BRB No. 02-0192

LANCE G. CLEVERLY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ELECTRIC BOAT CORPORATION	)	DATE ISSUED:Nov. 25, 2002
	)	
Self-Insured Employer-Respondent	)	

DECISION and ORDER

Appeal of the Decision and Order Denying Claim and the Decision and Order Denying Motion for Reconsideration of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

Scott N. Roberts, Groton, Connecticut, for claimant.

Conrad M. Cutcliffe (Cutcliffe, Glavin & Archetto), Providence, Rhode Island, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Claim and the Decision and Order Denying Motion for Reconsideration (2001-LHC-1043) of Administrative Law Judge Daniel F. Sutton 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 administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant was working as a general metalsmith when he sustained an injury to his left hand on January 26, 1990. Claimant sought treatment, but continued to work until April 1991 when he left work due to pain and coldness in his hand. After discontinuing work with employer in April 1991, claimant filed a claim for compensation under the Rhode Island workers' compensation act and was awarded "partial incapacity benefits" by the Rhode Island Workers' Compensation Court. In September 1993, claimant requested that his future state benefits be commuted on the basis of a lump sum settlement of $36,000, which was approved on December 16, 1993. Claimant sought benefits under the Longshore Act by filing a claim on October 5, 2000.

In his decision, the administrative law judge found that the statute of limitations under Section 13(a) of the Act, 33 U.S.C. §913(a), was not tolled by the filing of the state compensation claim and that even if it had been, that case was terminated as of December 16, 1993, and a claim was not filed under the Act within a year of that date. *See* 33 U.S.C. §913(d); *Bath Iron Works Corp. v. Director, OWCP [Acord]*, 125 F.3d 18, 31BRBS 109(CRT) (1st Cir. 1997). In addition, the administrative law judge found that claimant did not file any doctors' reports with the district director prior to October 2000, which could constitute a claim under the Act. Thus, the administrative law judge denied benefits as the claim therefor was not timely filed.

On claimant's motion for reconsideration, the administrative law judge rejected claimant's contention that the awareness standard of Section 13(a) requires that claimant have knowledge of a possible claim for medical care under the Act before the limitations period begins to run, as Section 13 does not apply to claims for medical benefits. The administrative law judge found claimant's date of awareness to be no later than May 31, 1991, when he filed his state claim. In addition, the administrative law judge found that employer's first report of injury form adequately described the nature of the injury and thus was sufficient to satisfy the reporting requirements of Section 30(a) of the Act, 33 U.S.C. §930(a). Thus, the administrative law judge found that the tolling provision of Section 30(f), 33 U.S.C. §930(f) is inapplicable, denied claimant's motion for reconsideration, and affirmed his finding that the claim was untimely filed.

On appeal, claimant contends that the time limitation for filing a claim was tolled pursuant to Section 30(f), 33 U.S.C. §930(f), as employer did not file all of the appropriate forms. In addition, claimant contends that the administrative law judge erred in failing to award medical benefits. Employer responds, urging affirmance of the administrative law judge's decision.

Claimant contends that the administrative law judge erred in finding that his claim for compensation benefits is barred by Section 13. The administrative law judge found that claimant received his last voluntary payment from employer prior to the settlement of the state compensation claim on December 16, 1993, and

that no claim was filed under the Longshore Act until October 5, 2000. Section 13 provides that:

> the right to compensation for disability or death under this chapter shall be barred unless a claim therefore [sic] is filed within one year after the injury or death. If payment of compensation has been made without an award on account of such injury or death, a claim may be filed within one year after the date of the last payment . . . The time for filing a claim shall not begin to run until the employee . . . is aware, or by the exercise of reasonable diligence should have been aware of the relationship between the injury . . . and the employment.

33 U.S.C. §913(a); *see Newport News Shipbuilding & Dry Dock Co. v. Parker*, 935 F.2d 20, 24 BRBS 98(CRT) (4th Cir. 1991). The administrative law judge found that claimant was aware of the relationship between his injury and his employment no later than May 31, 1991, and this finding is not contested on appeal. *See* Decision and Order Denying Motion for Reconsideration at 2.

[1] On appeal, claimant does not contest the administrative law judge's finding that there were no medical reports filed with the district director prior to October 5, 2000, that were sufficient to constitute a claim under the Act.

Claimant contends, however, that Section 30(f) tolled the one-year statute of limitations. Section 30(f) provides that employer's failure to comply with Section 30(a) tolls the Section 13(a) limitations period, 33 U.S.C. §930(f), and the time limitation period does not begin to run against the claim until the report is filed. *See also* 20 C.F.R. 702.205. Section 30(a) requires that:

> Within ten days from the date of any injury, which causes loss of one or more shifts of work, or death or from the date that the employer has knowledge of a disease or infection in respect of such injury, the employer shall send to the Secretary a report setting forth (1) the name, address, and business of the employer; (2) the name, address, and occupation of the employee; (3) the cause and nature of the injury or death; (4) the year, month, day, and hour when and the particular locality where the injury or death occurred; and (5) such other information as the Secretary may require. A copy of such report shall be sent at the same time to the deputy commissioner in the compensation district in which the injury occurred. Notwithstanding the requirements of this subsection, each employer shall keep a record of each and every injury regardless of whether such injury results in the loss of one or more shifts of work.

33 U.S.C. §930(a). The implementing regulation requires that employer's report of an employee's injury include "the cause, nature, and other relevant circumstances of the injury…." 20 C.F.R. §702.202.

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[2] Specifically, Section 30(f) provides:

> Where the employer or the carrier has been given notice, or the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier has knowledge, of any injury or death of any employee and fails, neglects, or refuses to file report thereof as required by the provisions of subdivision (a) of this section, the limitations in subdivision (a) of section 913 of this title shall not begin to run against the claim of the injured employee or his dependents entitled to compensation, or in favor of either the employer or the carrier, until such report shall have been furnished as required by the provisions of subdivision (a) of this section.

33 U.S.C. §930(f).

In the present case, claimant contends that employer filed its first report of injury, Form LS-202, on December 21, 1990, which was 329 days after the date of injury and 20 days after the day claimant first began to lose time from work. Although Section 30(a) requires employer to file its first report of injury within ten days of the date claimant lost time from work from his injury, the only "sanction" for late filing is the tolling of the statute of limitations until the date employer files the report. *See, e.g., Bustillo v. Southwest Marine, Inc.,* 33 BRBS 15 (1999). As employer filed its report on December 21, 1990, and as claimant does not contest the administrative law judge's finding that the LS-202 form employer submitted is sufficient under Section 30(a), we reject claimant's contention that Section 30(f) tolled the statute of limitations after December 21, 1990.

Claimant next contends that employer's failure to submit updated medical reports pursuant to Section 30(b), and Forms LS-206, LS-208, and LS-210, also should toll the statute of limitations pursuant to Section 30(f). Claimant did not raise this specific contention before the administrative law judge, and thus we need not address this contention. *See, e.g., Boyd v. Ceres* Terminals, 30 BRBS 218 (1997). Nonetheless, we shall address the contention as it is clearly without legal foundation. Section 30(a) requires employer to submit a first report of injury, or an equivalent report, with all of the required information. Section 30(f) refers specifically to this requirement only and does not act to enforce the submission of any other forms required by the Act or requested by the Secretary. 33 U.S.C. §930(f); *see also* 20 C.F.R. §§702.201-702.205. As claimant was aware of the relationship between his disabling injury and his employment no later than May 31, 1991, *see generally Ceres Gulf, Inc. v. Director, OWCP [Fagan]*, 111 F.3d 17, 31 BRBS 21(CRT) (5th Cir. 1997), and as he received his last voluntary payment of state compensation from employer prior to December 16, 1993, *see Smith v. Universal Fabricators, Inc.*, 21 BRBS 83 (1988), *aff'd,* 878 F.2d 843, 22 BRBS 104(CRT) (5th Cir. 1989), *cert. denied*, 493 U.S. 1070 (1990), we affirm the administrative law judge's finding that the claim filed in October 2000 is untimely. Thus, we affirm the denial of benefits under the Act.

[3] Section 30(b) states:

> Additional reports in respect of such injury and of the condition of such employee shall be sent by the employer to the Secretary and to such deputy commissioner at such times and in such manner as the Secretary may prescribe.

33 U.S.C. §930(b).

Claimant also contends that the administrative law judge erred in not specifically awarding medical benefits. Claimant contends that employer's approval of the Rhode Island workers' compensation claim effectively constitutes a refusal to pay for ongoing medical treatment. The right to seek medical treatment is never time-barred. *Marshall v. Pletz,* 317 U.S. 383 (1943); *Siler v. Dillingham Ship Repair*, 28 BRBS 38 (1994). Claimant, however, has not alleged that he needs additional medical treatment, that he sought authorization for treatment which was denied by employer, or that he incurred medical expenses which have not been reimbursed. The United States Court of Appeals for the Fifth Circuit held in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993), that claimant Buckley presented no evidence of medical expenses incurred in the past nor of medical treatment necessary in the future, and thus the court vacated the administrative law judge's award of medical benefits. *Baker*, 991 F.2d at 165, 27 BRBS at 16(CRT). The court stated that Buckley could file a claim for medical benefits if and when medical treatment became necessary. *Id*. Similarly, in the present case, there is no evidence that claimant is in need of medical treatment, or has sought treatment or authorization for treatment since the conclusion of the state compensation claim in 1993. Therefore, we hold that the administrative law judge did not err in not specifically awarding medical benefits. As in *Baker,* claimant may file a claim for medical benefits if and when treatment is necessary.

Accordingly, the administrative law judge's Decision and Order and Decision and Order Denying Motion for Reconsideration are 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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PETER A. GABAUER, Jr.
Administrative Appeals Judge