U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 16-0658

NORMAN SELTHON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: Aug. 4, 2017
JONES STEVEDORING COMPANY	)	
	)	
Self-Insured	)	ORDER on
Employer-Respondent	)	RECONSIDERATION

Claimant has filed a timely Motion for Reconsideration of the Board's Decision and Order in *Selthon v. Jones Stevedoring Co.*, BRB No. 16-0658 (Apr. 19, 2017) (unpub.). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Employer has filed a response brief, urging rejection of claimant's motion, to which claimant has replied.

In his motion for reconsideration, claimant asserts that the Board did not address whether an administrative law judge may reject hearsay testimony solely because it is hearsay. In its decision, the Board, citing *Richardson v. Perales*, 402 U.S. 389 (1971), stated that the administrative law judge properly recognized that hearsay evidence is admissible in cases arising under the Act and may be found credible and reliable. *Selthon*, slip op. at 4. Contrary to claimant's assertion, the admissibility of his hearsay testimony does not also require that his uncontradicted hearsay testimony be found sufficient to establish elements of his claim. Claimant bears the burden of establishing his entitlement to medical benefits. *See, e.g.*, *Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112 (1996). In this case, the administrative law judge reasonably determined that claimant's testimony that he asked Bay Hearing, LLC, to bill employer, and was told that Bay Hearing, LLC, and Willoughby Hearing unsuccessfully attempted to contact employer for authorization, also could refer to the providers' attempts to seek payment from employer after the fact. Thus, as claimant did not satisfy the fact-finder that he complied with Section 7(d)(1) of the Act, which is a prerequisite to entitlement to medical benefits, the administrative law judge did not err in denying reimbursement on this ground. *Maryland Shipbuilding & Dry Dock Co. v. Jenkins*, 594 F.2d 404, 10 BRBS 1 (4th Cir. 1979).

Claimant also contends that his direct testimony establishes that replacement hearing aids were reasonable and necessary for his work-related hearing loss. The Board affirmed the administrative law judge's finding that claimant's testimony was not

sufficient for this purpose. Claimant wore hearing aids at the time of his work injury. Tr. at 32. He testified that his hearing "changed dramatically" after the injury and that it "has steadily gotten worse and worse and worse." *Id*. at 32-33. Claimant's attorney asked, "[A]nd why did you need a new set of hearing aids[?]" *Id*. at 34. Claimant replied, "[B]ecause I couldn't hear with the hearing aids I had.…" *Id.* The administrative law judge found claimant's testimony that he did poorly on a hearing test insufficient to establish that the results were due to his work-related hearing loss. The administrative law judge stated that claimant did not provide any records from the audiologist concerning the test results. As claimant is not a medical professional, the administrative law judge declined to find that new hearing aids were reasonable and necessary for claimant's work-related hearing loss. In affirming this rational determination, the Board also noted that claimant had offered corroborative medical documentation in relation to his claim for medical treatment of his neck condition, but failed to do so with respect to the hearing loss claim. *Selthon*, slip op. at 4 n.4. Contrary to claimant's assertion, his testimony did not compel the administrative law judge to find that his replacement hearing aids were purchased due to the worsening of his work-related hearing loss or because his prior hearing aids were not working properly. *See generally Bath Iron Works Corp. v. Brown*, 194 F.3d 1, 33 BRBS 162(CRT) (1st Cir. 1999); *Steevens v. Umpqua River Navigation*, 35 BRBS 129 (2001).

The administrative law judge is entitled to draw reasonable inferences from the evidence of record. *Del Vecchio v. Bowers*, 296 U.S. 280 (1935). He also may decline to draw inferences therefrom, *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27(CRT) (9th Cir. 1988), and the Board must respect these determinations if they are rational. *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT) (9th Cir. 2010). The administrative law judge concluded that claimant's testimony was insufficient to meet his burden of proof by a preponderance of the evidence. The Board's affirmance of the administrative law judge's rational finding that claimant's testimony was insufficient to establish the elements of his claim for medical benefits is consistent with the Board's standard of review. Claimant has not established error in the Board's decision. Therefore, we deny claimant's motion for reconsideration.

Accordingly, claimant's motion for reconsideration is denied. 20 C.F.R. §802.409. The Board's decision is affirmed.

SO ORDERED.

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GREG J. BUZZARD
Administrative Appeals Judge

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RYAN GILLIGAN
Administrative Appeals Judge

_____
JONATHAN ROLFE
Administrative Appeals Judge