BRB No. 92-2337

JAMES L. SESSOMS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY	)	DATE ISSUED:
	)	
Self-Insured Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

James L. Sessoms, Ahoskie, North Carolina, *pro se*.

Cathleen Reilly-Brew (Seyfarth, Shaw, Fairweather & Geraldson), Washington, D.C., for self-insured employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (90-LHC-920) of Administrative Law Judge Richard K. Malamphy 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, we must affirm the findings of fact and the conclusions of law of the administrative law judge if 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.

On October 31, 1988, claimant sustained a work-related back injury. After receiving treatment from Drs. Cabinum and Good, who diagnosed claimant as having a lumbosacral sprain,

claimant requested and was granted a change in physicians to Dr. Byrd, an orthopedic surgeon. On June 1, 1989, Dr. Byrd released claimant to light duty work with restrictions, which he gradually lessened in succeeding months, so that by October 1989, claimant was allowed to lift up to 30 pounds and perform limited bending and climbing. Claimant returned to work on November 28, 1989, but allegedly fell while going to the job site; he has not returned to work since that date. Claimant was examined at that time by Dr. Bobbitt, the shipyard physician, who found claimant able to return to work under Dr. Byrd's restrictions. Tr. at pp. 27, 96 - 99. On December 7, 1989, claimant returned to the clinic with a note from Dr. Morales, to whom he had been referred to by his attorney, stating that claimant was unfit for duty and a note from his family physician, Dr. Lang, excusing his absences. Dr. Bobbitt, however, informed claimant that he should return to work under Dr. Byrd's restrictions because neither Dr. Morales nor Dr. Lang were authorized physicians. Claimant thereafter requested authorization for a change in physicians to Dr. Morales. Although this request was refused by Dr. Bobbitt, claimant continued to receive treatment from Dr. Morales, who either kept him out of work completely, or assigned severe light duty restrictions.

Employer voluntarily paid claimant temporary total disability compensation from the date of his injury until July 24, 1989, and from August 25, 1989 through November 15, 1989. Claimant sought additional temporary total disability compensation from July 26, 1989 through August 7, 1989, and from August 11, 1989 through August 22, 1989; permanent disability compensation commencing from November 15, 1989; and reimbursement for the medical treatment provided by Dr. Morales.

Crediting the unanimous opinions of Drs. Cabinum, Good, Bobbitt, Foer and Byrd that claimant suffered only a back sprain which should have resolved within a few months and has no objective findings to support his continued complaints, over claimant's testimony and that provided by Dr. Morales, the administrative law judge concluded that claimant could have performed alternate work available at the shipyard within Dr. Byrd's restrictions after June 1, 1989, if he had chosen to do so. Accordingly, the administrative law judge denied the additional temporary total disability compensation claimed. Crediting lay testimony introduced by employer which indicated that suitable alternate work had been available in claimant's former department within Dr. Byrd's restrictions on a regular and continuous basis at all times since November 15, 1989, when claimant's condition became permanent, the administrative law judge also denied the claim for permanent disability compensation. Finally, the administrative law judge denied reimbursement of Dr. Morales' medical expenses. Claimant, appearing without representation by counsel, appeals the denial of benefits, and employer responds, urging affirmance.

After consideration of the administrative law judge's Decision and Order in light of the relevant evidence, we initially affirm his denial of additional temporary total disability compensation. The administrative law judge's finding that as of June 1, 1989, claimant could perform suitable alternate work available at the shipyard in his former department within the restrictions imposed by Dr. Byrd is rational, in accordance with applicable law, and is supported by the medical opinions of Drs. Cabinum, Good, Bobbitt, Foer and Byrd, whom the administrative law judge acted within his discretion in crediting. *O'Keeffe, supra; Caudill v. Sea Tac Alaska*

Shipbuilding, Inc., 25 BRBS 92 (1991), *aff'd mem. sub nom. Sea Tac Alaska Shipbuilding v. Director, OWCP*, 8 F.3d 29 (9th Cir. 1993). The denial of the claim for permanent disability compensation subsequent to November 15, 1989 is also affirmed, inasmuch as the administrative law judge's finding that suitable alternate work within Dr. Byrd's restrictions has been available at the shipyard on a regular and continuous basis at all times since that date is supported by substantial evidence, specifically the testimony of Mr. Tabb, Mr. Hoffman and Mr. Sneed. *See generally Darden v. Newport News Shipbuilding & Dry Dock Co.*, 18 BRBS 224 (1986).

Finally, although the administrative law judge erred in determining that he lacked the authority to determine the propriety of employer's refusal to authorize a change in physicians, *see generally Anderson v. Todd Shipyards Corp.*, 22 BRBS 20, 23 (1989), we nonetheless affirm his determination that employer is not liable for Dr. Morales's medical treatment. Under Section 7(d) of the Act, 33 U.S.C. §907(d), an employee is entitled to recover medical benefits where employer refuses his request to authorize treatment and the treatment he procures thereafter on his own initiative is reasonable and necessary. *See generally 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). In the present case, however, the administrative law judge credited Dr. Bobbitt's testimony that he refused to authorize a change in physicians because claimant was being seen by Dr. Byrd, a back specialist, whom he believed was the most appropriate treating physician for the claimant, and because he felt that claimant was malingering. The administrative law judge's factual findings in this case lead to the conclusion that Dr. Morales's treatment was not reasonable or necessary for the injury. Inasmuch as the administrative law judge's decision to credit Dr. Bobbitt's testimony was within his discretionary authority, and employer did not refuse to provide further treatment from Dr. Byrd, who was claimant's choice of physician after he changed from Dr. Cabinum, we affirm the administrative law judge's finding that employer is not liable for Dr. Morales's medical treatment. *Hunt v. Newport News Shipbuilding & Dry Dock Co.*, 28 BRBS 364, 371 (1994), *aff'd mem.*, 61 F.3d 900 (4th Cir. 1995); *Senegal v. Strachan Shipping Co.*, 21 BRBS 8, 11 (1988); *Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge