U.S. Department of Labor

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

BRB No. 17-0006

ACHOLAM HANIF	)	
	)	
Claimant	)	
	)	
v.	)	
	)	
COLUMBIA GRAIN	)	
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION	)	DATE ISSUED: Aug. 8, 2017
	)	
	)	
Employer/Carrier-Petitioner	)	
	)	
JONES STEVEDORING COMPANY	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Order Finding Columbia Liable of William Dorsey, Administrative Law Judge, United States Department of Labor.

James R. Babcock (Holmes Weddle & Barcott), Lake Oswego, Oregon, for Columbia Grain and Signal Mutual Indemnity Association.

James McCurdy and Bradley Krupicka (Lindsay Hart, LLP), Portland, Oregon, for Jones Stevedoring Company.

Before: BOGGS, BUZZARD and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Employer, Columbia Grain (Columbia), appeals the Order Finding Columbia Liable (2013-LHC-02086) of Administrative Law Judge William Dorsey rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers'

Compensation Act, 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 if they 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).

On April 13, 2012, while working for Columbia, claimant sustained an injury to his right knee when he slipped and fell down a set of stairs. Three days later, claimant sought medical treatment and was diagnosed by Dr. Breeze with a mild knee sprain. EX 8 at 27. Claimant returned to work for employer between April 20 and May 1, 2012. Claimant reported knee pain to Dr. Wu on May 10 and to Dr. Breeze on May 17. EXs 9 at 29; 10 at 31-32. On May 28, 2012, claimant worked an 8-hour shift for Jones Stevedoring Company (Jones).[1] Claimant sought medical attention for his knee the following day, reporting that he had had knee pain since the fall in April. EX 11 at 34. A June 5, 2012 MRI revealed a torn medial meniscus in claimant's right knee. EX 13 at 40. Claimant underwent a right knee arthroscopy and medial meniscectomy on June 8, 2012, followed by a second surgical procedure on April 5, 2013. EXs 14 at 41; 24 at 59. Claimant returned to work on August 6, 2013.

On April 2, 2013, claimant filed a claim under the Act against Columbia for the injury he sustained to his right knee on April 13, 2012. Columbia controverted the claim, asserting, inter alia, that claimant aggravated his knee condition during his subsequent work for Jones on May 28, 2012 such that Jones is the responsible employer.

The administrative law judge found that claimant's disability resulted from the April 13, 2012 right knee injury he sustained while working for Columbia. Thus, the administrative law judge found Columbia to be the employer responsible for claimant's benefits. Columbia appeals the administrative law judge's decision, challenging the administrative law judge's determination that it is the responsible employer. Jones responds, urging affirmance. Columbia has filed a reply brief.

Columbia contends the administrative law judge's finding that claimant's disability is due to his April 13, 2012 work-related right knee injury is neither supported

[1] Jones's records state that claimant worked as a utility driver. *See* EX 5 at 9. Claimant did not recall working for Jones on May 28, but testified at his deposition that when he had worked for Jones in the past, his employment duties consisted of walking from one electric car to another in order to turn off the cars' ignitions. *See* EX 29 at 80. The administrative law judge found that claimant worked for Jones on May 28, "more likely than not" in the capacity in which he had worked in the past. Order at 17. The administrative law judge found that this work "required a fair bit of walking and standing," as well as bending and crouching to reach into cars. *Id*. at 18; EX 29 at 80.

by substantial evidence nor consistent with applicable law. Columbia asserts that claimant's employment with Jones on May 28, 2012 aggravated claimant's condition, accelerated his need for medical treatment, and resulted in his disability.

The United States Court of Appeals for the Ninth Circuit, within whose jurisdiction this case arises, has stated that the rule for determining which employer is liable for the totality of claimant's disability in a case involving cumulative traumatic injuries is as follows: if the disability results from the natural progression of an initial injury and would have occurred notwithstanding a subsequent injury, then the initial injury is the compensable injury, and the employer at the time of that injury is responsible for the payment of benefits. If, on the other hand, the subsequent injury aggravates, accelerates, or combines with claimant's prior injury, thus resulting in claimant's disability, then the subsequent injury is the compensable injury and the subsequent employer is fully liable. *Metropolitan Stevedore Co. v. Crescent Wharf & Warehouse Co.* [*Price*], 339 F.3d 1102, 37 BRBS 89(CRT) (9th Cir. 2003), *cert. denied*, 543 U.S. 940 (2004); *Foundation Constructors, Inc. v. Director, OWCP*, 950 F.2d 621, 25 BRBS 71(CRT) (9th Cir. 1991).

In concluding that claimant's disability was due to the April 13, 2012 right knee injury, the administrative law judge addressed at length the opinion of Dr. Irvine, a Board-certified orthopedic surgeon and the only medical expert to offer an opinion in this case. Dr. Irvine opined that "the injury to [claimant's] meniscus occurred as a result of the trauma that occurred on April 13, 2012." EX 34 at 137. Dr. Irvine noted that claimant reported symptoms consistent with a meniscus tear prior to his work for Jones. EX 8 at 27. The administrative law judge acknowledged that Dr. Irvine conceded it was "within the realm of possibility" that claimant's meniscus was torn on another day, but such was not "the most likely scenario" in this case. EX 34 at 135-137. Dr. Irvine opined that it was unlikely that claimant's one day of employment with Jones caused claimant's meniscus tear due to the nature of the work claimant performed that day. *Id.* at 138. In addressing whether claimant's increased symptoms the day after his employment with Jones was due to that employment, Dr. Irvine stated it was likely that claimant was merely experiencing the "normal waning and waxing of symptoms of a meniscus tear," which is a common occurrence. *Id*. at 135. In this regard, the administrative law judge noted that claimant had been off work for almost a month prior to May 28, which supports the conclusion that claimant's knee was painful prior to working that day.[2] Order at 22. Thus, the administrative law judge concluded that the evidence establishes that claimant sustained a meniscal tear of his right knee while

[2] Following his April 13, 2012, injury, claimant reported to his physicians that he experienced knee symptoms and remained off work. *See* EXs 8 at 27; 9 at 29.

working for Columbia, that claimant's work at Jones did not aggravate or accelerate his knee condition, and that Columbia is the responsible employer. *Id.* at 24.

We reject Columbia's contention that the administrative law judge erred in evaluating the evidence of record and applying the law. The administrative law judge addressed the issue of the responsible employer in light of the relevant law, *see Price*, 339 F.3d 1102, 37 BRBS 89(CRT); *Foundation Constructors, Inc.*, 950 F.2d 621, 25 BRBS 71(CRT), and applied an appropriate evidentiary standard in reviewing the record as a whole to determine whether claimant's work at Jones caused, aggravated, or accelerated claimant's knee injury. *See generally Siminski v. Ceres Marine Terminals*, 35 BRBS 136 (2001). It is well established that the Board is not empowered to reweigh the evidence, but must accept the rational inferences and findings of fact of the administrative law judge which are supported by the record. *See, e.g., Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994); *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 30(CRT) (9th Cir. 1988). The administrative law judge's finding that claimant's disabling knee injury was due to the April 13, 2012 fall at Columbia is supported by substantial evidence in the form of Dr. Irvine's opinion, as well as his findings concerning the nature of claimant's employment with Jones on May 28, 2012.[3] We therefore affirm the administrative law judge's finding that Columbia is the responsible employer.

[3] We note, moreover, that the record contains no affirmative medical opinion supportive of a finding that claimant's single day of employment for Jones caused, aggravated or accelerated his right knee condition.

Accordingly, the administrative law judge's Order Finding Columbia Liable is affirmed.

SO ORDERED.

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JUDITH S. BOGGS
Administrative Appeals Judge

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GREG J. BUZZARD
Administrative Appeals Judge

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RYAN GILLIGAN
Administrative Appeals Judge