

BRB No. 04-0469

WILLIAM F. FERRIOLO)
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Claimant-Petitioner)
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v.)
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NEW HAVEN TERMINAL) DATE ISSUED: FEB 4, 2005
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and)
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AMERICAN INTERNATIONAL)
GROUP)
)
Employer/Carrier-)
Respondents) DECISION and ORDER

Appeal of the Decision and Order Denying Claim for Payment of Medical Bills of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

David A. Kelly (Montstream & May L.L.P.), Glastonbury, Connecticut, for claimant.

Lucas D. Strunk (Pomeranz Drayton & Stabnick), Glastonbury, Connecticut, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Claim for Payment of Medical Bills (2001-LHC-02610) of Administrative Law Judge Daniel F. Sutton 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 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).

Claimant, a forklift operator, injured his head, neck, and right shoulder in a work accident on April 30, 1996.¹ Claimant sought treatment with Dr. Tsai beginning in October 1997, which continued at the time of the 2002 formal hearing. Apparently, some time after July 6, 1998, the parties agreed that claimant would seek payment of Dr. Tsai's treatment through claimant's private group health insurer. *See n. 1, supra; RX 31(a), (b).* Claimant's private insurer covered his treatment with Dr. Tsai until August 2000; claimant made copayments to Dr. Tsai. Since that time, claimant's private insurer has denied coverage for claimant's treatment with Dr. Tsai. Claimant injured his left shoulder at work on December 29, 1998, with the employer that took over the facility. Dr. Tsai also treated claimant for this injury. Claimant filed a claim seeking to hold employer liable for all of Dr. Tsai's treatment.

The administrative law judge found that employer is not liable for claimant's treatment with Dr. Tsai. The administrative law judge found that claimant did not request authorization for this treatment, and that, moreover, claimant's 1998 work injury aggravated his 1996 work injury. Because the 1998 employer had not been joined as a party to the instant claim for medical benefits, the administrative law judge did not reach the issue of whether that employer is liable for Dr. Tsai's treatment of claimant after the 1998 work injury. The administrative law judge merely held that the instant employer is not liable for the payment of Dr. Tsai's treatment after the 1998 work injury.

On appeal, claimant challenges the administrative law judge's finding that employer is not liable for Dr. Tsai's treatment. Specifically, claimant alleges he requested authorization to treat with Dr. Tsai, and that the administrative law judge erred in finding that the 1998 injury absolves employer of liability for treatment resulting from the 1996 injury. Employer responds in support of the denial.

Upon consideration of the administrative law judge's decision, the parties' briefs, and the evidence of record, we affirm the administrative law judge's denial of reimbursement for Dr. Tsai's bills. A claimant must request that employer authorize medical treatment before employer can be held liable for such care, unless treatment has been refused. 33 U.S.C. §907(d); *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

¹ In 1993, claimant sustained work-related injuries to his right hip and knee. Administrative Law Judge Di Nardi awarded claimant permanent partial disability benefits for a loss of wage-earning capacity. 33 U.S.C. §908(c)(21). Claimant also filed a claim for his 1996 injuries; this claim was remanded to the district director at the parties' request, as they reached an informal agreement. Claimant sustained a work-related left shoulder injury in 1998 while employed by employer's successor company. Administrative Law Judge Sutton awarded claimant permanent total disability and medical benefits for this injury pursuant to the parties' stipulations.

(2001); *Ranks v. Bath Iron Works Corp.*, 22 BRBS 301 (1989). The administrative law judge properly found that the record in this proceeding does not establish that claimant requested authorization to seek treatment with Dr. Tsai prior to 2001. Decision and Order Denying Claim for Payment of Medical Bills at 5-7. Moreover, there is no evidence in this case that claimant was referred to Dr. Tsai by another doctor prior to July 2, 2001, when Dr. Merikangas referred claimant to Dr. Tsai. See 20 C.F.R. §702.406(a); RX 20 at 18-19; 21; 25; 26. Thus, we affirm the administrative law judge's denial of medical benefits for Dr. Tsai's treatment prior to July 2, 2001.²

Moreover, the administrative law judge's finding that claimant's 1998 work injury aggravated his 1996 work injury is rational and supported by substantial evidence. See *Foundation Constructors, Inc. v. Director, OWCP*, 950 F.2d 621, 25 BRBS 71(CRT) (9th Cir. 1991); see also *New Haven Terminal Corp. v. Lake*, 337 F.3d 261, 37 BRBS 73(CRT) (2^d Cir. 2003); *Delaware River Stevedores, Inc. v. Director, OWCP*, 279 F.3d 233, 35 BRBS 154(CRT) (3^d Cir. 2002); Decision and Order Denying Claim for Payment of Medical Bills at 7-8. Dr. Merikangas stated that claimant's head, neck, and right shoulder problems were made worse by the 1998 work injury. RX 15 at 37-38. Dr. Tsai stated that the 1998 injury and surgery thereafter significantly exacerbated claimant's condition. See RX 3, Dep. Ex. 1 at 4; RX 7, 16 at 46-47, 59-60. Thus, substantial evidence supports the administrative law judge's finding that claimant's 1998 work injury aggravated his 1996 injury resulting in claimant's current condition. Where claimant sustains injuries while working for two different longshore employers, and the subsequent work-related injury aggravates a prior injury or condition, the employer at the time of the second injury is fully liable for the resulting disability and for medical benefits. *Carpenter v. California United Terminals*, 37 BRBS 149 (2003), vacated on other grounds on recon., 38 BRBS 56 (2004); *Abbott v. Dillingham Marine & Mfg. Co.*, 14 BRBS 453 (1981), aff'd mem., 698 F.2d 1235 (9th Cir. 1982). Thus, we affirm the administrative law judge's holding that the employer at the time of the 1996 work injury is not liable for Dr. Tsai's bills after the occurrence of the 1998 work injury.³ *Id.*

² Claimant argues that he did request authorization prior to 2001 to seek treatment with Dr. Tsai. However, claimant relies solely on evidence that was admitted at the 1998 hearing before Judge Di Nardi on his 1993 injury. See Cl. Br. at 7-9, 11; n.1, *supra*. This evidence is not contained in the record in this proceeding. If claimant has evidence that he requested authorization to treat with Dr. Tsai prior to 2001, he may request modification based on a mistake in fact. 33 U.S.C. §922; *Metropolitan Stevedore Co. v. Rambo [Rambo I]*, 515 U.S. 291, 30 BRBS 1(CRT) (1995); *Old Ben Coal Co. v. Director, OWCP*, 292 F.3d 533, 36 BRBS 35(CRT) (7th Cir. 2002); *Woods v. Bethlehem Steel Corp.*, 17 BRBS 243 (1985).

³ The administrative law judge noted claimant's apparent ambivalence about proceeding against the 1998 employer/carrier for the payment of Dr. Tsai's medical bills. A

Accordingly, the administrative law judge's Decision and Order Denying Claim for Payment of Medical Bills is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

claim for medical benefits, however, is never time-barred. *See, e.g., Siler v. Dillingham Ship Repair*, 28 BRBS 38 (1994).