BRB No. 02-0347

KENNETH DAWSON	)	
	)	
Claimant-Petitioner	)	
	)	
5.	)	
	)	
CERES MARINE TERMINALS	)	DATE ISSUED: Jan. 15, 2003
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

Robert J. Macbeth, Jr. (Rutter, Walsh, Mills & Rutter, L.L.P.), Norfolk, Virginia, for claimant.

Robert Rapaport (Clarke, Dolph, Rapaport, Hardy & Hull, P.L.C.), Norfolk, Virginia, for employer.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (00-LHC-2729) of Administrative Law Judge Fletcher E. Campbell, Jr., 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 findings of fact and conclusions of law of the administrative law judge which 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 lasher, suffered an injury to his lower back on August 1, 1999, while moving steel rods; he has not worked since that date. Claimant sought compensation for temporary total disability from the date of injury and continuing, as well as payment of medical bills related to his back condition, for treatment of a foot condition,[1] and for psychiatric problems which, he alleges, were caused and/or aggravated by his work injury.

[1]Claimant stated at the hearing that he believed his foot condition which resulted in surgery for removal of a pre-existing bunion on February 15, 2000, may have been the result of his altered gait following his back injury.

In his decision, the administrative law judge found that claimant is not disabled by his work injury, and he, therefore, denied compensation. He further found that claimant=s off hand remark during the hearing, *see* HT at 42-44, regarding his foot surgery was insufficient to raise the issue of the compensability of that surgery. *See* 20 C.F.R. '702.336(b).

On appeal, claimant challenges the administrative law judge=s denial of all benefits for his back injury. Specifically, claimant contends that the administrative law judge irrationally weighed the evidence to find that claimant is not disabled by his work injury. Claimant further alleges that it was irrational for the administrative law judge to deny all medical benefits. Employer responds, urging affirmance of the administrative law judge=s decision.

Claimant argues on appeal that the administrative law judge irrationally relied upon the medical opinions of Drs. Holden, Foer and Irby over those of Drs. Fatehi and Morales. As noted by the administrative law judge, Drs. Holden, Foer and Irby treated and/or examined claimant and opined that he was capable of returning to his usual job. *See* EXS 1, 2, 3, 37. Drs. Fatehi and Morales, on the other hand, opined that claimant continued to suffer from varying degrees of disability. *See* EXS 2, 25.

We reject claimant=s contention that the administrative law judge erred by failing to give determinative weight to the opinions of Drs. Fatehi and Morales, who found that claimant was not capable of returning to even light duty work prior to September 20, 1999. It is well-established that the administrative law judge has the authority to determine the weight to be accorded to the evidence of record. *See*

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[2]On appeal, claimant raises no errors in the administrative law judge=s finding that he is not entitled to compensation for his foot and/or psychological problems based on the judge=s determination that neither arose out of nor was aggravated by claimant=s work injury and that no disability resulted from any psychological problems claimant may suffer. Accordingly, those findings are affirmed.

[3]Dr. Morales released claimant to return to light to medium duty as of October 19, 1999, CX 2, while Dr. Fatehi released claimant to return to light duty as of September 20, 1999. CX 25.

[4]We reject claimant=s contention that the administrative law judge failed to address the testimony of his lay witnesses who provided anecdotal evidence concerning claimant=s work with employer and the aftereffects of his injury. Rather, the administrative law judge found their testimony either irrelevant or redundant

Calbeck v. Strachan Shipping Co., 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp., v. Hughes,* 289 F.2d 403 (2d Cir. 1961); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). The administrative law judge rationally found that the opinions of Drs. Holden, Foer, and Irby were consistent with the objective evidence and claimant=s prior medical history. Moreover, in rendering this determination, the administrative law judge did not, as claimant alleges, spuriously reject the opinions of Drs. Fatehi and Morales based on their underlying qualifications or lack thereof but because he found them unreasoned and based not only on claimant=s subjective complaints, which the administrative law judge found suspect, but also on an incomplete knowledge of claimant=s medical and psychological history. As the administrative law judge=s credibility determinations are rational and within his authority as factfinder, we affirm the administrative law judge=s weighing of the evidence and his finding that claimant is not currently disabled. *See generally Cordero v. Triple A Machine Shop,* 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied,* 440 U.S. 911 (1979); *Donovan,* 300 F.2d 741.

However, we cannot affirm the administrative law judge=s conclusion that claimant did not sustain any period of disability following his injury. None of the doctors of record, including those credited by the administrative law judge, stated that claimant suffered no period of disability. In this respect, it is undisputed that a work accident occurred on August 1, 1999, and that claimant was transported to the hospital by employer and that he subsequently came under the care of Dr. Holden, who diagnosed a lumbosacral strain and prescribed muscle relaxants, physical therapy and pain medication. Dr. Holden did not release claimant to return to work until September 13, 1999. EX 1. Claimant was subsequently examined by Dr. Irby on December 1, 1999 and by Dr. Foer on July 5, 2000; both doctors found claimant capable of returning to full duty work. EXS 2, 3. Although employer voluntarily paid compensation for total disability for one week, August 5 through August 11, 1999, claimant remained totally disabled at least until September 13, 1999, when his then treating physician, Dr. Holden released him to return to work. The administrative law judge=s determination that claimant is not entitled to any disability compensation, therefore, must be vacated and the case remanded for further consideration in light

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because it was based on claimant=s own subjective complaints and lacked the probative value of the extensive medical evidence of record before him. Decision and Order at 5 n.4. This is within the administrative law judge=s discretionary purview. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).

of the findings of the credited physicians.

Moreover, the administrative law judge=s conclusion that claimant is not entitled to any medical benefits also cannot stand in light of the facts of this case. A claimant=s entitlement to medical benefits is governed by Section 7, 33 U.S.C.'907, which requires that employer furnish such medical care as is reasonable and necessary for the treatment of claimant=s work injury or condition. *Weikert v. Universal Maritime Service Corp.*, 36 BRBS 38 (2002). Section 7 does not require that an injury be economically disabling in order for claimant to be entitled to medical expenses. *Buckland v. Dep=t of the Army/ NAF/CPO*, 32 BRBS 99 (1997); *Ballesteros v. Willamette Western Co.*, 20 BRBS 184 (1988).

It is acknowledged that claimant was injured at work and that employer sent claimant to the hospital. Claimant initially was treated by Dr. Holden, who also referred claimant for physical therapy and diagnostic services. There is no physician of record who states that claimant was never in need of any medical treatment for his injury. Although an administrative law judge may rationally find that any medical treatment provided after a date on which claimant=s condition has resolved is not employer=s liability, *see Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9 (2001), *aff=d mem.,* 32 Fed. Appx. 126 (5th Cir. 2002)(table), the administrative law judge in this case denied all medical benefits. The administrative law judge=s blanket denial of all medical benefits does not properly account for Dr. Holden=s diagnosis of a sprain, as well as claimant=s treatment and therapy following his accident. The administrative law judge=s determination that claimant is not entitled to any medical benefits, therefore, must be vacated. On remand, the administrative law judge must determine which medical services are reasonable and necessary for claimant=s injury, and are therefore the liability of employer pursuant to Section 7.

[5]It is unclear from the record before us which medical bills arising out of claimant=s treatment and therapy may be outstanding. Claimant contends that no medical bills have been paid while employer counters that some of the medical claims have been paid. *See* HT at 9.

Accordingly, the administrative law judge=s decision denying all compensation and medical benefits is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge