

ARTHUR G. NIDES)
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 Claimant-Petitioner)
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 v.)
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 1789, INCORPORATED) DATE ISSUED: 01/26/2005
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 and)
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 GAB BUSINESS SERVICES)
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 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Decision and Order and the Decision and Order on Reconsideration and Modification of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Arthur G. Nides, Rockville, Maryland, *pro se*.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order and the Decision and Order on Reconsideration and Modification (2003-DCW-3) of Administrative Law Judge Jeffrey Tureck 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.* (1982), as extended by the District of Columbia Workmen's Compensation Act, 36 D.C. Code §§501, 502 (1973)(the Act). In an appeal by a claimant without representation by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and in accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On June 24, 1982, while working for employer, claimant sustained a low back injury when he fell down a wet staircase. On April 7, 1988, claimant's claim under the Act was settled pursuant to Section 8(i), 33 U.S.C. §908(i); under this agreement,

employer remained liable to claimant, pursuant to 33 U.S.C. §907, for medical benefits arising as a result of claimant's work-related injury. Subsequently, various disputes have arisen regarding the scope of employer's responsibility for reimbursement of claimant for medical benefits associated with this injury.¹ In the instant case, claimant sought reimbursement for an annual membership at a local aquatic center, travel expenses related to attending both his medical and legal appointments, medical supply costs, and various litigation expenses.

In his Decision and Order, the administrative law judge awarded claimant reimbursement, on a pro-rated basis, for the yearly cost of an aquatic center membership fee, travel expenses related to claimant's attendance at physical therapy and medical appointments, as well as trips to the aquatic center, and medical supplies. The administrative law judge determined, however, that employer was not liable for claimant's litigation expenses or the travel expenses related to claimant's prescribed walking regimen at an area mall or his legal engagements.

Claimant thereafter sought both reconsideration and modification of the administrative law judge's decision regarding his request for reimbursement of his travel and legal expenses. In response to claimant's motions, employer informed the administrative law judge that it would accept liability for the travel expenses incurred by claimant in traveling to a mall for his walking regimen as of October 14, 2003, the day it received claimant's motion for reconsideration.² Accordingly, in his Decision and Order on Reconsideration and Modification, the administrative law judge amended his initial decision to reflect employer's liability for reimbursement of claimant's expenses traveling to the mall to engage in his prescribed walking regimen. The administrative law judge denied, however, claimant's renewed request that employer be held liable for his litigation expenses.

On appeal, claimant, representing himself, challenges the administrative law judge's refusal to hold employer liable for his litigation expenses; claimant additionally avers that the administrative law judge erred in considering his request for reimbursement of his travel and exercise expenses. Employer has not responded to claimant's appeal.

¹ This claim appears to be the sixth time that claimant and employer have appeared before an administrative law judge regarding a dispute over employer's liability for claimant's purported work-related medical expenses.

² Employer had previously provided claimant with a treadmill for this purpose. In his motion for reconsideration, claimant averred that this treadmill was no longer operable. Rather than provide claimant with a replacement treadmill, employer informed the administrative law judge that it would pay for claimant's travel expenses to the mall.

Section 7, 33 U.S.C. §907, of the Act generally describes an employer's duty to provide medical and related services and costs necessitated by its employee's work-related injury, employer's rights regarding control of those services, and the Secretary's duty to oversee them. *See Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989). In this regard, Section 7(a) of the Act states that

[t]he employer shall furnish such medical, surgical, and other attendance or treatment ... medicine, crutches, and apparatus, 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, the expense must be both reasonable and necessary, and must be related to the injury at hand. *See Pardee v. Army & Air Force Exch. Serv.*, 13 BRBS 1130 (1981); 20 C.F.R. §702.402. Whether a particular medical expense is necessary is a factual issue within the administrative law judge's authority to resolve. *See Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988).

Claimant initially challenges the administrative law judge's calculation of employer's liability for the cost of his aquatic center membership. Specifically, claimant sought reimbursement for the \$310 cost of an annual membership at a local aquatic center. CX 9. In support of this request, claimant presented a prescription from Dr. Michaels, dated October 24, 2002, which prescribed three days of swimming per week for claimant as a result of his work-related condition. CXs 4, 13. In addressing this issue, the administrative law judge found that Dr. Michaels' valid prescription for a medically recognized therapeutic measure constituted clear evidence of a reasonable and necessary medical benefit. Decision and Order at 4. Finding that employer failed to provide any evidence that Dr. Michaels' prescription was unreasonable, the administrative law judge concluded that claimant met his burden of establishing the reasonableness and necessity of an aquatic center membership. He therefore ordered employer to reimburse claimant, on a pro-rated basis, for the cost of an annual membership with the aquatic center, *id.* at 4, 7, thus granting claimant's request for a pool membership. We affirm the administrative law judge's determination that employer's liability commences as of October 24, 2002, as that is the date of Dr. Michaels' prescription.

Next, claimant sought reimbursement for travel expenses that he allegedly incurred commuting to and from a local mall where he undertakes his prescribed walking regimen. In support of this request, claimant submitted into evidence a prescription from Dr. Michaels stating that claimant should walk one-half hour per day. *See CXs 1, 13.* Although the administrative law judge initially declined to award claimant this requested reimbursement, upon receiving claimant's motion for reconsideration employer agreed to pay these transportation expenses effective October 14, 2003, the date on which claimant

informed employer that his treadmill was inoperable. *See* n.2, *supra*. Accordingly, the administrative law judge amended his Decision and Order to reflect employer's liability to claimant for the expenses incurred by claimant traveling to the mall in order to engage in his prescribed walking regimen. Decision on Recon. at 1. *See generally* *Anderson*, 22 BRBS 20. Under these circumstances, we reject the argument that claimant was entitled to reimbursement at an earlier date and affirm the administrative law judge.

Next, the administrative law judge denied claimant's request for reimbursement for travel expenses allegedly incurred commuting to and from various legal engagements which he asserted were associated with his claim. Specifically, the administrative law judge determined that the trips noted by claimant were legal rather than medical in nature, and that as such they were too attenuated to permit recovery under Section 7 of the Act. Decision and Order at 6. Claimant's travel expenses unrelated to medical care are not recoverable under Section 7, and such legal expenses are also not recoverable under Section 28, 33 U.S.C. §928. *See Stokes v. George Hyman Constr. Co.*, 19 BRBS 110 (1986).³ Accordingly, as the administrative law judge's decision to deny claimant the relief sought on this issue is rational and in accordance with law, it is affirmed.

Lastly, the administrative law judge denied claimant's request for reimbursement for the cost of a hearing transcript as well as litigation expenses totaling \$937.50, representing of seven and one-half hours of document preparation at an hourly rate of \$125. Costs incurred by claimant in litigating a claim may be assessed against an employer or carrier by the administrative law judge pursuant to Section 28(d) of the Act, 33 U.S.C. §928(d). *See Ezell v. Direct Labor, Inc.*, 33 BRBS 19 (1999). In the instant case, however, a review of the record indicates that the transcript for which claimant seeks reimbursement, as well as the initial six hours of document preparation time requested for reimbursement, relate to claimant's prior claims arising under the Act; thus, these charges are unrelated to the case at bar. *See* CXs 7, 8. Moreover, the exhibit submitted by claimant listing the remaining one and one-half hours requested for the preparation of a letter and claimant's Form LS-18 lacks specificity as to who performed the service and whether claimant paid anyone for that service. *See* CX 8. Accordingly, we affirm the administrative law judge's decision holding that employer is not liable for

³ Additionally, a review of the record indicates that these alleged travel expenses are unrelated to the case at bar but are, rather, related to the previous claims filed by claimant under the Act. *See* CX 8 at 2.

these costs, as claimant has not established that they were reasonable and necessary for the preparation of his case.⁴

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

⁴ Although claimant successfully prosecuted his claim for benefits due under the Act, employer is not liable for an attorney's fee since claimant appeared before the administrative law judge without the benefit of counsel. We note that employer is not liable for fees of lay representatives. *Todd Shipyards Corp. v. Director, OWCP*, 545 F.2d 1176, 5 BRBS 23 (9th Cir. 1976).