U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 17-0487

DARRELL BOUDREAUX	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
WILKINSON TECHNOLOGIES	)	
	)	DATE ISSUED: Feb. 21, 2018
and	)	
	)	
AMERICAN INTERSTATE INSURANCE COMPANY	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order and the Order on Reconsideration of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

Louis R. Koerner, Jr. (Koerner Law Firm), New Orleans, Louisiana, for claimant.

Henry H. LeBas and F. Douglas Ortego (LeBas Law Offices), Lafayette, Louisiana, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order and the Order on Reconsideration (2016-LHC-00813) of Administrative Law Judge Patrick M. Rosenow 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.*, as extended by the Outer Continental Shelf Lands Act, 43 U.S.C. §1331 *et seq*. (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge 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, who had a significant pre-existing right knee condition,[1] allegedly injured his right knee when, in the course of his work for employer as a rigger on October 9, 2013, he fell approximately three or four feet from a personnel basket onto a boat deck. EX 2. Claimant was returned to the mainland. On October 10, 2013, he was diagnosed with a right knee sprain and a left shoulder contusion, provided with Aleve, and cleared to return to regular duty. EX 29. Employer offered claimant light-duty work in its tool room but claimant declined the offer stating he could not work due to his injuries. Claimant has not worked since the October 9, 2013 incident because he believes he cannot put weight on his right knee. Claimant's treating physician, Dr. Stubbs, performed arthroscopic surgery on claimant's right knee on July 1, 2014, and subsequently recommended a total right knee replacement. Employer voluntarily paid claimant temporary total disability benefits through March 5, 2015. Claimant, thereafter, filed a claim alleging that the fall at work on October 9, 2013, rendered him totally disabled and in need of a right knee replacement.[2]

The administrative law judge found claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), that his present right knee condition is related to the October 9, 2013 work incident, that employer established rebuttal thereof, and that claimant did not satisfy his burden of establishing that his pre-existing right knee condition was aggravated by that work incident. The administrative law judge thus denied claimant's claim for benefits. The administrative law judge denied claimant's motion for reconsideration.

On appeal, claimant challenges the administrative law judge's findings that employer rebutted the Section 20(a) presumption and that he did not establish, by a preponderance of the evidence, that his present right knee condition is related to the work incident. Employer responds, urging affirmance of the administrative law judge's denial of benefits.

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[1]The record shows claimant had surgery to repair a lateral tibial plateau fracture of the right knee in September 1993, and an arthroscopic procedure on that knee on August 2, 2001. EXs 9, 10. The record also indicates that claimant had 15-20 emergency room evaluations for complaints of right knee pain between September 12, 2003 and July 24, 2013, as a result of specific accidents or flare-ups in general symptoms. EXs 14 – 27; EX 9, Dep. at 35-44; EX 11, Dep. at 43-77.

[2]Claimant also filed suit under the Jones Act, 46 U.S.C. §688(a), which was dismissed at the parties' request. EX 33.

After consideration of the administrative law judge's decision, the arguments raised on appeal, and the evidence of record, we affirm the administrative law judge's Decision and Order as it is supported by substantial evidence and contains no reversible error. *O'Keeffe*, 380 U.S. 359; *see* 20 C.F.R. §802.404(b). We affirm the administrative law judge's finding that employer rebutted the Section 20(a) presumption based on the opinions of Drs. Budden and Meyer[3] as it is rational and supported by substantial evidence. *See Ceres Gulf, Inc. v. Director, OWCP* [*Plaisance*], 683 F.3d 225, 231, 46 BRBS 25, 29(CRT) (5th Cir. 2012) (employer need only produce substantial evidence that "throw[s] factual doubt on claimant's prima facie case); *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert. denied*, 540 U.S. 1056 (2003). The administrative law judge also rationally found that claimant did not meet his burden to establish, by a preponderance of the evidence, that he sustained an injury as a result of the October 9, 2013 fall while at work or that he aggravated or exacerbated his underlying right knee condition as a result of that incident. *See Plaisance*, 683 F.3d at 229, 232, 46 BRBS at 27, 29(CRT). In addition to crediting the opinions of Drs. Budden and Meyer, the administrative law judge rationally accorded diminished weight to Dr. Stubbs's opinion that the October 9, 2013 fall at work exacerbated claimant's underlying arthritis because it was based on claimant's reporting, which the administrative law judge found was not credible, that his symptoms increased after the work incident.[4] Decision and Order at 18. The Board is not empowered to reweigh the evidence, but must accept

[3]Dr. Budden stated: 1) claimant was going to need the arthroscopic surgery which Dr. Stubbs performed in 2014, as well as the total knee replacement thereafter recommended, regardless of the October 9, 2013 work incident; 2) the fall at work did not accelerate the need for the knee replacement surgery; and 3) claimant's work limitations were the same or should have been the same before the October 9, 2013 alleged incident as they are after that incident. EX 9, Dep. at 46-47, 53. Dr. Meyer stated: 1) claimant's clinical findings are consistent with an individual who required a total knee arthroplasty years before his accident of October 9, 2013; 2) it is more likely than not that the right knee arthroscopy he underwent in July 2014 would have been necessary regardless of whether or not an injury occurred in October 2013; and 3) claimant's physical limitations are unchanged irrespective of the October 2013 injury. EX 12.

[4]The administrative law judge rationally found claimant's reporting of symptoms and overall testimony "suspect" because he failed to provide Drs. Budden and Stubbs with a full and accurate medical history, and he was not truthful about his drug use. Decision and Order at 18; *see Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 1335, 8 BRBS 744, 747 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979) (the administrative law judge's credibility determinations are not to be disturbed unless they are "inherently incredible or patently unreasonable").

the rational inferences and findings of fact of the administrative law judge that are supported by the record. *See James J. Flanagan Stevedores, Inc. v. Gallagher*, 219 F.3d 426, 34 BRBS 35(CRT) (5th Cir. 2000); *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991). Claimant has failed to raise any reversible error in the administrative law judge's decision, and we affirm the finding that claimant's right knee condition is not related to the October 9, 2013 work incident as it is supported by substantial evidence of record.[5] *Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT)*; Lennon v. Waterfront Transport*, 20 F.3d 658, 28 BRBS 22(CRT) (5th Cir. 1994); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

Accordingly, the administrative law judge's Decision and Order and Order on Reconsideration are affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge

_____
RYAN GILLIGAN
Administrative Appeals Judge

[5]Claimant has not shown that the administrative law judge erred in finding that employer reserved the right to raise any and all defenses in the Longshore case, notwithstanding its agreement to commence paying benefits under the Act in exchange for claimant dropping his Jones Act claim. The parties agreed that the Longshore Act "governs" claimant's claims against employer and that employer "reserve[d] all defenses." EX 32; Tr. at 9-15.