

STANLEY R. SILER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DILLINGHAM SHIP REPAIR)	DATE ISSUED:
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order on Motion for Summary Judgment and Decision Denying Motion for Reconsideration of Vivian Schreter-Murray, Administrative Law Judge, United States Department of Labor.

Stanley R. Siler, Portland, Oregon, *pro se*.

Dennis R. VavRosky and Patric J. Doherty (VavRosky, MacColl, Olson, Doherty & Miller, P.C.), Portland, Oregon, for self-insured employer.

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

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order on Motion for Summary Judgment and Decision Denying Motion for Reconsideration (89-LHC-1411) of Administrative Law Judge Vivian Schreter-Murray 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). In reviewing this *pro se* appeal, the Board will review the administrative law judge's findings of fact and conclusions of law to determine whether 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); 20 C.F.R. §§802.211(e), 802.220.

Claimant, a rigger, suffered a cerebral accident on July 7, 1983. Claimant returned to light-duty work on June 1, 1984, with restrictions on extended walking, climbing, bending and heavy lifting. After approximately two months, claimant was laid off; claimant has not worked since that time.

In her Decision and Order on Motion for Summary Judgment, the administrative law judge found the claim was untimely filed pursuant to Section 13 of the Act, 33 U.S.C. §913. Specifically, the administrative law judge, after determining that the claim was filed on August 24, 1988, concluded that claimant had the requisite awareness regarding his work-injury on May 31, 1985, when he consulted with Dr. Snodgrass,¹ and that, therefore, the claim was filed beyond the one year limitation period set forth in Section 13(a) of the Act. 33 U.S.C. §913(a). The administrative law judge thus dismissed the claim as time-barred without addressing the substantive issues raised by the parties. The administrative law judge subsequently denied claimant's petition for reconsideration.

On appeal, claimant, appearing *pro se*, challenges the administrative law judge's denial of his claim. Employer responds, requesting that the Board take judicial notice of the Order of the United States Court of Appeals for the Ninth Circuit in *Siler v. Dillingham Ship Repair*, No. 90-35320 (November 11, 1990)(unpublished), in which the court, after noting the administrative law judge's conclusion that the instant claim was time-barred, affirmed an Order of Dismissal of the United States District Court for the District of Oregon dismissing a claim filed by claimant before that tribunal. Initially, we reject this argument. The Board has jurisdiction to review the decisions of administrative law judges under 33 U.S.C. §921. The circuit court's reference, in an appeal of a district court decision, to the administrative law judge's decision does not preclude the Board's exercise of its statutory authority to consider the merits of claimant's timely appeal of the administrative law judge's decision. We will, therefore, address the administrative law judge's determination that the claim is time-barred.

Section 13(a) of the Act applies in cases involving traumatic injuries and requires that a claimant file his claim for benefits within one year of the time he becomes aware, or with the exercise of reasonable diligence should have been aware, of the relationship between his injury and his employment. 33 U.S.C. §913(a). The United States Court of Appeals for the Ninth Circuit, wherein appellate jurisdiction of this case lies, has held that a claimant's time for filing under Section 13(a) does not commence until he knows or has reason to know that his injury is likely to impair his earning capacity. *Abel v. Director, OWCP*, 932 F.2d 819, 24 BRBS 130 (CRT)(9th Cir. 1991); *J.M. Martinac Shipbuilding v. Director, OWCP*, 900 F.2d 180, 23 BRBS 127 (CRT)(9th Cir. 1990). *Accord Newport News Shipbuilding and Dry Dock v. Parker*, 935 F.2d 20, 24 BRBS 98 (CRT)(4th Cir. 1991); *Brown v. I.T.T./ Continental Baking Co.*, 921 F.2d 289, 24 BRBS 75 (CRT)(D.C.Cir. 1990); *Brown v. Jacksonville Shipyards, Inc.*, 893 F.2d 294, 23 BRBS 22 (CRT)(11th Cir. 1990); *Marathon Oil Co. v. Lunsford*, 733 F.2d 1139, 16 BRBS 100 (CRT)(5th Cir. 1984). Claims for benefits under the Act should be in writing and filed with the district director. *See* 20 C.F.R. §702.221.

In her Decision and Order, the administrative law judge found that claimant related his alleged injury to his employment with employer on July 31, 1985, during a consultation with Dr. Snodgrass, EX-12A-2, and that claimant consulted with separate counsel on August 6, 1985 and February 1, 1986 respectively, regarding the prosecution of a workers' compensation claim against

¹We note that claimant actually consulted with Dr. Snodgrass on July 31, 1985, *see* EX-12A-2; the administrative law judge acknowledges this date on page 2 of her initial Decision and Order.

employer. EXS-24-1, 27A. Based upon the foregoing, the administrative law judge determined that claimant had formed the requisite awareness of the relationship between his injury and his employment no later than his consultation with Dr. Snodgrass in 1985; accordingly, the administrative law judge concluded that the claim was untimely pursuant to Section 13 of the Act, since it was filed on August 24, 1988.

It is well-established that an administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences from the evidence. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988). The Board must affirm a decision if the findings of the administrative law judge are supported by substantial evidence in the record as a whole, if they are rational, and if the decision is in accordance with law. *See O'Keefe, supra*, 380 U.S. at 359. In the instant case, the administrative law judge set forth specific statements and actions undertaken by claimant which indicate that he was aware of the work-related nature of his injury by February 1, 1986. Additionally, our review of the record in this case indicates that claimant was repeatedly informed of the limitations placed upon him post-injury, and that claimant, in March 1986, authorized employer to release all documentation regarding his injury to his counsel. *See EX-27A*. We therefore affirm the administrative law judge's finding that claimant's August 24, 1988, claim was untimely filed pursuant to Section 13 of the Act, as that determination is rational and supported by substantial evidence in the record as a whole, and consistent with applicable law. *See Abel, supra*.

The fact that the administrative law judge did not err in denying the claim for compensation does not mean that the denial of benefits can be affirmed in its entirety. The administrative law judge, after concluding that the instant claim was untimely filed pursuant to Section 13, failed to address the claim for medical benefits. The right to medical benefits is never time-barred. *See Weber v. Seattle Crescent Container Corp.*, 19 BRBS 146 (1986). Thus, claimant may be entitled to medical benefits despite his failure to comply with Section 13. *See Mayfield v. Atlantic & Gulf Stevedores*, 16 BRBS 228 (1984). An award of medical benefits, however, is contingent upon other prerequisites related to the merits of claimant's compensation claim, such as a finding of a causal relationship. *See Romeike v. Kaiser Shipyards*, 22 BRBS 51 (1989). Moreover, medical treatment must be reasonable and necessary for a work-related injury, and claimant must comply with statutory requirements before employer can be held liable. *See* 33 U.S.C. §907. We, therefore, remand this case for the administrative law judge to determine whether claimant is entitled to medical benefits for a work-related injury pursuant to Section 7 of the Act.

Accordingly, the administrative law judge's finding that the claim for disability benefits is barred by Section 13 of the Act is affirmed; the case is remanded for the administrative law judge to consider claimant's entitlement to medical benefits under Section 7 of the Act in accordance with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge