

VERNON J. BELLAMY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
INTERMARINE USA	)	DATE ISSUED: 12/29/2005
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY	)	
ASSOCIATION	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Vernon J. Bellamy, Soperton, Georgia, *pro se*.

G. Mason White (Brennan, Harris & Rominger LLP), Savannah, Georgia, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order on Remand (2002-LHC-0493 and 2002-LHC-0494) of Richard K. Malamphy 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). In an appeal filed by a claimant without representation, we will review the administrative law judge's decision to determine if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are in accordance with law. If they are, they must be affirmed. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3). This case is before the Board for the second time.

Claimant, a machinist, was injured at work on July 24, 1995. Employer voluntarily paid claimant temporary total disability benefits for certain periods from the date of injury until November 13, 1995; employer also paid medical bills, including those incurred for surgery on October 26, 1995. Claimant's surgeon returned him to work on November 13, 1995, and again on February 14, 1996. Emp. Exs. 2, 5 at 10-12. Claimant testified that he attempted to return to work post-surgery but that it was too painful for him to work. 1998 Tr. at 33-37. Claimant was terminated from employment on April 19, 1996, after failing to respond to two letters from employer requesting information concerning his medical or family leave of absence. 1998 Tr. at 69-70. Claimant sought temporary total disability benefits from November 13, 1995, and reimbursement for certain medical bills incurred at the Veterans' Administration Hospital. Administrative Law Judge Holmes, in a 1998 decision, awarded claimant temporary total disability benefits from the date of injury until February 16, 1996, held employer liable for all work-related medical expenses, but denied reimbursement for certain medical bills from the Veterans' Administration Hospital since claimant did not establish their work-relatedness. Emp. Ex. 7.

Following employer's last payment of compensation on the above award, claimant filed a motion for modification of the prior award, contending he is entitled to additional disability benefits. Administrative Law Judge Malamphy (the administrative law judge), in a 2002 decision, found that claimant's motion was untimely filed as it was filed after the one year applicable statute of limitations. 33 U.S.C. §922. The administrative law judge thereafter denied claimant's motion for reconsideration.

The Board affirmed the administrative law judge's decision denying claimant's request for modification, holding that as employer's last payment of compensation was made on January 28, 1999, claimant's request for modification should have been filed on or prior to January 28, 2000. Therefore, as claimant's formal request for modification was not filed until September 21, 2001, it was untimely. However, as claimant's request for modification also appeared to contain a request for additional medical benefits, which are never time-barred, the Board remanded the case for the administrative law judge to address whether claimant is entitled to reimbursement for additional medical expenses. *Bellamy v. Intermarine USA*, BRB No. 03-0322 (Jan. 13, 2004)(unpub.).

On remand, claimant submitted, on October 20, 2004 and November 17, 2004, various receipts seeking reimbursement for a number of medications that had been prescribed for him by physicians at the Veterans Administration Medical Center, over-the-counter medications, and travel expenses. In his Decision and Order on Remand, the administrative law judge awarded claimant reimbursement for a cervical traction kit costing \$25.63 and travel expenses in the amount of \$6.60. The administrative law judge denied, however, claimant's request that employer be held liable for the remaining medication expenses which claimant had submitted into evidence.

On appeal, claimant, representing himself, contends that the administrative law judge erred in considering his request for reimbursement of his submitted expenses.

Employer responds, urging affirmance of the administrative law judge's decision in its entirety.

Section 7(a) of the Act, 33 U.S.C. §907(a), states that “[t]he employer shall furnish medical, surgical, and other attendance or treatment 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). Thus, even where a claimant is not entitled to disability benefits, employer may still be liable for medical benefits for a work-related injury. See *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5<sup>th</sup> Cir. 1993). In order for a medical expense to be assessed against employer, however, the expense must be both reasonable and necessary, and must be related to the injury at hand. See *Ezell v. Direct Labor, Inc.*, 37 BRBS 11 (2003); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Pardee v. Army & Air Force Exch. Serv.*, 13 BRBS 1130 (1981); 20 C.F.R. §702.402. Whether a particular medical expense is necessary is a factual issue within the administrative law judge's authority to resolve, see *Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988); however, it is claimant's burden to establish that his self-procured medical expenses are reimbursable by employer. See *Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9 (2001), *aff'd*, 32 Fed. Appx. 126 (5<sup>th</sup> Cir. 2002)(table); *Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112 (1996).

In the initial Decision and Order, Judge Holmes determined that while employer would be liable for those medical bills from the Veteran's Administration that were demonstrated to be reasonable and necessary for treatment in connection with claimant's work-related injury, claimant failed to meet his burden of persuasion in establishing that medical care procured as a result of his pain was related to his work injury. Decision and Order at 10. On remand, the administrative law judge similarly found that while claimant submitted into evidence various medication expenses, he did not offer any evidence indicating that those expenses are related to his work-related injury. Decision and Order on Remand at 3. In this regard, the administrative law judge specifically found that while the medical records from the Veterans Administration Medical Center (VAMC) noted that claimant presented with “chronic neck pain since an accident at work in a shipyard,” those records additionally documented a variety of conditions for which claimant sought treatment. *Id.*; see Clt's Nov. 17, 2004 letter and attachments on remand. The administrative law judge determined that it was impossible to determine from these VAMC Progress Reports whether the medications prescribed for claimant were related to his work-injury or whether they were ordered as a result of his other medical conditions. The administrative law judge therefore concluded that as claimant failed to demonstrate that the medications for which he sought reimbursement from employer were reasonable and necessary in connection to his work-injury, employer was not liable for those expenses. As it was within the administrative law judge's authority to review the documentation submitted into evidence by claimant, and the administrative law judge's conclusion that this documentation fails to satisfy claimant's burden is rational and supported by substantial evidence, we affirm the administrative law judge's finding that employer is not liable for the medication expenses proffered by claimant. See *Brooks v.*

*Newport News Shipbuilding & Dry Dock Co.*, 26 BRBS 1 (1992), *aff'd sub nom. Brooks v. Director, OWCP*, 2 F.3d 64, 27 BRBS 100(CRT) (4<sup>th</sup> Cir. 1993).

Accordingly, the Decision and Order on Remand of the administrative law judge is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge