BRB No. 10-0428

DENNIS WALTON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
P & O PORTS BALTIMORE	)	DATE ISSUED: 02/28/2011
	)	
and	)	
	)	
PORTS INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Myles R. Eisenstein, Baltimore, Maryland, for claimant.

Heather H. Kraus (Semmes, Bowen & Semmes), Baltimore, Maryland, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (2009-LHC-1975) of Administrative Law Judge Daniel F. Solomon 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).

Claimant, a gang carrier boss for employer, suffered an injury to his right knee on January 15, 2007. Claimant, who subsequently experienced pain in his left knee, received Supartz injections, which proved to be ineffective in relieving his bilateral knee

pain. He underwent athroscopic surgery on his right knee in June 2007 and on his left knee in November 2007.[1] Claimant returned to full-time work and thereafter sought medical benefits, specifically reimbursement for the Supartz injections and authorization for total knee replacement surgeries, allegedly related to his work injury.

In his Decision and Order, the administrative law judge found that claimant's Supartz injections were reasonable and necessary medical expenses associated with his work injury, and he thus held employer liable for the costs of those treatments. 33 U.S.C. §907(a). The administrative law judge found, however, that claimant's need for total knee replacement surgeries is unrelated to his work injury, and he consequently denied claimant's request that employer be held liable for the cost of those surgeries.

On appeal, claimant challenges the administrative law judge's denial of his request that employer authorize and be held liable for the cost of the recommended knee replacement surgeries. Employer responds, urging affirmance of the administrative law judge's decision.

Section 7(a) of the Act, 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." 33 U.S.C. §907(a); *see Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988). In order for a medical expense to be assessed against employer, therefore, the expense must be related to the work injury. *See Dupre v. Cape Romain Contractors, Inc.*, 23 BRBS 86 (1989); *Pardee v. Army & Air Force Exch. Serv.*, 13 BRBS 1130 (1981); 20 C.F.R. §702.402. A claimant may establish his *prima facie* case for compensable medical treatment when a qualified physician indicates that treatment is necessary for a work-related condition. *See Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989). However, whether a particular medical expense is necessary for the work injury is a factual issue within the administrative law judge's authority to resolve. *See Weikert v. Universal Maritime Serv. Corp.*, 36 BRBS 38 (2002*); Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988).

In this case, both Drs. Pollock and Klepper recommended knee replacement surgery for both knees. The administrative law judge, however, found that claimant failed to establish that these recommended knee replacement surgeries are related to his work injury. In making this determination, the administrative law judge credited Dr. Pollock's opinion regarding the relationship between the proposed knee replacement

[1] Claimant and employer stipulated as to the disability benefits due claimant under the Act; those stipulations were approved by the administrative law judge in a separate proceeding and are not the subject of this appeal.

surgeries and claimant's work injury. Decision and Order at 8. Dr. Pollock, while acknowledging that claimant's work injury exacerbated his underlying arthritis, found no relationship between claimant's work incident and his need for knee replacement surgery. In February 2008, Dr. Pollock stated that claimant likely will need bilateral knee replacements, but that the need for these surgeries is not related to the work accident. Cl. Exs. 3, 4. On February 24, 2009, Dr. Pollock stated that,

> [Claimant's] knee replacement is necessitated by his underlying degenerative arthritis in the left knee and the natural progression of that disease. . . . I do not believe that the [January 15, 2007 work incident] substantially change [sic] the natural history of his underlying arthritis or that has resulted in his current need for total knee replacement. Stated differently, I believe that he would be ready for a total knee replacement today absent the workplace incident that occurred in January 2007.

Cl. Ex. 6. The administrative law judge also found that Dr. Klepper's reports do not address the question of whether claimant's recommended knee replacement surgeries are related to his work injury. *See* Cl. Exs. 3, 4. Thus, as neither physician stated that the recommended surgeries are related to or necessary for the treatment of claimant's January 2007 work injury, the administrative law judge concluded that claimant failed to carry his burden on this issue and claimant's request that employer be held liable for the recommended surgeries was denied.

We reject claimant's challenge to the administrative law judge's decision on this issue. The administrative law judge fully addressed the medical testimony of record and claimant has established no error in his findings that claimant did not establish that the knee replacement surgeries are necessary for the treatment of the work injury. As the administrative law judge's findings on this issue are supported by substantial evidence, we affirm his determination that employer is not liable for claimant's recommended total knee replacement surgeries. *See Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9 (2001), *aff'd mem.*, 32 F.App'x 126 (5th Cir. 2002); *Wheeler*, 21 BRBS at 35.

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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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge