

U.S. Department of Labor

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



BRB No. 20-0493

WELLON PIERRE, JR.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED: 03/08/2021
CERES GULF, INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order and the Order Granting Employer’s Motion for Reconsideration of Angela F. Donaldson, Administrative Law Judge, United States Department of Labor.

William S. Vincent, Jr. (The Law Offices of Williams S. Vincent, Jr.), New Orleans, Louisiana, for Claimant.

James M. Mesnard (Postol Law Firm, P.C.), McLean, Virginia, for Self-Insured Employer.

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

PER CURIAM:

Claimant appeals Administrative Law Judge Angela F. Donaldson’s Decision and Order and Order Granting Employer’s Motion for Reconsideration (2019-LHC-00021) rendered on a claim filed pursuant to the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (Act). We must affirm the administrative law judge’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 was in a work-related vehicle accident on May 28, 2013. He visited the hospital that day, was treated for a headache, and was released. EX 13.¹ On June 10, 2013, Claimant filed a claim for compensation, asserting he sustained injuries to his back, left knee, head, and tooth in the accident; he claimed, “in general,” he did not “feel very good” and sought temporary total disability and medical benefits. EX 5; Cl. Pre-Hearing Statement (May 21, 2019). At the hearing, Claimant, a Vietnam veteran, testified the work accident also aggravated his pre-existing post-traumatic stress disorder (PTSD). Tr. at 54-56. Employer stipulated to the accident but disputed other aspects of Claimant’s claim and did not pay any benefits.²

The administrative law judge applied Section 20(a) of the Act, 33 U.S.C. §920(a), to presume Claimant’s back, neck, and head injuries, but not his knee, dental, or psychological injuries, are related to his employment accident. Decision and Order at 34-37, 41-42. She then found Employer failed to rebut the presumption. *Id.* at 43-44. With respect to the work-related injuries, the administrative law judge found Claimant failed to establish they prevented him from returning to work and denied disability benefits. *Id.* at 46-48. Because Claimant suffered work-related injuries, the administrative law judge found he is entitled to “ongoing medical benefits only for the treatment and care of those [work-related] conditions and to no other alleged conditions.” *Id.* at 49.

Following the decision, Employer filed a motion for reconsideration requesting the administrative law judge clarify the termination date for medical benefits. The administrative law judge granted Employer’s motion; she found Employer is not liable for treatment for Claimant’s back and neck conditions after April 30, 2015, and for his head injury after June 3, 2013. She amended her prior decision accordingly. Order on Recon. at 2; *see* Decision and Order at 50. Claimant appeals both decisions. Employer responds, urging affirmance.

Claimant contends it was erroneous for the administrative law judge to grant Employer’s motion for reconsideration and set termination dates for his medical benefits

¹ Upon examination, Claimant’s neck and back were negative for injury, and he was released with medication for his headache and no work restrictions. EX 13. The next day, he presented with head, neck, and low back pain, and on June 1, 2013, he complained of left knee pain. EXs 14-15. Each time, he was examined and released with no restrictions. *Id.*

² Following the incident, Claimant failed to appear for a mandatory drug test. This non-compliance violated the collective bargaining agreement. Claimant’s union card was revoked, rendering him unable to work on the waterfront. EX 27; Tr. at 140-144.

because that is solely within the purview of the district director, who is to actively supervise medical care. He also asserts the administrative law judge misread one of the medical reports on which she relied.³ We reject Claimant's contentions.

Where a claimant is not entitled to disability benefits, as here, the employer remains liable for necessary medical benefits for a work-related injury. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993); *Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9 (2001), *aff'd*, 32 F. App'x 126 (5th Cir. 2002). However, Section 7(a) of the Act states: "[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.*" 33 U.S.C. §907(a) (emphasis added); 20 C.F.R. §702.402. While Claimant is correct that active supervision of a claimant's medical care is performed by the Secretary of Labor and his delegates, the district directors, 33 U.S.C. §907(b); 20 C.F.R. §702.407, medical issues which involve factual disputes, as opposed to those which are purely discretionary, remain in the domain of the administrative law judge. *Weikert v. Universal Mar. Serv. Corp.*, 36 BRBS 38 (2002). The administrative law judge, therefore, has the authority to determine the necessity of medical care based on the evidence of record. *See, e.g., Ramsay Scarlett & Co. v. Director, OWCP*, 806 F.3d 327, 49 BRBS 87(CRT) (5th Cir. 2015); *Weikert*, 36 BRBS 38. Consequently, the administrative law judge acted within her authority in issuing her Order on Reconsideration.

To the extent Claimant challenges the termination dates, we reject the challenge. The administrative law judge relied on the opinions of Dr. Robert Steiner and Dr. Rachel Boulmay in determining Claimant's work-related injuries had resolved. She found Claimant's head injury resolved by June 3, 2013, when Dr. Boulmay reported Claimant had a "small scabbed area back of head, nontender and not red around it." Order on Recon. at 2; EX 16 at 88. She found Claimant's neck and back injuries resolved by April 30, 2015, when Dr. Steiner stated there was "no objective evidence of injury to [Claimant's] neck, back or knees as it relates to the incident of 5/28/13." Order on Recon. at 1-2; EX 25 at 4.⁴

³ Claimant also asserts he was never given the opportunity to see his first choice of physician. We decline to address this argument as he did not raise it before the administrative law judge and cannot raise it for the first time on appeal to the Board. *See Bourgeois v. Director, OWCP*, 946 F.3d 263, 53 BRBS 91(CRT) (5th Cir. 2020); *Boyd v. Ceres Terminals*, 30 BRBS 218 (1997).

⁴ Dr. Steiner diagnosed Claimant with age-related multilevel degenerative changes in his neck, low back, and knees. EX 25 at 4. Contrary to Claimant's assertion, the only future treatment Dr. Steiner identified was limited to anti-inflammatories for Claimant's

Substantial evidence supports the finding that Claimant's work-related conditions resolved as of June 3, 2013, and April 30, 2015, respectively, and that further medical treatment for the work injuries is not necessary. *Arnold*, 35 BRBS at 16-17; *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, we affirm the administrative law judge's Decision and Order and Order Granting Employer's Motion for Reconsideration.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

age-related degenerative conditions; he identified no necessary treatment for the resolved work conditions. *Id.*