BRB Nos. 12-0524
and 12-0524A

RONALD J. CANTRELLE	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
MAIN IRON WORKS, LLC	)	DATE ISSUED: 12/13/2013
	)	
and	)	
	)	
THE LOUISANA INSURANCE GUARANTY ASSOCIATION	)	
	)	
Employer/Carrier-Respondents	)	
Cross-Petitioners	)	DECISION and ORDER

Appeals of the Decision and Order of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Isaac H. Soileau, Jr. (Soileau & Associates, LLC), New Orleans, Louisiana, and Charles J. Ferrara, Metairie, Louisiana, for claimant.

Charles N. Branton (Branton & Associates), Slidell, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant appeals, and employer cross-appeals, the Decision and Order (2011-LHC-931) of Administrative Law Judge C. Richard Avery 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). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial

evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

On July 19, 1974, claimant was struck on the neck and low back by an air tank during the course of his employment as an outside machinist. Following this incident, claimant remained off work until September 8, 1974. On April 17, 1975, claimant sent a letter to the Department of Labor (DOL) authorizing his attorney to review his file; on April 30, 1975, claimant's attorney sent a letter to the DOL "in order to protect the rights" of claimant. CX 2. Claimant continued to experience various symptoms for which he sought medical treatment; ultimately, claimant underwent a rhizotomy and missed one year of work between 1975 and 1976. Employer voluntarily paid claimant compensation, and for the rhizotomy, during this period. Claimant returned to work in 1976 and remained employed with employer until he was laid off for economic reasons on January 6, 1983. Claimant then found employment with various non-longshore employers and he continued to seek medical care for back, neck and bladder complaints.

On December 18, 1986, claimant filed a claim for benefits under the Act, which employer controverted on January 28, 1987. In 1989, claimant underwent neck surgery which improved his bladder condition. Claimant voluntarily retired in 1999, and, in 2000, he underwent low back surgery.

In his Decision and Order, the administrative law judge found that claimant's attorney's April 30, 1975 letter to the DOL constituted a claim and that, therefore, claimant's claim for benefits was not time-barred. *See* 33 U.S.C. §913. The administrative law judge found that claimant's back condition is causally related to his work accident, but that claimant did not establish a causal connection between his neck and bladder conditions and his work accident. The administrative law judge found that claimant did not establish he was disabled during the time between his return to work for employer in September 1974 and his termination for economic reasons in January 1983, nor that his retirement in 1999 was due to his work-related back injury. Consequently, the administrative law judge did not award claimant any additional disability compensation, but he awarded claimant medical expenses related to the treatment of his back condition.

On appeal, claimant challenges the administrative law judge's decision in three respects: his exclusion from the record of claimant's Exhibit Number Ten; his finding that claimant did not establish a causal relationship between his work injury and his neck and bladder conditions; and his denial of ongoing disability benefits. Employer responds, urging the Board to reject claimant's contentions of error. In its cross-appeal, employer asserts that the administrative law judge erred in finding that the claim is not time barred. Alternatively, employer challenges the administrative law judge's treatment of Dr.

Pribil's opinion and the award of medical benefits for claimant's back condition. Claimant has filed a brief in response to employer's cross-appeal.

Timeliness of Claimant's Claim

We first address employer's challenge to the administrative law judge's finding that the claim was timely filed. Specifically, employer asserts that since claimant's attorney's April 17, 1975 letter to the DOL predates employer's Notice of Final Payment, it cannot constitute a claim for benefits under the Act.[1] For the reasons that follow, we reject employer's contention of error and we affirm the administrative law judge's determination that claimant's claim was timely filed.

Section 13(a) of the Act states in pertinent part that:

> Except as otherwise provided in this section, the right to compensation for disability or death under this chapter shall be barred unless a claim therefore is filed within one year after the injury or death. If payment of compensation has been made without an award on account of such injury or death, a claim may be filed within one year after the date of the last payment . . .

33 U.S.C. §913(a); *see Ceres Gulf, Inc. v. Director, OWCP [Fagan]*, 111 F.3d 17, 31 BRBS 21(CRT) (5th Cir. 1997); *Marathon Oil Co. v. Lunsford*, 733 F.2d 1139, 16 BRBS 100(CRT) (5th Cir. 1984). A claim need not be filed on any particular form to satisfy Section 13, as long as it discloses the claimant's intent to assert a right to compensation. *See Fireman's Fund Ins. Co. v. Bergeron*, 493 F.2d 545 (5th Cir. 1974); *McKnight v. Carolina Shipping Co.*, 32 BRBS 165, *aff'd on recon. en banc*, 32 BRBS 251 (1998).

In this case, employer does not challenge the administrative law judge's finding that claimant's counsel's April 30, 1975 letter to the DOL constituted a sufficient claim under the Act since that letter referenced claimant's July 19, 1974 work accident, requested the forms necessary to make a claim, and stated the intention to interrupt prescription. Decision and Order at 13-14; CX 2. *Scalia v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2004). Employer incorrectly asserts that claimant had to file his claim within one year of the last voluntary payment of compensation. As the April 30, 1975

[1]Employer states that claimant's attorney's April 17, 1975 letter was found to constitute a claim. Employer's Original Appellate Brief at 16. However, the administrative law judge found that counsel's April 30, 1975 letter did so. *See* Decision and Order at 14-15.

letter was filed within one year of claimant's accident, claimant was not required to again file a claim within one year of the last voluntary payment of compensation.[2] It is well-established that if a claim is timely filed under Section 13 of the Act, and has not been adjudicated or withdrawn, it remains pending. *Intercounty Constr. Corp. v. Walter*, 422 U.S. 1, 2 BRBS 3 (1975); *Petit v. Electric Boat Corp.*, 41 BRBS 7 (2007). Thus, the administrative law judge correctly found that the claim remained open, as it had not been adjudicated or withdrawn. *See* 20 C.F.R. §702.255. Consequently, as the April 30, 1975 letter to the DOL satisfied the filing requirement of Section 13, it held claimant's claim open, potentially allowing recovery for any subsequent disability arising from his work injury. *See Pool Co. v. Cooper*, 274 F.3d 173, 35 BRBS 109(CRT) (5th Cir. 2001). We therefore reject employer's contention of error and affirm the administrative law judge's finding that claimant's claim is not time-barred.

Evidentiary Issues

Claimant contends the administrative law judge erred when he declined to admit into evidence claimant's Exhibit Number Ten, a compilation of articles printed from the internet. In support of his contention of error, claimant asserts that the rejected articles would have informed and assisted the administrative law judge in understanding claimant's neurogenic bladder condition. *See* Cl. Br. at 4. In its cross-appeal, employer challenges the administrative law judge's decision to exclude from the record the deposition testimony of Dr. Pribil. *See* Emp. Br. at 17-18.

An administrative law judge has great discretion concerning the admission of evidence and any decisions regarding the admission or exclusion of evidence are reversible only if the challenging party shows them to be arbitrary, capricious, or an abuse of discretion. *See Collins v. Electric Boat Corp.*, 45 BRBS 79 (2011); *Patterson v. Omniplex World Services*, 36 BRBS 149 (2003); *Ezell v. Direct Labor, Inc.*, 33 BRBS 19 (1999). At the formal hearing, the administrative law judge declined to admit claimant's printed internet documents because he was skeptical as to the authorship and the accuracy of the documents. *See* Tr. at 35. With regard to Dr. Pribil's October 9, 2003, deposition, the administrative law judge did not, as asserted by employer, exclude or strike this deposition from the record. Rather, as all parties agreed that this deposition was taken without claimant's counsel's knowledge or presence, the administrative law judge

[2]The statute of limitations is tolled when employer voluntarily pays compensation, unless it has already run. *See Reed v. Bath Iron Works Corp.*, 38 BRBS 1 (2004).

accepted into the record the deposition "but not the hypotheticals contained therein."[3] *See* Tr. at 9 – 14. Neither claimant nor employer has established that the administrative law judge's decision to exclude from the record the internet documents and the hypotheticals contained in Dr. Pribil's deposition is arbitrary, capricious, or an abuse of discretion. While this case was pending before the administrative law judge, claimant did not attempt to address the administrative law judge's concerns regarding the accuracy of the documents. Regarding Dr. Pribil's deposition, employer has not established how it was prejudiced by the administrative law judge's limited consideration. Therefore, we affirm the administrative law judge's decision in this regard. *See Collins*, 45 BRBS 79; *Cooper v. Offshore Pipelines Int'l, Inc.*, 33 BRBS 46 (1999).

Claimant's Cervical and Bladder Conditions

Claimant avers that employer did not present evidence sufficient to establish rebuttal of the Section 20(a), 33 U.S.C. §920(a), presumption linking his cervical and bladder conditions to his work injury. Alternatively, claimant challenges the administrative law judge's finding that he did not establish the work-relatedness of these conditions based on the record a whole. We disagree.

The administrative law judge invoked the Section 20(a) presumption based on findings that claimant suffered physical harms, specifically back, cervical and bladder symptoms, and the existence of an accident at work, specifically the undisputed July 19, 1974, incident, that could have caused these conditions.[4] *See Port Cooper/T. Smith Stevedoring Co., v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). The burden then shifted to employer to rebut the presumed causal connection with substantial evidence that claimant's cervical and bladder conditions were not caused or aggravated by his work injury. *See Ortco Contractors Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert. denied*, 540 U.S. 1056 (2003); *Hunter*, 227 F.3d 285, 34 BRBS 96(CRT); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). In order to rebut the presumption, employer need not "prove the deficiency" in claimant's prima facie case; rather, "all it must do is advance evidence to throw factual doubt on the prima facie case." *Ceres Gulf, Inc. v. Director, OWCP [Plaisance]*, 683 F.3d 225, 231, 46 BRBS 25, 29(CRT) (5th Cir. 2012).

[3]In accepting Dr. Pribil's deposition, the administrative law judge implicitly agreed with employer's counsel, who suggested at the formal hearing that this deposition be treated "like a narrative medical report." Tr. at 13-14.

[4]Employer does not challenge on appeal the administrative law judge's finding that claimant's back condition is work-related.

The administrative law judge found that employer rebutted the Section 20(a) presumption because, following the initial work incident, the medical records are silent as to claimant's alleged neck condition until 1987 when claimant treated with Dr. Applebaum, who opined that claimant's "symptoms were probably not related to his original accident." CX 8 at 26. The administrative law judge also relied on Dr. Judice's 1989 opinion, that "it would be difficult to relate [claimant's] current problems to something that occurred in 1974." Decision and Order at 18-19; CX 8 at 19. As the opinions of Drs. Applebaum and Judice throw factual doubt on claimant's prima facie case, they constitute substantial evidence that claimant's cervical condition is unrelated to his employment. Therefore, we affirm the administrative law judge's finding that the Section 20(a) presumption, as it applies to claimant's cervical condition, is rebutted. *Plaisance,* 683 F.3d at 231, 46 BRBS at 29(CRT).

Once employer rebuts the Section 20(a) presumption, the administrative law judge must weigh all the relevant evidence and resolve the causation issue based on the record as a whole, with claimant bearing the burden of persuasion. *See Plaisance*, 683 F.3d 225, 46 BRBS 25(CRT); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). The administrative law judge weighed the relevant evidence and concluded that claimant did not establish his cervical condition is related to his July 1974 work injury. We reject claimant's assertion that the administrative law judge erred in his evaluation of the record. It is well-established that an administrative law judge is entitled to evaluate the credibility of all witnesses, to weigh the medical evidence, and to draw his own inferences therefrom. *See Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991); *Todd Shipyards Corp. v. Donovan,* 300 F.2d 741 (5th Cir. 1962). The administrative law judge found that the x-ray taken of claimant's neck after his July 1974 work injury returned normal results, that claimant soon returned to work without restrictions, and that no objective evidence supported claimant's complaints of neck pain at that time. The administrative law judge further found that claimant did not complain of neck pain until 1987, 13 years after his work injury, and that the opinions of Drs. Arcement and Pribil, both of whom opined that claimant's present cervical condition is related to his work injury, were stated 25 years after the injury and based largely on the history provided by claimant. The administrative law judge thus concluded that the evidence, consisting *inter alia* of the reports of Drs. Applebaum and Judice, weighs in favor of employer on this issue, and that consequently claimant did not meet his burden of establishing that his cervical condition is related to his employment with employer. Decision and Order at 18. This finding is rational and supported by substantial evidence. *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996). We, therefore, affirm the administrative law judge's finding that claimant's cervical condition is not work-related, and his consequent denial of benefits for that condition.

Claimant additionally challenges the administrative law judge's finding that he did not establish that his bladder condition is related to his July 19, 1974, work injury. Claimant's theory of causation is predicated upon his alleged work-related cervical condition resulting in his bladder condition. As we have affirmed the administrative law judge's finding that claimant's cervical condition is not work-related, we need not address claimant's specific allegations of error in this regard as they have been rendered moot.

Disability Subsequent to January 6, 1983 Layoff

Claimant avers the administrative law judge erred in failing to award him disability compensation subsequent to the date he was laid off by employer, January 6, 1983. Specifically, claimant sought temporary partial disability benefits from the date of his layoff until he underwent cervical surgery in 1989, total disability benefits for one year following that surgery, and ongoing partial disability benefits thereafter.

We affirm the administrative law judge's finding that claimant did not establish his entitlement to disability benefits subsequent to the date of his layoff, January 6, 1983. With respect to the issue of disability related to claimant's July 19, 1974, work incident, claimant is entitled to disability benefits for any period during which his work injury caused a total or partial loss of wage-earning capacity. *See generally Shell Offshore, Inc. v. Director, OWCP,* 112 F.3d 321, 31 BRBS 129(CRT) (5th Cir. 1997); *L.W. [Washington] v. Northrop Grumman Ship Systems, Inc.,* 43 BRBS 27 (2009). In his decision, the administrative law judge acknowledged claimant's testimony that he had returned to his usual employment as an outside machinist post-injury and was working in that capacity at the time of his layoff on January 6, 1983.[5] The administrative law judge thus found that claimant did not establish that he was disabled from his work injury during his post-injury employment with employer.[6] In addressing next claimant's claim for disability benefits subsequent to the date of his layoff, the administrative law judge found that claimant's layoff was unrelated to his work injury, and that any disability sustained by claimant between that day and his voluntary retirement in 1999 was due to his non-work-related cervical condition. Decision and Order at 21 n.15. As claimant's voluntary retirement from the workforce in 1999 was not due even in part to a work-related condition, the administrative law judge properly concluded that claimant did not

[5]During his 2001 deposition, claimant testified that he was not disabled at the time of his January 6, 1983 layoff by employer. *See* Cl. 2001 Dep. at 158.

[6]It is undisputed that employer paid claimant all disability benefits that were due him prior to January 6, 1983.

establish entitlement to any disability benefits following his back surgery in 2000. *Id; Harmon v. Sea-Land Serv., Inc.*, 31 BRBS 45 (1997); *see also Hoffman v. Newport News Shipbuilding & Dry Dock Co.*, 35 BRBS 148 (2001). On appeal, claimant cites only to his lower earnings post-layoff in support of his argument that he is entitled to disability benefits subsequent to January 6, 1983. Claimant, however, did not establish that his lower earnings were due to his work injury. *See* 33 U.S.C. §902(10) ("disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury.) Accordingly, as substantial evidence supports the administrative law judge's finding that claimant did not establish that his work-related back condition caused any loss in wage-earning capacity, we affirm the finding that claimant is not entitled to disability benefits subsequent to January 6, 1983.

Medical Expenses

Employer challenges the administrative law judge's award of medical benefits for claimant's work-related back condition; specifically, employer contends that claimant did not seek its approval to undergo additional medical treatment for his back symptoms following his treatment with Dr. Vogel.[7] We affirm the administrative law judge's award of medical benefits to claimant.

Section 7(a) of the Act, 33 U.S.C. §907(a), states:

> The employer shall furnish such medical, surgical, and other attendance or treatment ... for such period as the nature of the injury or the process of recovery may require.

Thus, once claimant has established that his injury is work-related, employer is liable for reasonable and necessary medical expenses related to that injury. *See Weikert v. Universal Maritime Serv. Corp.*, 36 BRBS 38 (2003); 20 C.F.R. §702.402. Even if claimant is no longer disabled, employer remains liable for medical treatment for a work injury. *See Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993). Pursuant to Section 7(d), 33 U.S.C. §907(d), claimant must request employer's authorization for treatment; however, where employer refuses a request for treatment, claimant is released from the continuing obligation to seek employer's approval, and employer is liable for any treatment claimant thereafter procures on his own initiative if it is reasonable and necessary. *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).

[7]Claimant last visited with D. Vogel on June 15, 1977. *See* CX 11 at 24.

In this case, the administrative law judge found the medical treatment claimant received from Drs. Pribil, Judice and Oyler for his back condition was both reasonable and necessary to treat that condition. The administrative law judge implicitly credited claimant's testimony that he contacted employer regarding his treatment with Drs. Pribil and Judice, but that employer declined to authorize that treatment. Decision and Order at 22; Tr. at 85-86, 92-93. Additionally, the administrative law judge found that employer was aware of claimant's work-related back condition as it had previously paid for the services rendered to claimant by Dr. Vogel. Consequently, the administrative law judge found employer liable for the medical treatment rendered by Drs. Pribil, Judice and Oyler for the treatment of claimant's back condition. Decision and Order at 21-23. The administrative law judge's finding that claimant sought and employer denied authorization for further care is supported by substantial evidence. Therefore, we reject employer's assertion that it is not liable for the treatment of Drs. Pribil, Judice and Oyler based on a lack of authorization. *Roger's Terminal,* 784 F.2d at 693, 18 BRBS at 86(CRT). As employer has not demonstrated error in the administrative law judge's finding that the treatment rendered by these physicians was reasonable and necessary, the administrative law judge's award of medical benefits is affirmed. *See Pozos v. Army & Air Force Exch. Serv.*, 31 BRBS 173 (1997).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge