(a) presumption drops from the case and the administrative law judge properly proceeded to weigh the evidence as whole. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT).

The administrative law judge has the authority to determine the weight to be accorded to the evidence of record. *See Pittman Mech. Contractors, Inc. v. Director, OWCP [Simonds]*, 35 F.2d 122, 28 BRBS 89(CRT) (4th Cir. 1994). In this case, the administrative law judge observed that, although Drs. Stiles and Wardell discussed the continuation of claimant's right knee pain since 1993, the record does not support this history. Specifically, the administrative law judge observed that, despite's claimant's testifying to chronic right knee pain since the 1993 accident, claimant continued to work in positions requiring physical labor and a great deal of walking, but claimant did not seek treatment for his right knee between 1993 and 2010, at which time Dr. Aldridge diagnosed osteoarthritis. Additionally, the Lackey Free Clinic described claimant's right knee pain as "new" and "acute" in December 2011. Moreover, the administrative law judge found that Dr. Cohn's opinion that claimant's current meniscal symptoms are not related to the 1993 incident is consistent with Dr. Prillaman's diagnosing only a knee contusion in 1993. Thus, the administrative law judge found Dr. Cohn's opinion persuasive. As Drs. Stiles and Wardell did not address the conclusions of Drs. Prillaman and Cohn, that claimant's 1993 injury was a contusion rather than a meniscal tear, the administrative law judge found their opinions did not contain sufficient reasoning to support their opinions that claimant's current knee condition is related to the 1993 accident. The administrative law judge concluded that claimant failed to establish by a preponderance of evidence that his knee condition is related to his 1993 injury. This finding is rational and supported by substantial evidence. *See Simonds*, 35 F.2d 122, 28 BRBS 89(CRT); *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP [Hess]*, 681 F.2d 938, 14 BRBS 1004 (4th Cir. 1982). Consequently, claimant has failed to meet his burden of persuasion, and we affirm the denial of benefits. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT).

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

SO ORDERED.

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BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

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REGINA McGRANERY
Administrative Appeals Judge

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GREG J. BUZZARD
Administrative Appeals Judge