BRB Nos. 99-0852, 00-0500
and 00-1092

RICHARD MCBRIDE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
HALTER MARINE, INCORPORATED	)	DATE ISSUED: Jan. 10, 2001
	)	
and	)	
	)	
RELIANCE NATIONAL INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeals of the Decision and Order on Remand Awarding Benefits, Decision and Order Denying Motion for Modification, and Decision on Motion for Modification of David W. DiNardi, Administrative Law Judge, United States Department of Labor.

Richard McBride, Moss Point, Mississippi, *pro se.*

Donald P. Moore (Franke, Rainey & Salloum, PLLC), Gulfport, Mississippi, for employer/carrier.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order on Remand Awarding Benefits, Decision and Order Denying Motion for Modification, and Decision on Motion for Modification (95-LHC-1175) of Administrative Law Judge David W. DiNardi 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). As claimant is not represented by counsel, the Board will review the administrative law

judge's findings of fact and conclusions of law in order to determine whether they are rational, supported by substantial evidence, and in accordance with law; if so, they must be affirmed. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3); 20 C.F.R. §§802.211(e), 802.220.

This case is before the Board for the third time. To briefly reiterate the facts relevant to the instant appeals, claimant sustained neck and back injuries resulting from two work-related incidents occurring on March 3, 1994, and April 13, 1994, respectively; claimant further alleged that he suffered a psychological injury as a result of these two work-related incidents. Claimant returned to work in a modified duty position at employer's facility on September 19, 1994, but, following a positive drug test, he was terminated on September 22, 1994, for violation of a company rule. In his initial Decision and Order issued on April 17, 1997, the administrative law judge found that claimant's physical injuries were related to his employment with employer, but that any psychological condition from which claimant may suffer was not related to the 1994 incidents. Accordingly, the administrative law judge awarded claimant temporary total disability compensation for disability due to his physical injuries from April 14, 1994, to September 18, 1994, at which time the administrative law judge determined that employer had established the availability of suitable alternate employment within its own facility. 33 U.S.C. §908(b).

Claimant appealed to the Board, challenging the administrative law judge's finding that his current psychological condition is unrelated to the two work incidents which he experienced while working for employer, and the administrative law judge's consequent denial of medical treatment and compensation under the Act for that alleged work-related condition. In its decision issued on June 5, 1998, the Board reversed the administrative law judge's finding that claimant's psychological condition is not work-related, and remanded the case for consideration of the remaining issues. *McBride v. Halter Marine, Inc.*, BRB Nos. 97-1226/A (June 5, 1998)(unpublished).

In his Decision and Order on Remand issued on April 5, 1999, the administrative law judge determined that claimant's psychological condition does not prevent him from performing the modified duty position at employer's facility which the administrative law judge had previously found to constitute suitable alternate employment. Accordingly, the administrative law judge denied compensation benefits for claimant's psychological condition. On the basis of the Board's holding as a matter of law that claimant's psychological condition is related to his employment, the administrative law judge next found employer to be responsible for any reasonable and necessary future medical

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[1]Employer also appealed to the Board, challenging the attorney fees awarded to claimant by both the administrative law judge and the district director. The attorney fee awards are not at issue in the appeals presently before the Board.

treatment of claimant's psychological condition. 33 U.S.C. §907. The administrative law judge denied Section 7 medical benefits, however, for the past medical treatment of claimant's psychological condition.

Both claimant and employer again appealed to the Board, claimant contesting the denial of compensation and past medical benefits, BRB No. 99-0852, and employer challenging the award of future medical benefits for claimant's psychological condition, BRB No. 99-0852A. Thereafter, claimant filed with the Board a request for modification accompanied by additional documents. Acting upon claimant's motion, the Board dismissed the appeals filed by both claimant and employer, and remanded the case for modification proceedings. 33 U.S.C. §922; 20 C.F.R. §§725.310, 802.301.

In a Decision and Order Denying Motion for Modification issued on January 18, 2000, the administrative law judge denied modification on the basis that the medical evidence accompanying claimant's modification request had already been admitted into evidence and the other documents submitted by claimant are irrelevant. Thereafter, claimant filed an appeal of the administrative law judge's denial of modification and additionally requested that his prior appeal, BRB No. 99-0852, be reinstated. By Order dated February 15, 2000, the Board acknowledged claimant's appeal of the modification denial, BRB No. 00-0500, reinstated claimant's appeal in BRB No. 99-0852, and consolidated the two appeals for purposes of rendering a decision. Claimant subsequently filed an additional motion for modification with the administrative law judge, which was summarily denied on July 26, 2000; claimant subsequently appealed this decision to the Board. By Order dated September 5, 2000, the Board acknowledged claimant's additional appeal, assigned that appeal the BRB No. 00-1092, and consolidated that appeal with claimant's appeals in BRB Nos. 99-0852 and 00-0500 for purposes of decision. Thus, in the appeals presently pending before the Board, claimant challenges

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[2]In a Decision and Order on Reconsideration issued on April 26, 1999, the administrative law judge corrected the Decision and Order on Remand to delete the award of a Section 14(e) assessment, 33 U.S.C. §914(e), consistent with his previous Decision on Motion for Reconsideration issued on June 3, 1997, finding that, as employer timely filed its controversion, claimant is not entitled to a Section 14(e) assessment. We note that, in his original appeal to the Board, claimant, who was then represented by counsel, did not challenge the denial of a Section 14(e) assessment. As the administrative law judge correctly found that employer timely filed its controversion, his denial of a Section 14(e) assessment is affirmed.

[3]Both parties were advised that their appeals would be reinstated by the Board only if petitioners requested reinstatement within thirty days from the date the decision on modification was filed. As employer has not filed a request for reinstatement of its appeal in BRB No. 99-0852A, the contentions raised in that appeal will not be considered.

the administrative law judge's Decision and Order on Remand denying disability benefits and past medical benefits for claimant's psychological condition, as well as the administrative law judge's two decisions denying claimant's request for modification. Employer responds, urging affirmance of the administrative law judge's denial of modification.

We first address claimant's challenge to the administrative law judge's denial of disability benefits for claimant's psychological condition in the Decision and Order on Remand. As it is undisputed that claimant cannot perform his usual work due to his work injury, the burden shifted to employer to demonstrate the availability of suitable alternate employment that claimant is capable of performing. *See Darby v. Ingalls Shipbuilding, Inc.*, 99 F.3d 685, 30 BRBS 93 (CRT)(5th Cir. 1996); *Mijangos v. Avondale Shipyards,* 948 F.2d 941, 25 BRBS 78 (CRT)(5th Cir. 1991); *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 14 BRBS 156 (CRT) (5th Cir. 1981). Employer may meet its burden of showing suitable alternate employment by offering claimant a job which he can perform within its own facility. *See Darby,* 99 F.3d at 688, 30 BRBS at 94(CRT); *Darden v. Newport News Shipbuilding & Dry Dock Co.*, 18 BRBS 224 (1986). The Board has held that where claimant has been discharged from a light duty job within employer's own facility for violation of a company rule, and not for reasons related to his disability, employer may use that position to satisfy its burden of showing suitable alternate employment if it has established that claimant is, in fact, capable of performing the duties of that position. Thus, if employer has demonstrated that claimant is able to perform the job within its facility, the fact that the position is no longer available to claimant, due to his discharge for reasons unrelated to his disability, does not impose upon employer the additional requirement to show different suitable alternate employment outside its facility. *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)(4th Cir. 1993); *see also Manship v. Norfolk & Western Ry. Co.*, 30 BRBS 175 (1996). Regarding this issue, the physical ability to perform a job is not the exclusive determinant whether the identified position constitutes suitable alternate employment; rather, the administrative law judge must consider whether claimant has the ability, from a mental or psychological standpoint, to successfully perform the requirements of the position. *See Ledet v. Phillips Petroleum Co.,* 163 F.3d 901, 32 BRBS 212 (CRT)(5th Cir. 1999); *Armfield v. Shell Offshore, Inc.*, 30 BRBS 122 (1996).

Thus, in the case at bar, the relevant inquiry in determining whether the modified duty position in employer's facility satisfies employer's burden of establishing the availability of suitable alternate employment is whether claimant's work-related psychological problems prevent him from performing the duties of that job. *See Armfield,* 30 BRBS at 123. The administrative law judge determined, in this regard, that claimant's psychological condition does not preclude his performance of the job in employer's

facility. In reaching this conclusion, the administrative law judge credited the opinion of Dr. Maggio, a psychiatrist who reviewed claimant's medical records and, on February 7, 1997, conducted a psychiatric examination of claimant on behalf of employer. The administrative law judge found the opinions of claimant's treating psychiatrist Dr. Gupta and treating psychologist Dr. Hearne that claimant is totally disabled by his psychological condition were outweighed by the contrary opinion of Dr. Maggio and by the administrative law judge's observation of claimant's demeanor. In giving determinative weight to Dr. Maggio's opinion that claimant's psychological disorders do not prevent him from working for employer, the administrative law judge found it noteworthy both that claimant's psychological condition did not arise until two years after he had stopped working and that this condition is due solely to personal factors. *See* Decision and Order on Remand at 23-24. The administrative law judge's finding, that claimant's psychological condition did not arise until two years after he stopped working, is not supported by substantial evidence. Contrary to the administrative law judge's finding, the record reflects that Dr. Longnecker prescribed the antianxiety medication Ativan to claimant as early as June 1994. *See* EX 9. A few days after claimant's supply of Ativan ran out, he sought treatment on November 11, 1994, at Singing River Hospital Emergency Department, where he was diagnosed with acute anxiety, probably secondary to Ativan withdrawal, and was referred for follow-up treatment at Singing River Mental Health Center. *See* ALJXS 12, 49. On November 29, 1994, claimant initiated treatment

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[4]The holding in *Marino v. Navy Exchange*, 20 BRBS 166 (1988), cited by the administrative law judge in support of his decision to deny claimant the disability award sought, is inapposite to the issue of disability presented in the instant case. In *Marino*, the Board held that a psychological injury arising wholly from a legitimate personnel action is not compensable. In the instant case, the work-related incidents giving rise to the psychological injury were the March 1994 assault and April 1994 crane incident, not the claimant's discharge in September 1994.

[5]Dr. Maggio diagnosed claimant, first, with an adjustment disorder with mixed emotions of anxiety and depression, resolving, and indicated that claimant could return to work while taking the medications prescribed for that condition. Dr. Maggio also diagnosed substance-induced psychosis in remission, and personality disorder not otherwise specified with features of paranoia, histrionic and avoidant personality disorders, and stated that these conditions do not prevent claimant's return to work. EX 1.

[6]In attributing claimant's psychological condition solely to personal factors, the administrative law judge cited claimant's lifestyle and the death of his mother. *See* Decision and Order at 24. Claimant notes on appeal that his mother, in fact, is not deceased. Both Drs. Maggio and Pickel reported claimant's mother as living, EX 1; ALJX 49; additionally, a Singing River Mental Health Center report dated April 23, 1999 submitted in support of claimant's modification request indicates that claimant's mother is alive.

with Singing River Mental Health Center; he was initially seen for therapy and subsequently was also seen by Dr. Feldberg, a Mental Health Center psychiatrist, for the psychopharmacological management of his diagnosed post-traumatic stress disorder. *See* ALJX 49. In addition, the record contains a referral for mental health treatment from claimant's orthopedist, Dr. Longnecker, dated December 7, 1994, as well as a follow-up note dated January 7, 1998 from Dr. Longnecker stating that, after first being seen on May 5, 1994, claimant progressively developed depression and psychotic behavior requiring referral to a psychiatrist. *See* CX 9; ALJX 12. Thus, as the administrative law judge's finding that claimant's psychological condition did not arise until two years after he stopped working is not supported by the record, the administrative law judge erred in relying, in part, on this finding to support his ultimate conclusion that claimant's psychological condition is not disabling. *See generally James J. Flanagan Stevedores, Inc. v. Gallagher,* 219 F.3d 426, 430, 34 BRBS 35, 37 (CRT)(5th Cir. (2000).

