U.S. Department of Labor

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

BRB No. 24-0111

WALTER B. CREWS, JR.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	**NOT-PUBLISHED**
	)	
GIS HOLDINGS, L.L.C. (AVONDALE OPERATIONS)	)	
	)	DATE ISSUED: 08/25/2025
and	)	
	)	
THE GRAY INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	
	)	DECISION and ORDER

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

Scott E. Silbert (Silbert, Pitre & Friedman), New Orleans, Louisiana, for Claimant.

Frank J. Torres (Blue Williams, L.L.C.), Metairie, Louisiana, for Employer and its Carrier.

Before: GRESH, Chief Administrative Appeals Judge, JONES, Administrative Appeals Judge, and ULMER, Acting Administrative Appeals Judge.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Noran J. Camp's Decision and Order Awarding Benefits (2022-LHC-00840) rendered on

a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act). We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[1] 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

The ALJ accepted the parties' stipulation that Claimant sustained a work-related back injury with Employer on September 2, 1995. In determining the nature and extent of Claimant's work-related injury, the ALJ credited the opinions of both Claimant's treating physician and Employer's expert physician because they agreed Claimant's condition had reached maximum medical improvement (MMI) after an intrathecal pump implantation surgery. Relying on the opinion of Employer's expert, the ALJ found Claimant's condition reached MMI on October 4, 2007, two weeks after the implantation surgery. Therefore, he awarded Claimant temporary total disability (TTD) benefits from September 12, 1995, through October 4, 2007, and permanent total disability (PTD) benefits from October 5, 2007, through the present and continuing.[2] The ALJ also awarded Claimant reasonably necessary medical treatment for his work-related injury.

On appeal, Employer contends the ALJ erred in finding Claimant established his work-related condition reached permanency on October 4, 2007. It argues the ALJ erred in crediting Claimant's treating physician's opinion because he is unfamiliar with the implantation surgery situation because he did not start treating Claimant until 2013, well after the 2007 surgery. Claimant responds in support of the ALJ's award.

The claimant has the burden of establishing the nature and extent of his disability. *Gacki v. Sea-Land Serv., Inc.*, 33 BRBS 127, 128 (1998); *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56, 59 (1980). A claimant's condition has reached MMI when he is no longer undergoing treatment intended to improve his work-related condition or when that condition is of a lasting and indefinite duration beyond a normal healing period. *See Gulf Best Elec., Inc. v. Methe*, 396 F.3d 601, 605 (5th Cir. 2004); *La. Ins. Guar. Ass'n v. Abbott*, 40 F.3d 122, 125-126 (5th Cir. 1994); *see also McCaskie v. Aalborg Ciserv Norfolk, Inc.*, 34 BRBS 9, 12 (2000). Nevertheless, if a physician believes further

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Fifth Circuit because Claimant sustained his injuries in New Orleans, Louisiana. 33 U.S.C. §921(c); *see Roberts v. Custom Ship Interiors*, 35 BRBS 65, 67 n.2 (2001), *aff'd*, 300 F.3d 510 (4th Cir. 2002), *cert. denied*, 537 U.S. 1188 (2003); 20 C.F.R. §702.201(a).

[2] As Employer had been voluntarily paying TTD benefits, the ALJ awarded it a credit for payments made. D&O at 22.

treatment should be undertaken, then a possibility of improvement exists. *Abbott*, 40 F.3d at 126. The Benefits Review Board must affirm a finding of fact establishing the date of MMI if it is supported by substantial evidence. *Ezell v. Direct Labor, Inc.*, 33 BRBS 19, 24 (1999); *Mason v. Bender Welding & Mach. Co.*, 16 BRBS 307, 309 (1984). It is the ALJ's duty to weigh the evidence, and associated credibility determinations are reserved to the discretion of the factfinder; the Board may not substitute its inferences for the ALJ but must affirm his findings unless they are contrary to law or unsupported by substantial evidence. *See Mendoza v. Marine Pers. Co.*, 46 F.3d 498, 500-501 (5th Cir. 1995); *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 944 (5th Cir. 1991).

Regarding the nature of Claimant's disability, the ALJ considered the medical opinions of Dr. Eric Gabriel and Dr. Bradley Heiges[3] that Claimant's condition had reached MMI following his intrathecal pump implantation surgery.[4] Decision and Order (D&O) at 18-19; Joint Exhibit (JX) 2 at 34-35; Employer's Exhibits (EXs) 1 at 9, 2 at 3. He gave both opinions "great weight" and specifically credited Dr. Heiges's opinion that Claimant's back condition reached MMI two weeks after the surgery on October 4, 2007. D&O at 19; EX 2 at 3. Therefore, the ALJ determined Claimant's disability related to his back injury became permanent on October 4, 2007. D&O at 19.

Initially, we reject Employer's argument that the ALJ erred in crediting Dr. Gabriel's opinion. Employer's Brief (Emp. Brief) at 5. During his 2022 deposition, Dr. Gabriel stated he started treating Claimant in 2013, when Dr. Hudson, Claimant's original treating physician, retired and transferred all his patients, and Dr. Gabriel has been treating Claimant since. JX 2 at 7-8. Dr. Gabriel testified he believed Claimant's work-related back condition reached MMI "a long time ago." *Id.* at 34. When asked for a specific date,

[3] Dr. Eric Gabriel, a neurosurgeon, is Claimant's treating physician. JX at 6-8. Dr. Bradley Heiges, an orthopedic surgeon, examined Claimant at Employer's request. EX 1 at 5-7.

[4] The ALJ also considered the medical opinion of Dr. Calvin Hudson, a neurosurgeon. D&O at 18. At his deposition, Dr. Hudson testified he performed a spinal injection on Claimant on July 3, 2002, which showed Claimant "got about eight hours of excellent relief with the morphine injection into his spine." JX 3 at 18. He opined Claimant "was a good candidate" for the intrathecal pump. *Id.* Contrary to Employer's assertion, the ALJ permissibly found that because Dr. Hudson believed Claimant needed an additional procedure to decrease his level of pain, Claimant's condition had not reached MMI prior to the intrathecal pump implantation surgery. *See La. Ins. Guar. Ass'n v. Abbott*, 40 F.3d 122, 125-126 (5th Cir. 1994); *McCaskie v. Aalborg Ciserv Norfolk, Inc.*, 34 BRBS 9, 12 (2000); D&O at 18; Employer's Brief at 5.

he concluded it was "probably" when the intrathecal pump was placed because Claimant has "been stable since then."[5] *Id.* at 34-35. Based on his credentials and his familiarity with Claimant, having treated him for nearly ten years, the ALJ gave Dr. Gabriel's opinion "great weight." D&O at 10 n.17, 13. As the ALJ fully examined Dr. Gabriel's report and deposition testimony to arrive at the conclusion that he is qualified to render an opinion worthy of "great weight," Employer has not shown the ALJ's determination to be "inherently incredible or patently unreasonable." *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *c.f., Lennon v. Waterfront Transp.*, 20 F.3d 658, 663 (5th Cir. 1994) (court held the Board properly reversed ALJ's decision where ALJ's determination was patently unreasonable). Indeed, Employer's contention that Dr. Gabriel's opinion amounts to "conjecture" because he did not treat Claimant until well after the 2007 surgery is effectively a request to reweigh the evidence which we are not empowered to do. *See Sea-Land Servs., Inc. v. Director, OWCP* [*Ceasar*], 949 F.3d 921, 925 (5th Cir. 2020); Emp. Brief at 5.

We also reject Employer's assertion that the ALJ's MMI date determination is "arbitrary" and nothing more than "sterile conjecture."[6] Emp. Brief at 5. To the contrary, the ALJ accurately found Claimant underwent intrathecal pump implantation surgery on September 20, 2007. D&O at 6; Hearing Transcript at 13. We affirm this finding as Employer does not challenge it. *See Scalio v. Ceres Marine Terminals, Inc*., 41 BRBS 57, 58 (2007). In addition, Dr. Heiges noted Claimant "had relief" following the "initial placement of the intrathecal pump."[7] EX 2 at 3. He considered the surgery to be "appropriate treatment" based on Claimant's subjective improvement after the pump was placed and did not recommend any future treatment other than "continuation of his current intrathecal pump" by Dr. Gabriel. *Id.* Dr. Heiges opined Claimant's condition reached MMI at the two-week mark following the procedure. *Id.* The ALJ gave "great weight" to

[5] Dr. Gabriel testified Claimant's condition has been consistent and without improvement since he started treating him, and he opined Claimant is "the best he's going to get." JX 2 at 21-22.

[6] Interestingly, the ALJ specifically noted "Employer in its closing brief does not directly address the issue of when Claimant reached MMI." D&O at 18. Before us, Employer does not suggest a less "conjectural" date. Rather, it asserts either Claimant's condition is still temporary, Emp. Petition for Review at 2, or his condition became permanent when Dr. Gabriel first started treating him, Emp. Brief at 5.

[7] Dr. Heiges noted Claimant had two "successive revisions" following the initial procedure but opined his MMI determination is "relevant" to the initial surgery. EX 2 at 3.

Dr. Heiges's opinion based on his credentials and appropriate deference to Dr. Gabriel as Claimant's treating physician. D&O at 15. As Drs. Gabriel and Heiges both agreed Claimant's back condition reached MMI after the intrathecal pump implantation surgery, the ALJ permissibly credited Dr. Heiges's opinion that Claimant's condition reached MMI two weeks after the surgery – on October 4, 2007. *See Mendoza*, 46 F.3d at 500-501; *Mijangos*, 948 F.2d at 944; D&O at 19; EXs 1 at 9, 2 at 3.

Because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant's back condition reached MMI on October 4, 2007.[8] *See Noble Drilling Co. v. Drake*, 795 F.2d 478, 481 (5th Cir. 1986) (substantial evidence is that which a reasonable mind could accept to support a conclusion); *Mendoza*, 46 F.3d at 500-501; *Mijangos*, 948 F.2d at 944; D&O at 19. Consequently, we affirm the ALJ's determination that Claimant is entitled to PTD benefits from October 5, 2007, through the present and continuing. D&O at 22.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.[9]

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge

[8] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant's disability is total. *Scalio v. Ceres Marine Terminals, Inc*., 41 BRBS 57, 58 (2007); D&O at 22.

[9] As we have processed this appeal, Claimant's Motion to Expedite is moot. 20 C.F.R. §802.219.