BRB No. 01-0219

IDA HOLLOWAY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ARMY AND AIR FORCE EXCHANGE SERVICE	)	DATE ISSUED: May 20, 2002
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION AND ORDER

Appeal of the Decision and Order Awarding Benefits of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Ida Holloway, San Antonio, Texas, *pro se*.

Ruth Bennett Whitfield (Office of the General Counsel, Army & Air Force Exchange Service), Dallas, Texas, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Awarding Benefits (99-LHC-1618) of Administrative Law Judge Richard D. Mills 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*., as extended by the Nonappropriated Funds Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). In an appeal by a claimant without representation, the Board will review the administrative law judge's findings of fact and conclusions of law to determine whether 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); 20 C.F.R. §§802.211(e), 802.220. If they are, they must be affirmed.

Claimant was employed as a "night stocker" at Fort Sam Houston near San Antonio, Texas. Claimant was injured on May 20, 1996, when a box fell off a stack of boxes and landed on her right hand. After treatment, claimant returned to her former position with some restrictions on September 10, 1996. However, she resigned her position on December

9, 1996. She has been receiving ongoing treatment for pain in her right hand, and she sought benefits under the Act.

In his Decision and Order, the administrative law judge found that claimant was capable of returning to her former position on September 10, 1996, and that she reached maximum medical improvement as of that date. The administrative law judge also found that claimant resigned her position on December 9, 1996, due to reasons not related to her injury, and thus she is not entitled to total disability benefits. The administrative law judge awarded claimant permanent partial disability benefits under the schedule for a 17 percent impairment to her right hand. With regard to claimant's entitlement to medical benefits, the administrative law judge found that employer had paid for all of claimant's medical treatment except for that rendered by Dr. Murphy. He found, however, that as claimant did not request authorization for treatment by Dr. Murphy, she was not entitled to reimbursement for past treatment. In addition, he found that claimant did not establish that the requested treatment was necessary for a work-related condition. Therefore, he denied future medical benefits.

Claimant is not represented by counsel in her appeal.[1] Employer responds to the appeal, urging affirmance of the administrative law judge's Decision and Order.

[1]Claimant was initially represented by counsel on appeal, but claimant's counsel was subsequently judged to be incapacitated and was appointed a guardian. Claimant did not obtain new counsel, and thus the case is reviewed under the Board's general standard of review. *See Holloway v. Army & Air Force Exchange Service*, BRB No. 01-0219 (May 21, 2001)(Order). In addition, claimant's appeal, which had been dismissed as abandoned, was reinstated upon receipt of information regarding claimant's counsel's incapacitation. *Id.*

Initially, the administrative law judge found that claimant suffered from a work-related injury to her right hand. He found that she was treated for a contusion which became infected; as a result, she developed cellulitis and tenosynovitis. She was treated for these conditions with a wrist brace, pain relievers, and physical therapy. The administrative law judge found that claimant's physician returned her to work with some restrictions on September 10, 1996. He also found that she was capable of performing her duties and that she resigned her position in December 1996 for reasons unrelated to her injury.[2] It is well-established that, in arriving at his decision, the administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence. *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).

In the instant case, the administrative law judge rejected claimant's contention that she also resigned due to her work injury, based on her testimony that she was released by her treating physician to return to work, H. Tr. at 14, the testimony of her supervisor that claimant returned to her same job, H. Tr. at 74, and the paperwork noting other reasons for the resignation, Emp. Ex. 1. The administrative law judge also noted that claimant stated in a deposition that she had not returned to work since the accident, Emp. Ex. 18 at 13-14, when the record shows she returned to her previous job from May 24, 1996 to June 5, 1996, and from September 10, 1996 to November 13, 1996. H. Tr. at 14-15, 73-75. Moreover, the administrative law judge found that the surveillance videotape contradicted claimant's contention that her injury prevented her from performing even basic chores. Emp. Ex. 23, 24. The record also contains the report of Dr. Cape, which the administrative law judge accorded determinative weight; Dr. Cape stated that although claimant has a 17 percent impairment of the right upper extremity, she could return to work with no restrictions. Emp. Ex. 6. On the basis of the record before us, the administrative law judge's decision to discredit the testimony of claimant, that she resigned in part due to her hand injury, is not patently unreasonable. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Accordingly, as substantial evidence supports the administrative law judge's finding that claimant was capable of performing her former job after reaching maximum medical improvement, we affirm the administrative law judge's finding that claimant is not entitled to permanent total disability benefits, and affirm the award of permanent partial disability benefits pursuant to the schedule, 33 U.S.C. §908(c)(3).[3] *Potomac Electric Power Co. v. Director, OWCP*, 449

[2]The reason stated in claimant's resignation letter is "To be with my mother because of her health." Emp. Ex.1.

[3]The administrative law judge found that claimant has a 17 percent impairment of the "upper extremity," based on Dr. Harris's opinion that claimant has a ten percent digit

U.S. 268, 14 BRBS 363 (1980).

The administrative law judge also considered claimant's request for treatment from Dr. Murphy as she alleged that she suffers from reflex sympathetic dystrophy (RSD) in her hand. Section 7(a) of the Act, 33 U.S.C. §907(a), states that "[t]he employer shall furnish medical, surgical and other attendance or treatment for such period as the nature of the injury or the process of recovery may require." Thus, even where a claimant is not entitled to disability benefits, employer may still be liable for medical benefits for a work-related injury. *See Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993). Section 7(d) of the Act, 33 U.S.C. §907(d), sets forth the prerequisites for an employer's liability for payment or reimbursement of medical expenses incurred by claimant. The Board has held that Section 7(d) requires that a claimant request her employer's authorization for medical services performed by any physician, including the claimant's initial choice. *See Maguire v. Todd Shipyards Corp.*, 25 BRBS 299 (1992); *Shahady v. Atlas Tile & Marble*, 13 BRBS 1007 (1981)(Miller, J., dissenting), *rev'd on other grounds*, 682 F.2d 968 (D.C. Cir. 1982), *cert. denied*, 459 U.S. 1146 (1983).

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impairment of the thumb, a 36 percent digit impairment of the index finger, a 19 percent digit impairment of the middle finger, a 20 percent impairment of the ring finger, and a 70 percent digit impairment of the small finger. Emp. Ex. 4. Dr. Harris combined these impairments to arrive at a 17 percent impairment of the hand. *Id.*; *see* American Medical Association *Guides to the Evaluation of Permanent Impairment*. We affirm this finding as it is supported by substantial evidence.

In the instant case, the administrative law judge found that claimant did not seek authorization to change physicians when she changed her family doctor from Dr. Dante Escalante to Dr. Rodriguez. In addition, the administrative law judge found that the pain specialist she was referred to by Dr. Rodriguez, Dr. Murphy, was not authorized, and he thus denied reimbursement for expenses related to Dr. Murphy's treatment.[4] Claimant testified that she did not seek authorization for treatment by Dr. Rodriguez or Dr. Murphy. Emp. Ex. 18 at 11; H. Tr. at 40. Therefore, we affirm the administrative law judge's finding that claimant is not entitled to reimbursement for the expenses incurred by Dr. Murphy's past treatment.

[4]Employer paid for the treatment by two hand specialists, Dr. Alonso Escalante and Dr. Otto, to whom claimant was referred by her authorized physician, Dr. Dante Escalante. *See* H. Tr. at 17, 35, 36.

As medical care must be appropriate for the injury, 20 C.F.R. §702.402, an administrative law judge may reject payment for unnecessary treatment. *Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9 (2001). Relying on the opinions of Drs. Harris and Cape, the administrative law judge found that claimant does not suffer from work-related RSD and thus is not entitled to further medical treatment for this condition.[5] Dr. Cape opined that claimant did not have a significant case of RSD, that she had reached maximum medical improvement, and that no further treatment would be necessary. Emp. Ex. 20 at 21; *see also* Emp. Ex. 5. Following his examination and report, Dr. Harris had an opportunity to view the surveillance videotape of claimant. He concluded that claimant does not have true RSD, that she has reached maximum medical improvement, and that the treatment recommended by Dr. Murphy is not necessary. Emp. Ex. 4. The administrative law judge accorded Dr. Harris's opinion dispositive weight as he found that Dr. Harris provided the most credible evaluation and explanation of claimant's condition. As it was within the administrative law judge's discretion to credit the opinions of Drs. Cape and Harris, and the administrative law judge's conclusion that treatment for RSD is not necessary is rational and supported by substantial evidence, we affirm the administrative law judge's finding that employer is not liable for Dr. Murphy's treatment as it is not necessary for claimant's work-related condition. *See Brooks v. Newport News Shipbuilding & Dry Dock Co.*, 26 BRBS 1 (1992), *aff'd sub nom. Brooks v. Director, OWCP*, 2 F.3d 64, 27 BRBS 100(CRT) (4th Cir. 1993).

Accordingly, the administrative law judge's decision awarding permanent partial disability benefits pursuant to Section 8(c)(3), and denying medical treatment for reflex sympathetic dystrophy is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

[5]The administrative law judge did find that claimant is entitled to reasonable care from her authorized physician for the treatment of tenosynovitis resulting from the accident.

BETTY JEAN HALL
Administrative Appeals Judge