Furthermore, in electing to give determinative weight to Dr. Maggio's opinion that claimant is not disabled, the administrative law judge failed, on remand, to address evidence in the record which contradicts Dr. Maggio's opinion regarding claimant's ability to return to work. Specifically, the record reveals that on February 12, 1997, five days after Dr. Maggio's examination of claimant, Dr. Gupta admitted claimant to Charter Hospital, as claimant was experiencing psychotic symptoms including auditory and visual hallucinations and paranoia. During this hospitalization, claimant was treated for post-traumatic stress disorder and major depressive disorder, and was prescribed antipsychotic medications in addition to the antidepressant and antianxiety medications that already had been prescribed. On March 1, 1997, claimant was discharged from the hospital for outpatient mental health treatment, but he was not released to return to work. *See* CX 6.

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[7]Claimant additionally underwent a psychological evaluation by Dr. Pickel as part of a Social Security disability determination. On the basis of his examination of claimant on March 21, 1995, psychological testing conducted on March 21, 1995 and April 18, 1995, and review of Singing River Mental Health Center records reflecting claimant's continuing treatment there, Dr. Pickel made a provisional diagnosis of major depression with possible psychotic symptoms, to be confirmed by Dr. Feldberg. ALJX 49.

[8]Although the administrative law judge briefly summarized the evidence regarding this hospitalization in his initial Decision and Order, *see* April 17, 1997 Decision and Order at 16-17, there is no indication that he considered, on remand, whether evidence of this hospitalization, subsequent to Dr. Maggio's examination, diminishes the probative value of Dr. Maggio's opinion that claimant is able to work.

[9]The record also reveals that Dr. Gupta had previously hospitalized claimant at Charter Hospital on November 24, 1996; claimant was treated at this facility for major depressive disorder with psychosis, post-traumatic stress disorder and personality disorder, and was prescribed antipsychotic medications. Claimant was still delusional and

We therefore vacate the administrative law judge's determination, in his Decision and Order on Remand, that claimant's psychological condition is not disabling, and remand the case for consideration of all of the evidence of record regarding whether employer met its burden of establishing that claimant, in light of his work-related psychological condition, is capable of performing the restricted duty position in employer's facility. *See generally Ledet*, 163 F.3d at 905, 32 BRBS at 214-215(CRT).

We next address claimant's assignment of error to the administrative law judge's denial of his request for modification. Section 22 of the Act, 33 U.S.C. §922, provides the only means for changing otherwise final decisions; modification pursuant to this section is permitted based upon a mistake of fact in the initial decision or a change in claimant's physical or economic condition. *See Metropolitan Stevedore Co. v. Rambo [Rambo I]*, 515 U.S. 291, 30 BRBS 1 (CRT) (1995). It is well-established that the party requesting modification bears the burden of proof. *See*, e.g., *Metropolitan Stevedore Co. v. Rambo [Rambo II]*, 521 U.S. 121, 31 BRBS 54 (CRT) (1997); *Kinlaw v. Stevens Shipping & Terminal Co.*, 33 BRBS 68 (1999), *aff'd mem.*, No. 99-1954 (4th Cir. Dec. 8, 2000). To reopen the record under Section 22, the moving party must allege a mistake of fact or change in condition and assert that the evidence to be produced or of record would bring the case within the scope of Section 22. *See Kinlaw*, 33 BRBS at 73; *Duran v. Interport Maintenance Co.*, 27 BRBS 8 (1993).

Where a party seeks modification based on a change in condition, an initial determination must be made as to whether the petitioning party has met the threshold requirement by offering evidence demonstrating that there has been a change in claimant's condition. *See Jensen v. Weeks Marine, Inc.*, 34 BRBS 147 (2000); *Duran*, 27 BRBS at 14. Where modification based on a mistake of fact is sought, the decision as to whether to reopen a case under Section 22 is discretionary, and is contingent upon the fact-finder's balancing the need to render justice against the need for finality in decision making. *See Kinlaw*, 33 BRBS at 72-73; *see also General Dynamics Corp. v. Director, OWCP [Woodberry]*, 673 F.2d 23, 14 BRBS 636 (1st Cir. 1982); *McCord v. Cephas*, 532 F.2d 1377, 3 BRBS 371 (D.C. Cir. 1976); *Lombardi v. Universal Maritime Service Corp.*, 32 BRBS 83 (1998).

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experiencing hallucinations when he left the hospital against medical advice on November 29, 1996. *See* ALJXS 50A, 54, 57; CX 2. Although the administrative law judge included this evidence in the summary of evidence in his original Decision and Order, *see* April 17, 1997 Decision and Order at 14, he did not address it on remand in his consideration of the evidence relevant to the issue of claimant's work-related disability.

[10]Once the petitioner meets its initial burden of demonstrating a basis for modification, the standards for determining the extent of disability are the same as in the initial proceeding. *See Rambo II*, 521 U.S. at 121, 31 BRBS at 54(CRT)(1997); *Jensen*, 34

In the present case, the administrative law judge concluded that claimant's newly submitted evidence is insufficient to show a change in condition or a mistake of fact. Specifically, the administrative law judge found that the medical records have already been made part of the record and that the remaining evidence submitted is irrelevant to this proceeding. Contrary to the administrative law judge's finding, however, claimant, in requesting modification, submitted medical records which were not previously made part of the record; specifically, claimant introduced medical records from the Singing River Mental Health Center dating from 1997 to 1999 and Dr. Hearne's report dated October 21, 1999. Because these records were erroneously found by the administrative law judge to have previously been admitted into evidence, we must vacate the administrative law judge's denial of modification. If, on remand, the administrative law judge again denies disability benefits on the basis of the existing record, he must reconsider whether the newly submitted medical evidence supports reopening the record pursuant to Section 22. *See generally Kinlaw*, 33 BRBS at 68; *Wynn v. Clevenger Corp.*, 21 BRBS 290 (1988).

Lastly, we consider claimant's contention that the administrative law judge erred in denying Section 7 medical benefits for the past medical treatment of claimant's psychological condition. Under the Act, claimant is entitled to reimbursement for all reasonable and necessary medical treatment related to his work injury. *See Kelley v. Bureau of National Affairs*, 20 BRBS 169 (1988). Specifically, 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." Thus, claimant is entitled to medical benefits regardless of whether his injury is economically disabling so long as the treatment is necessary. *See Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993); *Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989). Section 7(d) of the Act, 33 U.S.C. §907(d), sets forth the prerequisites for an employer's liability for payment or reimbursement of medical expenses incurred by claimant. The Board has

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BRBS at 149; *Delay v. Jones Washington Stevedoring Co.*, 31 BRBS 197, 204 (1998).

[11]We affirm the administrative law judge's finding that the non-medical evidence submitted by claimant does not support reopening the record on the ground that such evidence is not relevant or material to this proceeding.

[12]Although the newly submitted medical records do not explicitly address the effect of claimant's psychological condition on his employability, they do discuss claimant's continuing psychological problems. Thus, these records may support reopening the record to reconsider the issue of disability, in light of the fact that it is employer's burden to establish that claimant is able to perform the job within employer's facility from a psychological standpoint. *See Turner*, 661 F.2d at 1040-1041, 14 BRBS at 163.

held that Section 7(d) requires that a claimant request his employer's authorization for medical services performed by any physician, including the claimant's initial choice. *See Ezell v. Direct Labor, Inc.*, 33 BRBS 19, 28 (1999); *Maguire v. Todd Shipyards Corp.*, 25 BRBS 299 (1992); *Shahady v. Atlas Tile & Marble*, 13 BRBS 1007 (1981)(Miller, J., dissenting), *rev'd on other grounds*, 682 F.2d 968 (D.C. Cir. 1982), *cert. denied*, 459 U.S. 1146 (1983). Where a claimant's request for authorization is refused by the employer, claimant is released from the obligation of continuing to seek approval for his subsequent treatment and thereafter need only establish that the treatment he subsequently procured on his own initiative was reasonable and necessary in order to be entitled to such treatment at employer's expense. *See Ezell*, 33 BRBS at 28; *Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112 (1996); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989). An employer must consent to a change of physician where claimant has been referred by his treating physician to a specialist skilled in treating claimant's injury. *See Ezell*, 33 BRBS at 28; *see generally Armfield v. Shell Offshore, Inc.*, 25 BRBS 303 (1992)(Smith, J., dissenting on other grounds); *Senegal v. Strachan Shipping Co.*, 21 BRBS 8 (1988); 20 C.F.R. §702.406(a).

In the instant case, the administrative law judge determined that employer was not liable for the medical treatment rendered to claimant by Singing River Mental Health Center solely on the basis that claimant failed to request authorization from employer for that treatment. *See* Decision and Order on Remand at 25, 27. However, contrary to the administrative law judge's statement that claimant never sought authorization for this treatment except in legal pleadings filed herein, the record does contain evidence, not considered by the administrative law judge, that claimant did request authorization for his treatment with Singing River. First, the administrative law judge did not address evidence that claimant was referred to Singing River for mental health treatment by his authorized treating orthopedist, Dr. Longnecker. *See* ALJX 12; CX 9; EX 20 at 37-38, 52; Tr. at 130, 131, 180. Furthermore, the administrative law judge did not consider claimant's hearing testimony that employer was provided with a copy of Dr. Longnecker's referral to Singing River and that claimant called employer to request payment of Singing River's bills and his medications, but that employer denied those requests. *See* Tr. at 134-135, 180. As the administrative law judge did not consider this evidence which is relevant to claimant's request for medical benefits, we vacate the administrative law judge's denial of payment for treatment provided by Singing River Mental Health Center; on remand, the administrative law judge must address all of the evidence of record regarding claimant's request for authorization and his referral to Singing River by his authorized treating orthopedist. *See Ezell*, 33 BRBS at 28; *Armfield*, 25 BRBS at 309; 20 C.F.R. §702.406(a).

Next, in denying claimant's request for reimbursement for the services rendered by Drs. Hearne and Gupta, the administrative law judge found, first, that claimant failed to seek prior authorization from employer for treatment with these physicians, and, second, that it was unreasonable for claimant to obtain treatment from these medical providers,

who are located at a distance equal to a four-hour drive from claimant's residence when other qualified providers are available in the vicinity of claimant's home. The administrative law judge ruled, in the alternative, that if this treatment was held to be reasonable, claimant's travel expenses are denied and medical benefits are limited to those reasonable costs that would be incurred near claimant's home.

Pursuant to our previous discussion of this issue, the administrative law judge's denial of Section 7 benefits on these grounds is vacated; on remand, the administrative law judge must determine whether employer had previously refused authorization of claimant's mental health treatment, and, if so, whether such refusal released claimant from the obligation of continuing to seek approval for his subsequent mental health treatment. *See Ezell*, 33 BRBS at 28; *Schoen*, 30 BRBS at 113; *Anderson*, 22 BRBS at 23. If, on remand, claimant is found to have been released from the obligation to seek employer's approval for his subsequent treatment by Drs. Hearne and Gupta, the administrative law judge must reconsider whether this self-procured treatment was reasonable and necessary. *See Schoen*, 30 BRBS at 113; *Anderson*, 22 BRBS at 23; *see also 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); 20 C.F.R. §§702.402, 702.413. Moreover, the distance claimant must travel to a chosen physician does not in itself render the treatment unreasonable; thus, the administrative law judge erred in relying upon this rationale for the denial of all expenses for this treatment. As he found in the alternative, however, claimant's medical expenses may reasonably be limited to those costs which would have been incurred had the treatment been provided locally. *See Schoen*, 30 BRBS at 114-115; *Welch v. Pennzoil Co.*, 23 BRBS 395, 401 n.3 (1990); 20 C.F.R. §702.403. In the present case, as the administrative law judge's finding that competent medical care was available to claimant locally is supported by the uncontroverted deposition testimony of Drs. Hearne and Gupta, *see* CX 2 at 19-20; CX 3 at 34, we affirm the administrative law judge's finding that any medical expenses and travel costs awarded for the treatment provided by Drs. Hearne and Gupta are limited to those expenses and travel costs that would have been incurred had the treatment been provided locally.

Accordingly, the administrative law judge's Decision and Order on Remand Awarding Benefits, Decision and Order Denying Motion for Modification, and Decision on Motion for Modification are affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this decision.

SO ORDERED.

ROY P. SMITH

Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge