**U.S. Department of Labor**

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

BRB No. 19-0322

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| ABDUL B. ABDI | ) | |
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| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
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| WORLDWIDE LANGUAGE RESOURCES, INCORPORATED | ) | |
| | ) | |
| | ) | DATE ISSUED: 01/08/2020 |
| and | ) | |
| | ) | |
| ACE AMERICAN INSURANCE COMPANY | ) | |
| | ) | |
| Employer/Carrier-Respondents | ) | DECISION and ORDER |

Appeal of the Decision and Order of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

Abdul B. Abdi, Houston, Texas.

Alan G. Brackett and Derek O'Connor (Mouledoux, Bland, Legrand & Brackett, LLC), New Orleans, Louisiana, for employer/carrier.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant, appearing without counsel, appeals the Decision and Order (2017-LDA-00153) of Administrative Law Judge Lee J. Romero, Jr., rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). In an appeal

by an unrepresented claimant, the Board reviews 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. If they are, they must be affirmed. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

As a result of an improvised explosive device (IED) explosion in June 2011, claimant sustained injuries to his right eye, neck and back during the course of his work in Afghanistan. He subsequently filed a claim for benefits under the Act and, in a Decision and Order issued on June 3, 2014, the administrative law judge found that claimant established work-related injuries to his right eye, neck and back, but failed to establish any loss of wage-earning capacity as a result of those injuries. Consequently, the administrative law judge denied claimant's claim for disability benefits, but awarded all reasonable and necessary medical care for claimant's right eye, neck and back conditions. Both parties moved for reconsideration. The administrative law judge denied both motions in a decision dated October 2, 2014 and filed by the district director on October 7, 2014. These decisions were not appealed, and thus became final.

Sometime in 2015, claimant asserted to the district director that employer was not in compliance with the administrative law judge's award of medical benefits.[1] The district director first transferred the case to the Office of Administrative Law Judges (OALJ) on June 21, 2015. Subsequently, the case was remanded to the district director. After receiving Dr. Barrash's December 2, 2015, report, employer filed a request for modification of the administrative law judge's ongoing award of medical benefits based on a change in claimant's condition. The case was again transferred to the OALJ. Before the administrative law judge, claimant sought "enforcement" of the award of medicals benefits for his back and neck conditions, and, with regard to his right eye condition, reimbursement of medical costs at a rate higher than that set forth in the Office of Workers' Compensation (OWCP) Fee Schedule. He also claimed he is entitled to medical benefits for a new eye condition allegedly related to the work accident. Employer sought to terminate its responsibility for ongoing medical care related to claimant's back and neck complaints, and contested the work-relatedness of new eye complaints.

In a Decision and Order issued March 7, 2019, the administrative law judge denied claimant's request that he "enforce the medical care provisions" of his initial Decision and Order and found claimant did not establish a new work-related injury to his right eye, but the administrative law judge determined that employer remains liable for medical charges related to claimant's initial right eye injury. The administrative law judge found, moreover, that as claimant's current back and neck complaints are not related to his work injury, and

[1] The exact date cannot be ascertained from the record.

no additional medical care is necessary for his initial neck and back injuries, employer is no longer responsible for medical treatment for those conditions.

Claimant appeals the administrative law judge's decision. Employer filed a response brief, urging affirmance of the administrative law judge's decision. Claimant filed a reply letter to which he attached a Memorandum and Order from the United States District Court for the Southern District of Texas addressing the censure of employer's medical expert, Dr. Barrash, by the American Association of Neurological Surgeons.[2]

**Medical Benefits/Causation**

In his initial Decision and Order, the administrative law judge ordered employer to pay, pursuant to Section 7(a) of the Act, 33 U.S.C. §907(a), all reasonable, appropriate and necessary medical expenses for claimant's work-related right eye, neck and back injuries. Employer moved to terminate the award of medical benefits for claimant's back and neck conditions, contending that his current symptoms, if any, are unrelated to the IED incident. In addition, claimant sought to hold employer liable for medical treatment for additional right eye symptoms.

Initially, we observe that although employer termed its claim to terminate the award of medical benefits a "motion for modification" under Section 22 of the Act, 33 U.S.C. §922, any request for modification was not timely filed with respect to the denial of the claim for compensation. A motion for modification must be filed within one year of the last payment of compensation or the denial of the claim, whichever is later. *Alexander v. Avondale Industries, Inc.*, 36 BRBS 142 (2002). The administrative law judge finally denied the claim for compensation in a decision dated October 2, 2014, which was filed by the district director on October 7, 2014, and employer did not file its request to terminate liability for medical benefits until sometime after receiving Dr. Barrash's December 2, 2015, report. The payment of medical benefits does not extend the time for filing a motion for modification because medical benefits are not "compensation" within the meaning of Section 22. *Wheeler v. Newport News Shipbuilding & Dry Dock Co.*, 637 F.3d 280, 45 BRBS 9(CRT) (4th Cir.), *cert. denied*, 565 U.S. 1058 (2011). Nevertheless, because a

[2] This Order is not a part of the record before the administrative law judge. Nonetheless, as this Order constitutes an official court document and is consequently a matter of public record, it is properly the subject of judicial notice. *See Hill v. Avondale Industries, Inc.*, 32 BRBS 186 (1998), *aff'd sub nom. Hill v. Director, OWCP*, 195 F.3d 790, 33 BRBS 184(CRT) (5th Cir. 1999), *cert. denied*, 530 U.S. 1213 (2000). We decline to consider the medical documents claimant sent to the Board, as they were not admitted into evidence before the administrative law judge. 20 C.F.R. §802.301(b).

claim for medical benefits is never time barred, *Siler v. Dillingham Ship Repair*, 28 BRBS 38 (1994) (en banc), the parties retain the ability to "further litigat[e] the propriety or reasonableness of any specific medical expense" following the entry of a general award of medical benefits, as in this case.[3] *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 610, 38 BRBS 60, 69(CRT) (1st Cir. 2004). Similarly, claimant's claim for medical benefits for new eye symptoms is not barred by any statute of limitations or similar restriction. *Siler*, 28 BRBS 38.

**Back and Neck Conditions**

Employer, as the proponent for a change, bore the burden of establishing that claimant no longer requires medical treatment for his neck or back conditions. *See Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). In support of its contention, employer offered the opinion of Dr. Barrash.[4] Dr. Barrash examined claimant on December 2, 2015, and opined that claimant's back and neck complaints cannot be verified either through imaging or physical examination, that any such complaints are unrelated to the work injury, and that no further medical treatment is necessary for claimant's neck or back.[5] *See* Tr. at 38 – 42; EX 2. Claimant did not provide any countervailing medical evidence, and the administrative law judge permissibly found his testimony concerning his physical complaints is not credible.[6] Decision and Order at

[3] Under Section 7(a) of the Act, 33 U.S.C. §907(a), employer is liable for medical benefits "for such period as the nature of the injury or the process of recovery may require."

[4] The administrative law judge specifically acknowledged Dr. Barrash's testimony that he had been censured in a separate case by the American Association of Neurological Surgeons. *See* Decision and Order at 6. Claimant has not established the administrative law judge abused his discretion in relying on Dr. Barrash's opinion notwithstanding this disciplinary action.

[5] In his letter seeking review of the administrative law judge's decision, claimant states without elaboration that Dr. Barrash does not have experience with IED victims. However, Dr. Barrash testified he has treated such patients. Tr. at 36.

[6] Claimant testified that his neck and back pain is "spreading." Tr. at 22-23. The administrative law judge noted Dr. Barrash opined claimant exaggerated his complaints, based on his inconsistent and inaccurate recitations concerning his pain. Decision and Order at 20 (citing Tr. at 30). The administrative law judge found claimant's testimony contradictory and inconsistent, noting that at the first hearing he had found claimant's

11, 20; *see Bis Salamis, Inc. v. Director, OWCP [Meeks]*, 819 F.3d 116, 50 BRBS 29(CRT) (5th Cir. 2016). Thus, based on the uncontradicted opinion of Dr. Barrash that claimant's neck and back symptoms are not related to his work injury and do not require further medical treatment, the administrative law judge terminated the award of medical benefits for claimant's back and neck injuries. *Id.* at 21. As this finding is supported by substantial evidence, we affirm it.[7] *See Victorian v. International-Matex Tank Terminals*, 52 BRBS 35 (2018), *aff'd sub nom. International-Matex Tank Terminals v. Director, OWCP*, 943 F.3d 278 (5th Cir. 2019).

**New Right Eye Symptom**

Claimant alleged that in 2018 he developed blood in his right eye, which is the eye injured in the work accident. Tr. at 29. Dr. Barrash examined claimant's right eye on December 2, 2015, and stated there was nothing wrong with it at that time. *See* EX 2. Thus, he stated that any new eye condition claimant complained of thereafter is unrelated to his June 12, 2011, work accident. Tr. at 40 – 41. Based on Dr. Barrash's opinion, the administrative law judge found that employer is not liable for medical treatment for any new symptoms, but remains liable for any treatment related to the original eye injury. Decision and Order at 20.

Although the administrative law judge did not discuss claimant's new eye symptom in terms of the Section 20(a), 33 U.S.C. §920(a), presumption, any error in this regard is harmless. *See generally Suarez v. Service Employees Int'l, Inc.*, 50 BRBS 33 (2016). Even assuming claimant is entitled to the Section 20(a) presumption relating his eye condition to his employment, the opinion of Dr. Barrash would rebut any presumed connection between the 2018 symptoms and the work accident, *see Ceres Gulf, Inc. v. Director, OWCP [Plaisance]*, 683 F.3d 225, 46 BRBS 25(CRT) (5th Cir. 2012), and is sufficient to establish the absence of a causal relationship based on the record a whole. *Bingham v. General Dynamics Corp.*, 20 BRBS 198 (1988). In addition, claimant did not offer any evidence that this condition is related to his employment or required medical treatment. Thus, the

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statements regarding his ability to work contraindicated by video evidence. *Id.* at 10-11, 20.

[7] The administrative law judge did not specifically state the date on which employer's liability for medical benefits ceased. The logical ending date is December 1, 2015, as he found based on Dr. Barrash's examination on December 2, 2015, that claimant's back and neck complaints are not work-related and no longer require treatment. *See* Decision and Order at 21.

finding that claimant did not establish entitlement to medical benefits for his 2018 eye symptoms is supported by substantial evidence and is affirmed.

**Enforcement of Prior Award of Medical Benefits**

Claimant sought to hold employer liable for the actual medical charges he incurred for treatment with Dr. Watkins for his work-related right eye condition. Claimant testified that Dr. Watkins, an ophthalmologist, does not accept workers' compensation payments, that he pays Dr. Watkins for his services, and that employer reimburses him at the rates set forth in the OWCP Fee Schedule. Tr. at 20 – 22. Claimant further testified that employer has encouraged him to find a physician who accepts workers' compensation payments, but he has declined to do so. *Id.* Employer, in response, acknowledged it remains liable for claimant's medical care related to his initial work-related right eye condition, but asserted that such liability does not require it to pre-pay claimant's physician or to pay charges in excess of those set forth in the OWCP Fee Schedule. *Id.* at 9.

The administrative law judge found that Section 7(g) of the Act, 33 U.S.C. §907(g),[8] and Section 702.413 of the regulations, 20 C.F.R. §702.413,[9] are applicable to this issue,

[8] Section 7(g) provides:

> All fees and other charges for medical examinations, treatment, or service shall be limited to such charges as prevail in the community for such treatment, and shall be subject to regulation by the Secretary. The Secretary shall issue regulations limiting the nature and extent of medical expenses chargeable against the employer without authorization by the employer or the Secretary.

[9] Section 702.413 addresses fees for medical services:

> All fees charged by medical care providers for persons covered by this Act shall be limited to such charges for the same or similar care (including supplies) as prevails in the community in which the medical care provider is located and shall not exceed the customary charges of the medical care provider for the same or similar services. Where a dispute arises concerning the amount of a medical bill, the Director shall determine the prevailing community rate using the OWCP Medical Fee Schedule (as described in 20 CFR 10.805 through 10.810) to the extent appropriate, and where not appropriate, may use other state or federal fee schedules. The opinion of the Director that a charge by a medical care provider disputed under the provisions of section 702.414 exceeds the charge which prevails in the

and dictate that employer is liable only at the "prevailing community rate." Decision and Order at 12-13. He noted there is no evidence that any dispute as to amounts payable to Dr. Watkins has been presented to the district director, as required by the regulations. *See Newport News Shipbuilding & Dry Dock Co. v. Loxley*, 934 F.2d 511, 24 BRBS 175(CRT) (4th Cir. 1991), *cert. denied*, 504 U.S. 910 (1992); 20 C.F.R. §§702.413–702.417. Thus, he declined to order employer to pay medical benefits in excess of the OWCP Fee Schedule rate. We affirm this determination, as the district director, not an administrative law judge, is charged with resolving disputes over the amount of a medical bill. Thus, a claimant or a doctor must present payment issues to the district director if there is a dispute as to the amounts payable. 33 U.S.C. §907(d)(3); *Watson v. Wardell Orthopaedics, P.C.*, 51 BRBS 17 (2017).

Claimant also requested that the administrative law judge "enforce" his initial Decision and Order awarding medical care payable by employer. Claimant testified that employer declined to pay for facet blocks prescribed in October 2015, *see* Tr. at 16, and for pain management services in 2016. *Id.* at 18 – 20. The administrative law judge declined to "enforce" the prior award, finding the record devoid of any evidence that claimant sought an informal conference before a district director on the issue of employer's failure to comply with the initial award of medical benefits. Decision and Order at 11-12.

We affirm, albeit on different grounds.[10] The record indicates claimant did not undergo the facet blocks or pain management treatment after employer refused to authorize

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> community in which said medical care provider is located shall constitute sufficient evidence to warrant further proceedings pursuant to section 702.414 and to permit the Director to direct the claimant to select another medical provider for care to the claimant.

Sections 702.414 through 702.417 address the procedures for resolving disputes over whether the provider's charges exceed the prevailing charges. 20 C.F.R. §§702.414–702.417.

[10] The administrative law judge declined to enforce the award of medical benefits because the enforcement mechanism of Section 21(d) of the Act, 33 U.S.C. §921(d), requires that a claimant obtain a default order from the district director and apply for enforcement thereof in district court. Decision and Order at 11-12; *see* 20 C.F.R. §702.372; *but see Grimm v. Vortex Marine Constr.*, 921 F.3d 845, 53 BRBS 23(CRT) (9th Cir. 2019) (a general award of "medical benefits" is not enforceable; the order must indicate an amount to be paid, a means for calculating what the employer owed, or an itemization of a specific medical service for which the employer would be liable).

these treatments. *See* EX 1 at 331; Tr. at 16 – 18. As we have affirmed the finding that claimant does not require additional medical treatment for his back or neck complaints as of December 2, 2015, employer cannot now be held liable for facet blocks or pain management provided on or after that date. *See Raiford v. Huntington Ingalls Industries, Inc.*, 49 BRBS 61, 64 (2015) (medical expenses must be related to a work injury).

Accordingly, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge