BRB No. 01-0902

CHARLES KNIGHT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
RYAN-WALSH STEVEDORING COMPANY	)	DATE ISSUED: August 12, 2002
	)	
and	)	
	)	
EMPLOYERS NATIONAL INSURANCE COMPANY c/o ALABAMA INSURANCE GUARANTY ASSOCIATION	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order and the Order Denying Claimant's Motion for Reconsideration of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

Charles Knight, Pensacola, Florida, *pro se*.

Douglas L. Brown (Armbrecht Jackson LLP), Mobile, Alabama, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order and the Order Denying Claimant's Motion for Reconsideration (2000-LHC-916, 1697) of Administrative Law Judge Clement J. Kennington 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). In an appeal by a claimant who is not represented by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law to

determine if they are rational, supported by substantial evidence, and in accordance with law; if they are they must be affirmed. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant began work as a longshoreman in 1977, and typically sought work from a hiring hall where gang members were selected based upon their seniority and work qualifications. Claimant was unable to perform his normal work duties for two weeks after he was diagnosed as suffering from respiratory problems on March 25, 1986. After receiving treatment, his breathing problems were controlled, and claimant returned to his usual employment. Claimant continued to work until he injured his back on February 23, 1989, as he was moving pallets in the hatch of a ship. He was released for light duty work on May 23, 1989, and subsequently, following an examination on July 31, 1989, was released for full duty work with no restrictions. Emp. Ex. 13. Employer paid claimant temporary total disability benefits for this injury from February 28, 1989 to March 12, 1989, and from March 25, 1989 to June 26, 1989, pursuant to a settlement agreement. 33 U.S.C. §908(i); Emp. Exs. 13, 14. Claimant returned to his former employment in June 1989, and worked until he was involved in a non-work-related automobile accident on July 9, 1997. Emp. Ex. 19. Claimant did not return to work as a longshoreman following this accident, but worked as an account manager and maintenance supervisor in 1998 and as a maintenance supervisor from February 22, 1999 through the date of the hearing. Tr. at 77; Emp. Ex. 18. Claimant sought medical treatment under the Act following the car accident, benefits for the 1986 respiratory condition, plus an adjustment to his employment record with employer to reflect an increase in seniority for purposes of his pension plan.

In his decision, the administrative law judge found that the evidence shows that a supervening cause arising entirely outside of employment was the cause of claimant's current back condition and that the initial, work-related, lumbar strain had completely resolved. Thus, the administrative law judge found that employer is not liable for the medical treatment for claimant's present back condition. In addition, the administrative law judge found that employer agreed that it is liable for two weeks of temporary total disability for claimant's respiratory condition in 1986. The administrative law judge ordered employer to complete a form LS-208 to reflect this payment and to submit it to Local 1988 of the International Longshoremen's Association, so that the work-related nature of the injury was communicated. However, the administrative law judge refused to find employer liable for reimbursement for loss of pension benefits claimant incurred as a result of his not working the requisite hours in 1987, 1988, 1989, 1995 and 1996, due to his decreased seniority, as the administrative law judge concluded that this request is based on conjecture and that there is no remedy or legal basis for such action under the Act. The administrative law judge also found that claimant is not entitled to disability benefits for any time he lost due to his decreased seniority. Subsequently, the administrative law judge summarily denied claimant's motion for reconsideration.

Claimant, without legal representation, appeals this decision. Employer responds, urging affirmance of the administrative law judge's decision.

Initially, we affirm the administrative law judge's finding that employer is not liable for claimant's medical treatment for his current back condition. Employer is liable for medical expenses incurred as a result of a work-related injury. 33 U.S.C. §907; *James v. Pate Stevedoring Co.*, 22 BRBS 271 (1989). Employer cannot be held liable for compensation benefits or medical treatment for an injury that was caused by a subsequent non work-related event which was not the natural or unavoidable result of the initial work injury. *See Cyr v. Crescent Wharf & Warehouse Co.*, 211 F.2d 454 (9th Cir. 1954); *Bailey v. Bethlehem Steel Corp.*, 20 BRBS 14 (1987), *aff'd mem.*, No. 89-4803 (5th Cir. April 19, 1990). Where the subsequent injury or aggravation is not a natural or unavoidable result of the work injury, but is the result of an intervening cause, employer is relieved of liability for the disability and medical treatment attributable to the subsequent injury. *Arnold v. Nabors Offshore Drilling Inc.*, 35 BRBS 9 (2001), *aff'd*, 32 Fed. Appx. 126 (5th Cir. 2002)(table); *Plappert v. Marine Corps Exchange*, 31 BRBS 13, *aff'd on recon. en banc*, 31 BRBS 109 (1997); *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991); *Marsala v. Triple A Machine Shop*, 14 BRBS 39 (1981).

In the present case, the administrative law judge found that claimant had been released for full duty in 1989 and that he returned to his employment with no further complaints until he was involved in a non work-related automobile accident on July 9, 1997. Claimant was injured when his automobile was struck by another car that ran a red light. Emp. Ex. 19 at 26. Following this accident, claimant was treated by Dr. Timmons who found claimant to be suffering from a lumbar strain, noting that claimant had strained his back previously but had fully recovered with conservative treatment. Emp. Ex. 17. Dr. Timmons prescribed medication and physical therapy to treat claimant's lumbar strain resulting from the automobile accident. The administrative law judge found that claimant did not request medical treatment for any back condition until the accident occurred in 1997, and this finding is supported by the record. *See* Emp. Ex. 11. The administrative law judge concluded that "[t]he evidence clearly demonstrated a supervening cause arising entirely outside of employment that overpowered and nullified claimant's initial lumbar strain, which

had completely resolved...." Decision and Order at 9.[1] Thus, as it is rational and supported by substantial evidence, we affirm the administrative law judge's finding that employer is not liable for medical treatment for claimant's present lumbar strain. *See Arnold*, 35 BRBS at 15.

Claimant also sought temporary total disability benefits for time he missed work in 1986 due to a respiratory condition. Prior to the hearing, employer agreed that claimant is entitled to an additional period of temporary total disability benefits and related medical treatment for this condition. 33 U.S.C. §§907, 908(b). In considering claimant's request that the administrative law judge order an adjustment to his seniority for purposes of the union pension plan calculation, the administrative law judge properly found that he does not have the jurisdiction to order such an adjustment.[2] *See generally* 33 U.S.C. §919(a); *Jourdan v. Equitable Equipment Co.*, 32 BRBS 200 (1998), *aff'd sub nom. Equitable Equipment Co. v. Director, OWCP*, 191 F.3d 630, 33 BRBS 167(CRT) (5th Cir. 1999)(no jurisdiction over a cause of action wholly unrelated to an underlying claim for compensation). Thus, as

[1]The Section 20(a) presumption applies to the issue of whether an injury is causally related to employment. In order to invoke the Section 20(a) presumption, claimant must prove that he suffered a harm and that employment conditions existed or an accident occurred which could have caused, aggravated, or accelerated the condition. *See Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). The administrative law judge rationally found that the Section 20(a) presumption is not invoked in this case as there is no evidence that claimant's current back condition could be due to his previous work-related back injury. *See generally Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996).

[2]The administrative law judge did order employer to complete a Form LS-208 demonstrating its payment of disability compensation and to provide it to union officials.

the administrative law judge's decision accords with law, we reject claimant's contention that the administrative law judge was required to adjust his seniority date.

In addition, the administrative law judge denied claimant compensation benefits for the years 1987, 1988, 1989, 1995 and 1996. Section 8 of the Act, 33 U.S.C. §908, provides the formulae used to determine compensation for disability. Disability is defined in Section 2(10), 33 U.S.C. §902(10), as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." The employee has the burden of establishing the nature and extent of disability. *See generally Gacki v. Sea-Land Service, Inc.*, 33 BRBS 127 (1998). There is no evidence of record that claimant was unable to work following either the period of temporary total disability due to his respiratory condition in 1986 or his release to full duty following the back strain in 1989. Moreover, as the administrative law judge correctly found, it is too speculative to conclude that claimant would have worked additional hours in 1987, 1988, 1989, 1995 and 1996 if he had been credited with the additional seniority he lost in 1986. Therefore, as claimant has not established that he was unable to perform his usual duties due to a work injury, with the exception of the periods of temporary total disability in 1986 and 1989, we affirm the administrative law judge's finding that claimant is not entitled to any additional benefits under the Act.

Accordingly, the administrative law judge's Decision and Order and Decision and Order Denying Claimant's Motion for Reconsideration are affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge