BRB No. 00-0352

TALMADGE B. HANCOCK	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
VITRO LAB AUTOMATION INDUSTRIES	)	DATE ISSUED: Dec. 13, 2000
	)	
and	)	
	)	
TRAVELERS PROPERTY & CASUALTY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order - Rejection of Claim of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Talmadge B. Hancock, Washington, D.C., *pro se.*

Amy L. Epstein (Law Offices of Roger S. Mackey), Chantilly, Virginia, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order - Rejection of Claim (1983-DCW-176) of Administrative Law Judge Edward Terhune Miller 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.* (1982), as extended by the District of Columbia Workmen's Compensation Act, 36 D.C. Code §§501, 502 (1973)(the Act). In an appeal by a claimant without representation 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. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33

U.S.C. §921(b)(3). If they are, they must be affirmed. 20 C.F.R. §§802.211(e); 802.301.

Claimant injured his back while working for employer on December 6, 1978. Employer voluntarily paid temporary total disability benefits from December 7, 1978, through July 7, 1981. Claimant subsequently filed a claim for additional benefits on May 5, 1982, and the parties ultimately executed a settlement agreement on December 21, 1982. Pursuant to the agreement, claimant received a lump sum of $15,000 in settlement of his claim, without prejudice to his rights to continued medical treatment for any condition causally related to his work-related injury. The district director approved the agreement by order dated March 11, 1983, as he found that it was in the best interests of claimant. *See* 33 U.S.C. §908(i) (1982) (amended 1984).

The instant case involves claimant's alleged entitlement to reimbursement for chiropractic treatment provided by Dr. Wier between January 2, 1980, and December 31, 1982. The record shows that employer authorized claimant's treatment by Dr. Wier in a letter dated December 17, 1979, and employer subsequently acknowledged receipt of progress reports regarding such treatment for the period in question. Claimant's Exhibits (CX) 1-3. Claimant however did not request reimbursement for these services at the time of the settlement agreement. Rather, he first claimed reimbursement for these services in 1998, stating that he was unaware of his right to do so until that time. Employer agreed, by letter dated April 9, 1998, to reimburse claimant for mileage expenses for doctors' appointments which took place between December 1978 and March 1998, including claimant's visits to Dr. Wier for chiropractic care, upon submission of proper documentation. Claimant was subsequently reimbursed $2,447.76 for mileage expenses.

On June 19, 1998, employer acknowledged claimant's request for reimbursement of the fees for the chiropractic services, advised claimant that adequate documentation was required under the D.C. Act, and upon noting that its efforts to obtain relevant information had been futile, informed claimant that production of said documents was necessary prior to reimbursement. On July 21, 1998, employer acknowledged receipt of "the dates of service along with the paid stamp from [Dr. Wier's] office," but in effect, rejected the claim based on a lack of adequate documentation or proof, and the delayed submission of the request for reimbursement. CX 8.

In his decision, the administrative law judge denied claimant's request for reimbursement based on the release of liability contained in the parties' settlement agreement and the district director's Compensation Order. Specifically, he found that both documents confirm employer's continued liability for *future* medical benefits only and, thus, did not cover the services in question which were provided prior to the date of

[1]Specifically, the letter stated that "[a]t this time we are unable to process your claim for payment due to the unverifiable information and untimely submission as treatment was rendered 18 years ago." CX 8.

the Compensation Order approving the Section 8(i) settlement.

On appeal, claimant, representing himself, challenges the administrative law judge's denial of reimbursement for the chiropractic treatment rendered by Dr. Wier. Employer responds, urging affirmance.

Section 8(i)(A) of the 1972 Act, 33 U.S.C. §908(i)(A) (1982), permits the district director to approve agreed settlements discharging the liability of the employer for compensation. This subsection, however, does not cover settlements that provide for discharge of liability for medical benefits. Section 8(i)(B), 33 U.S.C. §908(i)(B) (1982), expressly addresses the approval of settlements of claims for medical benefits. It provides:

> Whenever the Secretary determines that it is for the best interests of the injured employee entitled to medical benefits, he may approve agreed settlements of the interested parties, discharging the liability of the employer for such medical benefits . . . .

33 U.S.C. §908(i)(B) (1982)(emphasis added). The 1972 Act therefore permits the district director to approve settlements discharging liability for compensation benefits, but approval of compromise agreements involving medical benefits is expressly reserved to the Secretary. *See Marine Concrete v. Director, OWCP*, 645 F.2d 484, 13 BRBS 351 (5th Cir. 1981), *aff'g Ladner v. Marine Concrete*, 12 BRBS 742 (1980). This is further supported by the language of the accompanying regulations in effect at that time. Specifically, applications for approval of an agreed settlement of medical benefits are first submitted to the district director, 20 C.F.R. §702.242(b) (1984), who, after consultation with the parties, forwards the application together with his recommendations to the Director, Office of Workers' Compensation Programs (the Director), "for such action as the Director considers appropriate . . . ." 20 C.F.R. §702.242(c) (1984). The regulations governing the procedure for settlement of medical benefits explicitly state that the district director can make only a "recommendation" and that final approval can only come from the Director, OWCP, as the designee of the Secretary. 20 C.F.R. §702.242(c) (1984).

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[2]Initially, we note that contrary to claimant's contention, he was provided with the opportunity to, and in fact did, testify at the hearing. *See* Hearing Transcript at 36-88.

[3]Section 8(i) was amended in 1984 to expressly include "any claim for compensation under this Act, including survivor's benefits," and to allow the district director or administrative law judge to approve all settlements, including compensation, survivor's benefits, and *future medical benefits*. 33 U.S.C. §908(i)(1)(1994). The 1984 Amendments however do not apply to cases, including the instant one, which arise under the 1928 D.C. Act. *Keener v. Washington Metropolitan Area Transit Authority*, 800 F.2d 1173, 1175 (D.C. Cir. 1986), *cert. denied*, 480 U.S. 918 (1987). Furthermore, as the settlement proceedings in this case took place in 1982-83, the pre-1984 language of Section 8(i) applies.

Although the regulations permit the Director "or his designee" to make the determination that the settlement involving medical benefits is in the employee's best interests, 20 C.F.R. §702.242(a) (1984), the Fifth Circuit held that there has been no delegation of that authority by the Director. *Marine Concrete, supra*.

In his decision, the administrative law judge found that although the chiropractic treatment in question apparently continued until ten days after the date that the settlement agreement was executed, the treatment ceased well before the agreement was approved by the district director on March 11, 1983. He then determined that the settlement agreement does not provide for reimbursement of past medical costs or claims, and, on the contrary, provides explicitly for the release of employer from any further liability with the sole exception of claimant's rights to "continue to receive medical treatment for any condition which is causally related to his injury of 12/7/78 [*sic*]." Employer's Exhibit (EX) 4. The administrative law judge determined that the Compensation Order is prospective in effect, and explicitly confirms employer's liability only for future medical benefits. He therefore concluded that the settlement agreement and Compensation Order bar claimant's claim for reimbursement of medical expenses for treatment rendered prior to the time that the Settlement Agreement was approved.

In rendering his findings, the administrative law judge did not consider the pre-1984 version of Section 8(i), which applies in this case. *See* n. 3 *infra*. Contrary to the administrative law judge's determination, the agreement entered into by the parties did not include a settlement of claimant's claim for medical benefits related to his work injury, as there is no evidence that the parties separately reached an agreed settlement of medical benefits, or for that matter that they followed the requisite procedure for approval of such an agreement. 33 U.S.C. §908(i)(B)(1982); 20 C.F.R. §702.242(c); *Marine Concrete*, 645 F.2d at 484, 13 BRBS at 351. Moreover, even if the agreement could be construed as to include a settlement of medical benefits, it would not be valid as the district director is not empowered under the 1972 Act to approve settlements involving medical benefits. *Id*. Inasmuch as the parties' settlement agreement cannot have included a settlement of medical benefits, past or future, the administrative law judge erred in finding claimant's claim for reimbursement barred on the basis of the settlement

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[4]The Compensation Order Approval of Agreed Settlement is vague regarding the actual coverage of the settlement agreement, particularly since it contains conflicting language. It first states that "[t]he parties have agreed on the pertinent issues and desire to settle the claim [on] the following basis: future medical treatment for any condition that is causally related to the injury of December 6, 1978." Employer's Exhibit (EX) 4. To the extent that the settlement agreement might cover this, it would be invalid as the district director lacks the authority under the 1972 Act to approve a settlement of medical benefits. In this case, however, the district director's compensation order also includes language that the settlement agreement "effects a final disposition of his/her claim, discharging the liability of the employer and insurance carrier for such compensation, *except for medical treatment*." EX 4 [emphasis added].

agreement. We therefore reverse the administrative law judge's determination that the settlement agreement and Compensation Order bar the reimbursement claim, and we remand the case for further consideration of claimant's claim for reimbursement of medical expenses related to the chiropractic services rendered by Dr. Wier between January 2, 1980, and December 31, 1982.

In addressing employer's other arguments for denying claimant's claim for reimbursement on remand, *i.e.*, the claim exceeds the three year statute of limitations, that the specific treatment rendered by Dr. Wier was not authorized and that those services were unnecessary and duplicative of those performed by Dr. Azer, the administrative law judge is reminded that a claim for medical benefits under Section 7 of the Act, 33 U.S.C. §907 (1982), is never time-barred, *Ryan v. Alaska Constructors, Inc.*, 24 BRBS 65 (1990), and that the doctrine of laches does not apply to cases arising under the Act. *See, e.g., Madrid v. Coast Marine Construction Co.*, 22 BRBS 148 (1989). Thus, the administrative law judge on remand must consider employer's liability for medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907, which generally describes an employer's duty to provide medical services for its employee's work-related injury and the circumstances under which an employer is liable for payment or reimbursement of medical expenses incurred by claimant. *See Anderson v. Todd Shipyards, Corp.*, 22 BRBS 20 (1989).

Accordingly, the administrative law judge's decision denying claimant's request for medical benefits associated with the chiropractic treatment provided by Dr. Wier is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

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[5]Employer's reliance on *Cassell v. Taylor*, 243 F. 259 (D.C. Cir. 1957), in support of this contention is misplaced as that case involved a suit for enforcement of a judgment under a general statute of limitations, as opposed to the instant case which involves a request for reimbursement of medical benefits under the Longshore Act.

[6]As previously noted, the record contains evidence that employer's carrier authorized treatment by Dr. Wier. CX 1.

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge