U.S. Department of Labor

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

BRB No. 17-0011

ARTHUR LEWIS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
FLUOR DANIEL CORPORATION	)	
	)	
and	)	DATE ISSUED: Aug. 10, 2017
	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA c/o AIG CLAIMS	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of Decision and Order of Larry W. Price, Administrative Law Judge, United States Department of Labor.

Arthur Lewis, Spring, Texas.

Jonathan A. Tweedy and Kelly F. Walsh (Brown Sims), New Orleans, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant, appearing without representation, appeals the Decision and Order (2016-LDA-00232) of Administrative Law Judge Larry W. Price 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.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). In an appeal by a claimant without legal representation, 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. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

On June 26, 2011, while working for employer as a material control specialist in Afghanistan, claimant experienced neck and shoulder pain. After undergoing medical treatment, claimant resigned from his job on July 31, 2011, and returned to the United States. Claimant was diagnosed with multiple levels of cervical spine stenosis, for which he underwent a C3 through C7 laminectomy, as well as spinal canal stenosis and borderline neural foraminal stenosis at L3/L4. Claimant filed a claim for benefits under the Act.

In a Decision and Order issued on May 31, 2013, the administrative law judge found that claimant sustained a work-related injury to his cervical spine, but that claimant's lumbar spine condition is not work-related. Claimant was awarded a period of temporary total disability benefits, followed by temporary partial disability benefits, and medical benefits for his cervical spine condition. *Lewis v. Fluor Daniel Corp.*, Case No. 2012-LDA-00510 (May 31, 2013).

Claimant moved for modification of the administrative law judge's 2013 Decision and Order, contending he obtained evidence establishing his entitlement to permanent total, rather than temporary partial, disability benefits. In a Decision and Order on Modification dated June 19, 2015, the administrative law judge modified the award to reflect claimant's entitlement to permanent partial, rather than temporary partial, disability benefits as of February 3, 2014. *Lewis v. Fluor Daniel Corp.*, Case No. 2014-LDA-00465 (Jun. 19, 2015). Claimant appealed the administrative law judge's decision on modification to the Board. The Board vacated the administrative law judge's denial of total disability benefits and certain medical benefits, and remanded the case to the administrative law judge for further consideration.[1] *Lewis v. Fluor Daniel Corp.*, BRB No. 15-0434 (July 21, 2016) (unpub.).

While his appeal of the administrative law judge's decision on modification was pending before the Board, claimant filed an LS-18 Pre-Hearing Statement with the Office of Administrative Law Judges asserting that employer was denying him access to medical care. A formal hearing was held on May 3, 2016, on the issue of employer's alleged refusal to pay for medical treatment and prescribed medications. *See* Tr. at 13.

In a Decision and Order dated on September 8, 2016, the administrative law judge found that employer is not liable to claimant for the medical treatment performed, or

[1] The administrative law judge issued his Decision and Order on Remand of Modification on June 13, 2017. *Lewis v. Fluor Daniel Corp.*, Case No. 2014-LDA-00465 (Jun. 13, 2017). That decision was not appealed to the Board.

medications prescribed, by Dr. Stafford. Consequently, claimant's claim for medical benefits was denied.

Where, as here, claimant appeals without representation by counsel, the Board will review findings adverse to claimant, applying the substantial evidence standard of review.[2] 20 C.F.R. §802.301. Employer responds that claimant's appeal is without merit. Claimant has filed a reply letter.

Section 7 of the Act describes an employer's duty to provide medical services necessitated by its employee's work-related injuries. Generally, an employer is liable for all reasonable and necessary medical expenses that result from the work injury. 33 U.S.C. §907(a). Section 702.406(a) of the Act's regulations, 20 C.F.R. §702.406(a), requires that a claimant obtain authorization from employer or the district director prior to changing physicians. *See generally Maguire v. Todd Pacific Shipyards Corp.*, 25 BRBS 299 (1992). Regarding reimbursement of payment for medical services, an employer is not liable for past medical expenses unless the claimant first requested authorization prior to obtaining medical treatment, except in cases of emergency, neglect, or refusal. 33 U.S.C. §907(d); *Roger's Terminal & Shipping Corp. v. Director, OWCP*, 784 F.2d 687, 18 BRBS 79(CRT) (5th Cir.), *cert. denied*, 479 U.S. 826 (1986); *Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112 (1997). Where an employer has refused to provide treatment, a claimant may obtain reimbursement if he establishes that the treatment was necessary for his injury. *See Atlantic & Gulf Stevedores, Inc. v. Neuman*, 440 F.2d 908 (5th Cir. 1971).

In this case, substantial evidence supports the administrative law judge's findings that claimant has treated with Dr. Mai since May 2013, that claimant treated with Dr. Stafford on August 6, 2015 and was prescribed medication by him on October 27, 2015, and that claimant's first request to employer that Dr. Stafford become his treating physician was filed on December 7, 2015.[3] In this regard, claimant testified that he considered Dr. Mai to be his treating physician. *See* Tr. at 77; *see also* EXs 36 at 1; 47. Claimant further testified that, after hearing a radio advertisement regarding Dr.

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[2] In addition to challenging the administrative law judge's September 8, 2016 Decision and Order addressing medical benefits, claimant's correspondence to the Board, dated October 22, November 17, and December 25, 2016, references issues raised in his claim seeking modification of the disability award. It would appear that claimant's contentions in this regard were subsequently addressed in the administrative law judge's June 13, 2017 decision, which was not appealed to the Board. *See* n.1, *supra*.

[3] The record does not show that claimant saw Dr. Stafford after he filed this change of physician form.

Stafford's practice, he sought treatment from him. *See* Tr. at 84. The record contains a Choice of Physician form dated December 7, 2015, approximately four months after claimant initially treated with Dr. Stafford, which claimant submitted to employer seeking to have Dr. Stafford approved as his treating physician.[4] *See* EX 4. As the record supports the administrative law judge's finding that claimant did not request a change in his treating physician until December 7, 2015, we affirm the administrative law judge's denial of claimant's claim for medical benefits for treatment with and medications prescribed by Dr. Stafford.[5] *See generally Galle v. Ingalls Shipbuilding, Inc.*, 33 BRBS 141 (1999), *aff'd sub nom. Galle v. Director, OWCP*, 246 F.3d 440, 35 BRBS 17(CRT) (5th Cir.), *cert. denied*, 534 U.S. 1002 (2001); *Ranks v. Bath Iron Works Corp.*, 22 BRBS 301 (1989).

The administrative law judge also concluded that claimant's treatment with Dr. Stafford, and the prescriptions that followed, were not reasonable and necessary in order to treat claimant's work-related cervical condition. The administrative law judge based his decision in part on the opinion of Dr. Vanderweide, a Board-certified orthopedic surgeon who examined claimant and reviewed Dr. Stafford's August 6, 2015 recommendations. Dr. Vanderweide opined that there is no indication that Dr. Stafford's recommended treatment is related to claimant's work-related cervical injury. *See* Decision and Order at 2; EX 12. The administrative law judge further found that Dr. Stafford refused to communicate with employer with regard to the purpose of the recommended treatment and prescriptions. Decision and Order at 3; *see* EXs 11, 13.

It is well-established that an administrative law judge is entitled to weigh the evidence and to draw his own inferences and conclusions from it. *See generally Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). The administrative law judge rationally found the evidence insufficient to establish that the treatment recommended, and medications prescribed, by Dr. Stafford were related to claimant's compensable cervical condition. Thus, the administrative law judge's finding that claimant did not establish that Dr. Stafford's treatment was reasonable and necessary is affirmed, as it is rational and supported by the opinion of Dr. Vanderweide.[6] *See generally Arnold v.*

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[4] We note that the record also contains an earlier form dated August 10, 2015, which claimant submitted at the May 3, 2016 formal hearing. *See* Decision and Order at 2; CX 55 at 2. There is no evidence, however, that employer received this form prior to the hearing. *Id.*

[5] We note that, following the formal hearing, employer authorized claimant's treatment with a neurologist, Dr. Nigam. *See* Decision and Order at 3.

[6] Section 702.407 of the regulations, 20 C.F.R. §702.407, authorizes the district director to actively supervise the medical care of injured employees. Claimant, therefore,

Nabors Offshore Drilling, Inc., 35 BRBS 9 (2001), *aff'd mem.*, 32 F. App'x 126 (5th Cir. 2002); *Hunt v. Newport News Shipbuilding & Dry Dock Co.*, 28 BRBS 364 (1994), *aff'd mem.*, 61 F.3d 900 (4th Cir. 1995).

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

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

may contact the district director should a dispute arise in the future regarding the medical care authorized for his work-related cervical injury. *See Lynch v. Newport News Shipbuilding & Dry Dock Co.*, 39 BRBS 29 (2005).