BRB No. 04-0928

JUAN JIMENEZ	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
PINNACLE MANAGEMENT SERVICES	)	DATE ISSUED: 08/25/2005
	)	
and	)	
	)	
CNA CASUALTY OF CALIFORNIA	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Lewis S. Fleishman (Richard Schechter, P.C.), Houston, Texas, for claimant.

Andrew Z. Schreck (Henslee, Fowler, Hepworth & Schwartz, L.L.P.), Houston, Texas, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2003-LHC-02388) of Administrative Law Judge Ralph A. Romano 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 findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant fell from a cargo tank onto his back on January 12, 2003, during the course of his employment for employer. He immediately received treatment at East

Houston Regional Hospital. X-rays of claimant's back showed spondylolysis and spondylolisthesis. Claimant was examined the next day by Dr. Gonzalez; Dr. Gonzalez prescribed physical therapy and medication until he released claimant to return to work without restrictions on March 11, 2003. Employer voluntarily paid claimant compensation for temporary total disability from January 14 to March 10, 2003. Dr. Esses examined claimant on September 4, 2003. He diagnosed spondylolisthesis with bilateral nerve root compression, and he opined that claimant was unable to return to work for employer. Claimant has not returned to any employment, and he sought compensation for total disability from March 10, 2003, and for the medical treatment and testing recommended by Dr. Esses.

In his decision, the administrative law judge found that claimant failed to establish that he was unable to return to his usual employment for employer after March 10, 2003, or that he requires further medical treatment for his work injury. Accordingly, the claim for additional compensation and medical benefits was denied.

On appeal, claimant argues that the administrative law judge erred by not addressing when claimant's work injury reached maximum medical improvement and that he inadequately discussed the evidence of record. Claimant further argues that the administrative law judge's denial of medical treatment is not supported by substantial evidence, and that the administrative law judge erred by foreclosing claimant's entitlement to future medical care. Employer responds, urging affirmance.

Claimant has the burden of establishing the nature and extent of his disability. *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56, 59 (1980). In order to establish a *prima facie* case of total disability, claimant must prove that he is unable to perform his usual work due to the injury. *See, e.g., Gacki v. Sea-Land Serv., Inc.*, 33 BRBS 127 (1998); *Delay v. Jones Washington Stevedoring Co.*, 31 BRBS 197 (1998). In this case, the administrative law judge, relying on the opinions of Drs. Gonzalez, Randall, and Barnes, found that claimant was able to perform his usual employment on March 11, 2003. Dr. Gonzalez treated claimant's work injury. Dr. Gonzalez referred claimant for evaluation to Dr. Randall, an orthopedic surgeon. Dr. Randall examined claimant twice in February 2003, and he opined that claimant was capable of returning to work without restrictions on February 28, 2003. EX 3 at 5. Thereafter, Dr. Gonzalez opined that claimant was capable of returning to work without restrictions on March 11, 2003. CX 7 at 43-44. Dr. Barnes examined claimant at the request of the Department of Labor on May 1, 2003. Dr. Barnes released claimant to return to light-duty work for one week and then to full-time work without restrictions. CX 3 at 34-35. Dr. Barnes also stated that he would not disagree with Dr. Gonzalez's assessment that claimant was capable of returning to work by the end of March 2003. CX 3 at 35. As the administrative law judge acted within his discretion in crediting the opinions of Drs. Gonzalez, Randall, and Barnes, over that of Dr. Esses, we affirm the administrative law judge's finding that

claimant was able to perform his usual employment after March 11, 2003, as it is supported by substantial evidence and rational.[1] *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962).

Claimant also challenges the administrative law judge's finding that he is not entitled to medical treatment for his work-related back injury. Section 7(a) of the Act, 33 U.S.C. §907(a), states that "[t]he employer shall furnish such medical, surgical and other attendance or treatment . . . medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require." *See Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988). In order for a medical expense to be awarded, it must be reasonable and necessary for the treatment of the injury at issue. *See Davison v. Bender Shipbuilding & Repair Co.*, 30 BRBS 45 (1996); 20 C.F.R. §702.402. It is claimant's burden to prove the elements of his claim for medical benefits. *See Ingalls Shipbuilding, Inc., v. Director, OWCP*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993).

In this case, the administrative law judge found that the evidence does not support entitlement to additional medical treatment after March 10, 2003. The administrative law judge credited the opinions of Drs. Gonzales, Randall, and Barnes that claimant did not require further medical care other than, possibly, continued use of medication as of the date they last examined him. CXs 3 at 34-35, 7 at 44, 8 at 43-44. The administrative law judge further credited the observation of these doctors that claimant's reported symptoms were inconsistent with their examination findings. CXs 3 at 19-20, 32-33, 7 at 37, 8 at 20, 23-25, 27. The administrative law judge concluded that claimant is not a reliable reporter of his symptoms, and he found that claimant exaggerated and inconsistently reported the distance he allegedly fell, with reports varying from two to three feet, to six to nine feet, to 20 feet. Tr. at 73-74; CXs 3 at 29, 4 at 6, 7 at 16, 8 at 15-16; EXs 1 at 7, 5 at 1. For these reasons, the administrative law judge found the reports of the credited doctors better documented and reasoned than the report of Dr. Esses, who testified that he relied on claimant's complaints of pain and functional restrictions. EX 4 at 34-35. Inasmuch as substantial evidence supports the administrative law judge's finding that claimant did not establish that his work injury requires further medical treatment, we affirm the denial of the claim for additional medical treatment.[2] *See Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9 (2001), *aff'd*, 32 Fed. Appx. 126 (5th Cir. 2002).

[1] Contrary to claimant's contention, as claimant was not disabled at all after this date the administrative law judge was not required to make a finding as to the date claimant's condition reached maximum medical improvement.

[2] We reject claimant's contention that the administrative law judge erred by allegedly foreclosing claimant's entitlement to future medical benefits. Claimant sought

With regard to the above holdings, we reject claimant's contention that the administrative law judge's analysis does not comport with the Administrative Procedure Act (APA).[3] Having set forth the evidence, the administrative law judge weighed the evidence and provided reasons for his conclusions based on the evidence. As claimant has not established reversible error in the administrative law judge's weighing of conflicting evidence, we reject claimant's contention that the administrative law judge's decision does not comport with the APA. *See generally James J. Flanagan Stevedores, Inc. v. Gallagher*, 219 F.3d 426, 34 BRBS 35(CRT) (5th Cir. 2000); *H.B. Zachry Co. v. Quinones*, 206 F.3d 474, 34 BRBS 23(CRT) (5th Cir. 2000).

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specific medical treatment recommended by Dr. Esses. Tr. at 6, 8; Claimant's Post-Hearing Brief at 19. The administrative law judge rationally found, based on the evidence of record before him, that claimant does not require the claimed medical care for his work injury. Decision and Order at 4. Employer, however, remains liable for any reasonable and necessary medical care which claimant establishes is related to his work injury, and a claim therefor is never time-barred. *See generally Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993); *Siler v. Dillingham Ship Repair*, 28 BRBS 38 (1994).

[3] The Administrative Procedure Act requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record." 5 U.S.C. §557(c)(3)(A). An administrative law judge must independently analyze and discuss the evidence, and must adequately detail the rationale behind his decision and specify the evidence upon which he relied. *Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988); *Williams v. Newport News Shipbuilding & Dry Dock Co.*, 17 BRBS 61 (1985).

Accordingly, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge