U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 23-0320

AHMAD SHAH MIR SAHIB KHAN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	**PUBLISHED**
	)	
ALLIANCE PROJECT SERVICES	)	
	)	
and	)	DATE ISSUED: 04/10/2025
	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA	)	
	)	
Employer/Carrier-Petitioners	)	
	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Timothy J. McGrath, Administrative Law Judge, United States Department of Labor.

John C. F. C. Vinci (Bosson Legal Group, P.C.), Fairfax, Virginia, and Lara D. Merrigan and John P. Kaplan (Merrigan Legal), Campbell, California, for Claimant.

Lawrence P. Postol (Postol Law Firm, P.C.), McLean, Virginia, for Employer and its Carrier.

Before: GRESH, Chief Administrative Appeals Judge, BOGGS and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Timothy J. McGrath's Decision and Order Awarding Benefits (2021-LDA-01643) rendered on a claim filed pursuant to the

Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act), as extended by the Defense Base Act, 42 U.S.C. §§1651-1655 (DBA).[1] We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant worked as an employee trainer and interpreter for Employer in Afghanistan from 2010 to 2013. Hearing Transcript (TR) at 15. On April 8, 2010, he and his brother, Naeem Khan, were walking from their home in Afghanistan to Forward Operating Base (FOB) Salerno,[2] where they were to begin work for the day when a nearby improvised explosive device (IED) detonated, knocking them both unconscious.[3] *Id.* at 15-16, 52-53, 57-59; Joint Exhibit (JX) 27 at 12-13. After the explosion, Claimant and his brother were taken to a local hospital.[4] TR at 52-53, 58-60, 78-79; JX 8; JX 9; JX 27 at 17-19; JX 28.

Claimant sustained significant injuries to his back, head, and legs from shrapnel expelled by the IED. TR at 16-19, 23-24; JX 27 at 22; JX 28. His family subsequently transferred him to another hospital in Afghanistan,[5] where he underwent a laminectomy

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[1] This case arises within the jurisdiction of the United States Court of Appeals for the First Circuit because the office of the district director who issued the compensation order is in Boston, Massachusetts. 33 U.S.C. §921(c); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45 (2011).

[2] FOB Salerno is located in Khost Province. TR at 15.

[3] Naeem briefly regained his consciousness on the way to the hospital. TR at 59-60, 78. However, Claimant remained unconscious for several months. *Id.* at 53; JX 27 at 20.

[4] It is not clear where the clinic is located. Claimant testified the name of the hospital is "Babrigul clinic," but he does not remember the names of the physicians who treated him. JX 27 at 18-19, 23. At his deposition, he testified his family told him they initially took him to a clinic in Khost and eventually transferred him to a hospital in Jalalabad. *Id.* at 18-19. The ALJ found Claimant was taken to a hospital in Jalalabad "immediately after the explosion." D&O at 3.

[5] It is not clear where the hospital is located. Claimant testified he believes the name of the hospital is "Emull something," but he does not remember the names of the physicians who treated him. JX 27 at 19-20, 22; *see also* TR at 19-20 (Claimant testified he did not recall the name of the hospital where surgery was performed.). At the hearing, Claimant testified he underwent surgery at a hospital in Jalalabad. TR at 19. Claimant and his

and operations to remove the shrapnel. TR at 19-20; JX 8; JX 9; JX 11; JX 27 at 19-23. After he was discharged from treatment, he returned to work for Employer at FOB Salerno in November 2010.[6] TR at 21; JX 27 at 25-26; JX 45; JX 48 at 155-156, 160; *but see* JX 8 (Claimant Affidavit: returned to work on January 1, 2011). For safety reasons, he was later transferred to FOB Fenty in Jalalabad and continued working for Employer until March 2013.[7] TR at 21-22, 42-43; JX 27 at 11, 26, 29; JX 45; JX 48 at 155-156, 160; JX 8 at 2 (Claimant Affidavit: transferred to FOB Phoenix in Kabul then to FOB Fenty in Jalalabad); *but see* JX 44 at 1 (Claimant transferred from FOB Fenty to FOB Phoenix). Since moving to the United States in 2017, Claimant has received medical treatment at Yale New Haven Health for residual issues related to the accident. These consequences include pain and weakness in his legs, headaches, bowel and urinary incontinence, back pain, and difficulties with physical activity. JXs 12-25, 29-33, 35, 37, 47, 49.

Claimant's brother Naeem suffered less serious injuries from the explosion and was discharged from the hospital the same day as the incident. TR at 78-79. After leaving the hospital, he went to FOB Salerno to report the explosion to his supervisor "Mitch."[8] *Id.* at 60-61, 67-69, 78-79; *see also* JX 9. He also requested help in transferring Claimant's treatment from the private hospital to the military hospital within FOB Salerno, but the military hospital staff advised him there was no room for Claimant or Naeem. TR at 67-68, 79-80. After the incident and being out of work for approximately two to three months, Naeem was transferred for safety reasons to FOB Fenty in Jalalabad. *Id.* at 71, 80, 82, 85-86. Naeem testified that after he was transferred, he presented a hospital bill to his FOB Fenty supervisor, "Barrens," and requested payment for Claimant's medical treatment;

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brother both stated in their affidavits that Claimant was transferred to Kabul for treatment, and that he was under treatment in Jalalabad and Kabul for almost nine months. JX 8 (Claimant Affidavit: transferred from the local hospital to Kabul "for better treatment"); JX 9 (Naeem Affidavit: transferred Claimant from local hospital to Kabul after two days). The ALJ found Claimant was transferred from a hospital in Jalalabad to Kabul. D&O at 3.

[6] Claimant continued treating at the Babrigul clinic in Khost Province after he was discharged from the other hospital. JX 27 at 23-24.

[7] Claimant was terminated for cause on March 27, 2013. JX 2. Employer's termination list indicates Claimant's worksite was FOB Phoenix at the time he was terminated. JX 41.

[8] Naeem testified Mitch worked for Employer and was responsible for hiring and terminating employees, renewing badges, and issuing paychecks. TR at 60-61, 66-67.

Barrens told him he could not help with the payment.[9] *Id.* at 62, 73-75, 82-83; *see also* JX 9.

On June 25, 2020, Claimant filed a claim for disability compensation, reimbursement for his medical expenses, and future medical treatment. JXs 1, 57-59. Employer controverted the claim, contesting causation, timeliness under 33 U.S.C. §912 and 33 U.S.C. §913, entitlement to medical treatment, and reimbursement for medical expenses. JX 4. At Claimant's request, the district director referred the case to the Office of Administrative Law Judges for a formal hearing. JX 57-59.

The formal hearing took place on June 17, 2022, during which Claimant and his brother Naeem testified. In his Decision and Order Awarding Benefits (D&O), the ALJ found Employer had been given timely notice of Claimant's injury because it acquired knowledge of the injury on April 8, 2010, when Naeem reported the explosion to his supervisor Mitch. Alternatively, he found Claimant was excused from providing notice because Employer failed to properly post a notice to employees informing them of the designated person to whom notice should be given and of their right to benefits under the Act (Form LS-241), as Section 34 of the Act and its implementing regulation require. 33 U.S.C. §934; 29 C.F.R. §702.211(b). He also found the claim was timely filed because Employer had knowledge of the injury and the time for filing was tolled due to Employer's failure to file a first report of injury pursuant to Section 30(a) of the Act, 33 U.S.C. §930(a). D&O at 4-6. Next, the ALJ found Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), and Employer failed to rebut it. D&O at 6-10. Therefore, he awarded temporary total disability compensation during the seven-month period Claimant was unable to work as well as reasonable and necessary future medical treatment. *Id.* at 10-11.

As for reimbursement of medical expenses and travel costs already incurred, the ALJ found Claimant was "immediately taken to the hospital" after the explosion and in a coma for two months; therefore, it was "impossible for him to seek preauthorization for such treatment." D&O at 12. In any event, he found Employer was informed of Claimant's medical expenses but declined to pay them when Naeem presented the hospital bill to Barrens and requested payment. *Id.* at 11-12. Thus, he ordered Employer to reimburse Claimant $38,838.71 "for his reasonable and necessary medical care in 2010."[10] *Id.* at 12. However, because Claimant did not request preauthorization for his treatment at Yale New

[9] Naim testified Barrens oversaw the badging office at FOB Fenty. TR at 82-83.

[10] The ALJ converted the total invoice amount from 1,849,000 Afghanis to U.S. dollars. D&O at 12 n.6; *see also* JX 45A (Afghanis exchange rate).

Haven Health, the ALJ denied Claimant's claim for reimbursement of mileage costs incurred in pursuit of that medical treatment. *Id.*

On appeal, Employer contends the ALJ erred in finding Claimant entitled to reimbursement of his medical expenses. Claimant responds, urging affirmance.

Employer contends Claimant did not comply with the requirements of Section 7 of the Act, 33 U.S.C. §907, because he did not request authorization for medical treatment, failed to establish the reasonableness and necessity of his treatment, and because none of the providers who rendered treatment filed an initial report of treatment. Employer's Brief (Emp. Br.) at 10-12. Consequently, Employer maintains Claimant's non-compliance with Section 7 precludes him from recovering his medical treatment expenses. Employer further asserts the ALJ's decision does not comport with the Administrative Procedure Act (APA) because he failed to discuss the conflicting testimony from Claimant and his brother, did not make any credibility determinations based on the conflicting testimony, and ignored the lack of evidence to support compliance with Section 7. *Id.* at 12.

Section 7(d)(1)

Employer first contends the ALJ erred in finding Claimant sufficiently met the Act's notice and authorization requirements under Section 7. Specifically, it asserts Claimant did not request authorization for any of his hospital treatment, and it was not aware of Claimant's injury and its work-relatedness prior to his treatment. In response, Claimant contends strict compliance with the authorization requirements under the Act was permissibly excused due to his prolonged unconsciousness and emergent need for life-saving care. Claimant's Response Brief (Cl. Resp.) at 15-16. Alternatively, he asserts substantial evidence establishes he satisfied the Act's authorization requirements. *Id.* at 16-19. In reply, Employer argues that "even if the first day or two was an emergency," the emergency exception "does not excuse Claimant's failure to get authorization for treatment he received beyond the emergency." Employer's Reply Brief (Emp. Reply) at 7.

Section 7 of the Act states: "[t]he employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require." 33 U.S.C. §907(a); 20 C.F.R. §702.402. Section 7(d)(1), which sets forth the conditions that must be met for a claimant to be entitled to reimbursement from his employer for medical expenses, states:

> (1) An employee shall not be entitled to recover any amount expended by him for medical or other treatment or services unless-

> (A) the employer shall have refused or neglected a request to furnish such services and the employee has complied with subsections (b) and (c) of this section and the applicable regulations; or
>
> (B) the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide or authorize same.

33 U.S.C. §907(d)(1); 20 C.F.R. §702.421. Therefore, a claimant is entitled to recover medical expenses if: 1) he requests the employer furnish or authorize medical treatment and the employer refuses or neglects the request; or 2) the nature of the work-injury requires such treatment and the employer, having knowledge of the injury, neglects to provide or authorize that treatment. *Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112, 113 (1996); *Anderson v. Todd Shipyards Corp.,* 22 BRBS 20, 23 (1989); *Lazarus v. Chevron U.S.A. Inc.*, 958 F.2d 1297, 1301 (5th Cir. 1992); *Lustig v. Todd Shipyards Corp.*, 20 BRBS 207, 210 (1988), *aff'd in pertinent part sub nom.*, *Lustig v. U.S. Dep't of Labor*, 881 F.2d 593 (9th Cir. 1989); 20 C.F.R. §§702.405, 702.421. In addition, Section 7(d)(2) provides: "[n]o claim for medical or surgical treatment shall be valid and enforceable against [the] employer" unless the physician giving such treatment provides the employer and the district director with a report of injury or treatment within ten days following the first treatment. 33 U.S.C. §907(d)(2); 20 C.F.R. §702.422.

Upon reviewing this case record, we are unable to affirm the ALJ's award for reimbursement of Claimant's medical expenses because he did not adequately address "all the material issues of fact, law, or discretion presented on the record" and provide "the appropriate rule, order, sanction, relief, or denial thereof" in accordance with the APA, 5 U.S.C. §557(c); *see also* 33 U.S.C. §919(d). Specifically, the relevant disputes before the ALJ were: 1) whether Claimant complied with the requirements of Section 7(d)(1); 2) whether his medical providers filed timely medical reports in compliance with Section 7(d)(2); and 3) whether the treatment Claimant received was necessary for his work injury and the charges for such treatment were reasonable.[11] Emp. Post-Hearing Br. at 3. Those questions are left unanswered in the ALJ's decision.

[11] Employer specifically argued its duty to provide medical care does not arise until it receives notice of a work-related injury, and the duty to reimburse medical expenses does not arise until authorization is sought. It contended it did not have notice of a work-related injury, and no timely medical reports were filed. Further, it asserted there were no medical bills to which to apply the medical schedule, no receipts showing the medical expenses

Of relevance to the factual disputes and issues raised, the ALJ found Claimant's injuries were work-related, that he was taken to a hospital in Jalalabad immediately after the explosion, transferred to a hospital in Kabul where he underwent thirty-five surgical procedures to remove shrapnel, remained unconscious in the hospital "for about two months," and was hospitalized "for about seven months" in total. D&O at 3, 5. He found that on the day of the explosion, Naeem reported to Mitch, an Alliance Project Services (APS) manager, that Claimant was severely injured in the explosion and asked if Claimant could be treated at the military hospital but was told the hospital did not have the capacity to provide his brother care. *Id.* Because the ALJ found Claimant was "immediately taken to the hospital" and "in a coma for two months," he determined it was "impossible" for Claimant to seek "preauthorization for such treatment." *Id.* at 12. Nonetheless, the ALJ found that "*several months* after the incident, when Naeem was transferred to FOB Fenty in Jalalabad, he asked Barrens, who worked in the badging office, for help paying for [Claimant's] medical expenses" and "provid[ed] Barrens with a one-page medical bill but was told APS could not help." *Id.* at 3 (emphasis added) (citing TR 61-62, 74-75; JX 51). He later found Naeem presented the hospital bill to Barrens "*about one month* after the injury." *Id.* at 12 (emphasis added). Given that "an employee or agent of APS" was "informed of the medical bill" and "declined to assist with payment," the ALJ determined Employer must reimburse Claimant "for his reasonable and necessary medical care in 2010" for the amount listed on the bill. *Id.*

It is unclear from the ALJ's findings whether Claimant met the criteria for reimbursement of his medical expenses under either Section 7(d)(1)(A) or Section 7(d)(1)(B). For purposes of Section 7(d)(1)(A), the ALJ did not determine: 1) whether Claimant made a *request* to Employer for medical services;[12] 2) whether Employer *refused or neglected* the request; and 3) whether Claimant *complied* with Sections 7(b) and 7(c). 33 U.S.C. §907(d)(1)(A). For purposes of Section 7(d)(1)(B), the ALJ did not determine: 1) whether the *nature of the injury* required the treatment and services for which reimbursement is sought; 2) whether Employer had the requisite *knowledge* of Claimant's *injury*; and 3) whether Employer *neglected to provide* or *refused to authorize* the treatment

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incurred, and no medical records showing whether the treatment rendered was reasonable and necessary. Emp. Post-Hearing Br. at 9-10, 20-21.

[12] By contrast, the ALJ found Claimant "did not seek preauthorization" for any of the treatment he received at Yale New Haven Health from 2017 through 2020. D&O at 12. As this finding is unchallenged on appeal, we affirm it. *See Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007).

and services for which reimbursement is sought.[13] 33 U.S.C. §907(d)(1)(B) (as construed in *Bethlehem Ship Building Corp. v. Monahan*, 57 F.2d 217 (D. Mass 1932), *aff'd*, 62 F.2d 299 (1st Cir. 1932)).[14]

The ALJ considered Naeem's initial report on the day of the incident sufficient for imputing knowledge of the injury to Employer when addressing notice and timeliness under Section 12 and Section 13, 33 U.S.C. §§912, 913, but failed to address Naeem's initial report of the injury, request for Employer to help transfer Claimant's treatment to the military hospital, and the response he received under Section 7(d)(1). D&O at 11-12. When discussing Claimant's claim for reimbursement of his medical expenses, the ALJ considered only Naeem's presenting a bill and request for payment after Claimant was transferred to another hospital and had presumably already received medical care and "expended" medical costs for which reimbursement was sought. *Id.*; 33 U.S.C. §907(d)(1). He found that when Naeem presented the medical bill to Barrens either "several months" or "about one month after the injury" and Barrens "declined to assist with payment," Employer "was informed of the medical bill and declined to pay it," and therefore must reimburse Claimant the amount of the medical bill "for his reasonable and necessary medical care in 2010." *Id.* at 12. However, it is unclear from the ALJ's findings how Naeem's presenting the medical bill from Sana Hospital factors into his Section 7(d)(1) analysis.[15]

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[13] Whether a claimant requested medical treatment from an employer or sought authorization is also relevant when a claimant seeks reimbursement of his medical costs for treatment from a provider who was not his initial choice. 33 U.S.C. §907(c)(2). However, "consent shall be given in cases where an employee's initial choice was not of a specialist whose services are necessary for and appropriate to the proper care and treatment of the compensable injury or disease." *Id.*; *Roger's Terminal & Shipping Corp. v. Director, OWCP*, 784 F.2d 687, 693 n.6 (5th Cir. 1986); *Ezell v. Director Labor, Inc.*, 33 BRBS 19, 28 (1999); 20 C.F.R. §702.419.

[14] In *Monahan*, the United States District Court for the District of Massachusetts and First Circuit discussed the Section 7(d)(1)(B) criteria as originally enacted under 33 U.S.C. §907(a) (1927).

[15] A request for reimbursement of costs for medical treatment and services already received, and the associated amounts already expended, does not satisfy the requirement that a request for medical treatment or services be made to an employer before a claimant pays for that treatment himself. 33 U.S.C. §907(d)(1)(A). In any event, we note Claimant testified he did not personally request reimbursement for his medical expenses from Employer but believes his brother "might have." TR at 24. By contrast, he stated in his

Additionally, as Employer asserts, the ALJ's findings in this regard are inconsistent. The ALJ's award for reimbursement of medical expenses is based on an invoice dated April 20, 2010, twelve days after the explosion, yet the charges on the invoice are for ninety days of medical treatment. Naeem testified he presented the "one-page" hospital bill to his FOB Fenty supervisor, Barrens, and requested payment for Claimant's medical treatment, but that Barrens told him he could not help with payment. TR at 62, 73-75, 82-83; *see also* JX 9. He testified this exchange took place when he was transferred to FOB Fenty for safety reasons—approximately two to three months after the April 8, 2010 explosion. TR at 71, 80, 82, 85-86. The ALJ initially found Naeem presented the hospital bill to Barrens after Naeem was transferred to FOB Fenty in Jalalabad "several months after the incident." D&O at 3. However, he later found Naeem presented the bill "about one month after the injury." *Id.* at 12.

Conclusive findings as to where and when Claimant was treated, the treatment he received,[16] and when Naeem presented the hospital bill to Employer and requested

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affidavit that Employer "repeatedly denied" his requests to pay for medical expenses. JX 8 at 2. Naeem also stated in his affidavit that Employer "repeatedly declined our requests to cover the medical bills." However, he testified at the hearing that he presented the bill to Barrens, Barrens said no to his request to pay the bill, and Naeem "did not talk to him any further … [t]hat was the end of the conversation." TR at 75. In Claimant's written request for reimbursement of his medical expenses to Employer, dated December 14, 2020, he indicated the medical bill associated with the ninety days of medical treatment and services he received at Sana Hospital was paid on April 20, 2010. JX 51.

[16] The ALJ's findings as to which hospitals Claimant received treatment from and when, as well as the treatment he received at each hospital, conflict with his other findings and are inconsistent with Claimant's and Naeem's testimony, which the ALJ credited. For example, the ALJ found Claimant was taken to a hospital in Jalalabad immediately after the explosion and was then transferred to a hospital in Kabul where he underwent thirty-five surgical procedures to remove shrapnel. D&O at 3 (citing TR 19; JX 8; JX 9; JX 28; JX 11). Naeem stated in his affidavit that Claimant was at a "local hospital" for two days before being transferred to Kabul for treatment, and that he was under treatment in Kabul and Jalalabad for almost nine months. JX 9; *see also* JX 8 (Claimant Affidavit: treated at hospitals in both Kabul and Jalalabad). However, Claimant testified he initially treated at a local clinic in Khost and was later transferred to a hospital in Jalalabad where he underwent the surgery and incurred the charges for which reimbursement is sought. JX 27 at 18-22; TR at 19-20. The Komaki Clinic letter states Claimant was admitted on April 8, 2010, and discharged on April 19, 2010. The letter indicates the clinic's address is "Khust province" and states "we performed operations." JX 28. The letter from Sana Hospital states Claimant was admitted to the emergency department on April 20, 2010, stayed for

Employer pay the bill[17] or reimburse Claimant for the amount already expended,[18] are necessary and relevant to the Section 7(d)(1) inquiry. This is particularly important because the bill is purportedly for treatment Claimant received at Sana Hospital, a different facility than the one Claimant was "immediately taken to … after the IED exploded," D&O at 12, is dated the same day Claimant was allegedly admitted, and includes charges for treatment presumably not yet rendered at Sana Hospital that Claimant allegedly paid prior to the bill's presentation. JXs 11, 51; *See Maryland Shipbuilding & Dry Dock Co. v. Jenkins*, 594 F.2d 404, 406 (4th Cir. 1979) ("Liability for medical services is incurred when the service is rendered, not when payment is tendered or when a workman's compensation award is made."). Therefore, we vacate the ALJ's award for reimbursement of Claimant's medical expenses and remand the case to him for additional findings and Section 7(d)(1) analysis. On remand, the ALJ must fully analyze whether the requirements under Section 7(d)(1)(A) or Section 7(d)(1)(B) were met to determine whether Claimant is entitled to reimbursement for his medical expenses. We further find vacatur and remand is required for the reasons set forth *infra*.

Reasonable and Necessary Treatment

Employer next argues the ALJ erred in finding it liable for reimbursing Claimant for his hospital medical expenses because he failed to make a finding that the care was reasonable and necessary, there were no medical records to support the reasonableness and necessity of the care, and the medical bill is invalid on its face. In response, Claimant contends Employer submitted no evidence showing Claimant's hospital treatment was either unnecessary or unrelated to his work injury. Cl. Resp. at 22. He asserts Employer's argument regarding the reasonableness and necessity of Claimant's hospital treatment

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three months, and underwent a laminectomy. JX 11 at 1. The invoice from Sana Hospital, dated April 20, 2010, and upon which the award for reimbursement of medical expenses is based, shows charges for a private room for ninety days, an operation, dressing, medicine, lab work, and a "phasytrapey," (sic) and indicates the hospital is in Jalalabad City. *Id.* at 2.

[17] In this regard, the ALJ must make findings and explain his determination as to whether Mitch and Barrens, considered separately, constituted Employer for purposes of Section 7(d)(1)(A) or constituted Employer or superintendent or foreman for purposes of Section 7(d)(1)(B).

[18] In addressing these issues, the ALJ must also determine whether Barrens is an agent of Employer, and whether the invoice was presented to Employer by means other than the presentation to Barrens.

should be dismissed as inadequately briefed or alternatively rejected because substantial evidence supports the reasonableness and necessity of the hospital care Claimant received. *Id.* at 29-31. In addition, he asserts Employer's argument regarding the validity of the medical bill supporting reimbursement should be rejected or considered waived because Employer did not present that argument to the ALJ and submitted the bill as a joint exhibit. *Id.* at 26-29.

Even when the requirements of either subsection (A) or (B) under Section 7(d)(1) are met, the claimant still must establish the medical treatment for which reimbursement is sought was both reasonable and necessary for the work injury. *Dupre v. Cape Romaine Contractors, Inc.*, 23 BRBS 86, 94 (1989); *Ranks v. Bath Iron Works Corp.*, 22 BRBS 302, 308 (1989) (citing *Anderson*, 22 BRBS at 23). The claimant bears the burden of showing the medical treatment he received was reasonable and necessary for the work injury. *Schoen*, 30 BRBS at 114; *Krohn v. Ingalls Shipbuilding, Inc.*, 29 BRBS 72, 75 (1994); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994). We agree with Employer's position that the ALJ did not make the necessary findings as he awarded Claimant reimbursement "for his reasonable and necessary medical care in 2010" without providing his rationale or citing the evidence he relied upon in finding the care listed on the bill was reasonable and necessary. Because Employer specifically raised a question as to the reasonableness and necessity of the medical treatment Claimant received and the associated charges,[19] *Salusky v. Army Air Force Exch. Serv.*, 3 BRBS 22, 26 (1975), the ALJ has a duty to resolve the dispute and provide his rationale and the evidence he considered. 5 U.S.C. §557(c); 33 U.S.C. §919(d); *Plappert v. Marine Corps. Exch.*, 31 BRBS 13, 18, *aff'd on recon.*, 31 BRBS 109 (1997) (en banc). Accordingly, we vacate the ALJ's finding that Claimant's medical treatment in 2010 was both reasonable and necessary and remand the case for additional analysis and explanation.

Physician's Report

Finally, Employer contends the ALJ did not make any findings regarding Claimant's medical providers' failure to provide their first reports of treatment. In response, Claimant asserts the ALJ did not need to explicitly state he was excusing the providers' failure to file because the record supports that excusing such a failure was in the interests of justice, and Employer did not establish how it was prejudiced by the failure or

[19] Employer argued there were no medical bills to which to apply the medical fee schedule, no receipts showing the medical expenses incurred, and no medical records showing whether the treatment rendered was reasonable and necessary. Employer also raised questions as to the reliability of the documentation submitted from alleged Afghani providers. Emp. Post-Hearing Br. at 9-10, 20-21.

show the treatment was unreasonable or unnecessary. Cl. Resp. at 20-22. He further asserts Employer's failure to notify him of his rights under the DBA should preclude it from arguing for strict compliance with Section 7. *Id.* at 23-26.

Under Section 7(d)(2) of the Act, the employer is not required to reimburse a claimant for medical expenses he paid unless, within ten days following the first treatment, the physician giving such treatment provides an initial report of treatment to the employer and the district director. 33 U.S.C. §907(d)(2). The Secretary of Labor may excuse a physician's failure to provide such a report within ten days if she finds it is in the interest of justice to do so. *Id.*; 20 C.F.R. §702.422.[20] It is in the interest of justice to excuse the failure to properly file medical reports when the claimant "substantially complied with the Act's requirements," and the employer was not prejudiced by the delay. *Roger's Terminal & Shipping Corp. v. Director, OWCP*, 784 F.2d 687, 694 (5th Cir. 1986). However, it is the claimant's burden to show compliance with Section 7(d), and the decision to excuse a physician's failure to file a report is discretionary. *Jenkins*, 549 F.2d at 407; *Toyer v. Bethlehem Steel Corp.*, 28 BRBS 347, 353 (1994); *Rieche v. Tracor Marine, Inc.*, 16 BRBS 272, 276 (1984).

In the instant case, the ALJ did not make any findings relevant to whether Claimant's provider filed a first report of treatment in accordance with Section 7(d)(2), nor did he remand the case to the district director for a determination as to whether noncompliance should be excused. Therefore, on remand, if the ALJ finds the requirements of either Section 7(d)(1)(A) or (B) have been met, and the treatment for which reimbursement is sought was both reasonable and necessary, the ALJ must remand the case to the district director for a discretionary determination as to whether to excuse Claimant's noncompliance with Section 7(d)(2) in the interests of justice. 33 U.S.C. §907(d)(2); *see generally Toyer*, 28 BRBS at 353-354 (1994).

Accordingly, we vacate the ALJ's award for reimbursement of Claimant's medical expenses and remand the case to him for further findings and analysis consistent with this

[20] The regulation authorizes the Director to excuse failure to file a report when "good cause" is shown, but other implementing regulations delegate this authority, and the authority to oversee medical treatment, to the district directors. 20 C.F.R. § 702.422(a), (b); *see Ferrari*, 34 BRBS at 81 n.4 (authority to excuse non-compliance with Section 7(d)(2) rests with the district director and not the ALJ); *Plappert*, 31 BRBS at 18; *Krohn*, 29 BRBS at 74; *see also Toyer v. Bethlehem Steel Corp.*, 28 BRBS 347, 349 (1994); 20 C.F.R. §702.407 (the Director, "through the district directors and their designees shall actively supervise the medical care of an injured employee covered by the Act.").

decision.[21] In all other respects, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[21] Because we are remanding the case to the ALJ for additional fact finding and further analysis, we decline to address Employer's argument that it is entitled to a credit against any future medical expenses. *Chavez v. Director, OWCP*, 961 F.2d 1409 (9th Cir. 1992). On remand, if the ALJ concludes Claimant is not entitled to reimbursement for any or all the medical expenses initially awarded, Employer may raise its credit argument for the ALJ to consider in the first instance.