U.S. Department of Labor

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

BRB No. 19-0104

PATRICK M. LANGFORD	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ORION MARINE CONSTRUCTION	)	
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LIMITED	)	DATE ISSUED: 07/26/2019
	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Carrie Bland, Administrative Law Judge, United States Department of Labor.

John F. Sharpless (Law Office of Michael J. Winer, P.A.), Tampa, Florida, for claimant.

James W. McCready, III, and William R. Wicks, III (Bowman and Brooke, LLP), Miami, Florida, for employer/carrier.

Before: BOGGS, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2016-LHC-01676) of Administrative Law Judge Carrie Bland rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq*. (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant was injured while descending a ladder to board a skiff on January 2, 2014, during the course of his employment as a crane operator. He testified he missed a step, hyperextended his foot, and landed in the skiff on his back. Tr. at 62-64. Claimant injured his right calcaneus. An examination that day showed that claimant's right Achilles tendon was not intact, and he had surgery on January 17, 2014. CX 4. Employer paid claimant compensation for temporary total disability from January 3, 2014 to October 19, 2016. 33 U.S.C. §908(b). The parties stipulated that claimant's calcaneus injury reached maximum medical improvement on September 23, 2014, with no residual impairment. Decision and Order at 3.

Claimant alleged he also injured his back in the work accident, and he sought permanent total disability benefits. In support of his claim, the record includes the date-of-accident medical report, claimant's examination for back pain by Dr. Goldsmith on January 7, 2014, his treatment by Dr. Patel, a urologist, commencing on January 10, 2014, and Dr. Maniscalco's reports from April 24, 2014, documenting treatment for radiating lower back pain. CXs 2; 4; 9; 10; EX Vol. 2, tab 5.

The administrative law judge invoked the Section 20(a) presumption, 33 U.S.C. §920(a), that the fall could have caused, aggravated or accelerated claimant's back pain based on his testimony of increased back pain, numbness and radiculopathy after the work accident, new symptoms of numbness in the groin area, and urological symptoms. Decision and Order at 27-28. She also relied on the medical evidence documenting pre-existing lumbar spine conditions and related pain, including arachnoiditis, a post-surgical condition that can be aggravated by physical trauma.[1] *Id*. at 28. The administrative law judge found that employer rebutted the presumption with the opinions of Drs. Burton and Kagan that claimant's current back complaints are unrelated to the fall and are due to the natural progression of his pre-existing back condition. *Id*. at 29.

[1] Claimant underwent a laminectomy at L4-L5 in 1999 and an L4-S1 spinal fusion in 2005. CXs 1 at ex 3 p.171; 9 at p. 357; EX Vol. 8, tab 1.

In weighing the evidence as a whole, the administrative law judge focused on whether the work accident aggravated claimant's arachnoiditis; she found the medical experts agreed this is the cause of claimant's lower back pain and stems from his previous back surgeries. Decision and Order at 29. The administrative law judge ascribed "no weight" to the opinion of Dr. Burton, as she found it inconsistent and not well-reasoned. *Id*. at 29-30. She found Dr. Kagan's opinion is not well-reasoned because it is based solely on the MRI evidence and does not account for the totality of the medical documentation about claimant's symptoms. *Id*. at 30-31. She credited the opinion of Dr. Derasari, who is claimant's treating physician.

Dr. Derasari testified at his deposition that claimant has adhesive arachnoiditis, which became symptomatic after the work accident and that some of claimant's need for medical treatment is related to the work accident. CX 1 at 15, 23, 57. The administrative law judge found that Dr. Derasari's opinion as treating physician is "well-documented, well-reasoned, and entitled to significant weight." Decision and Order at 30. She also found claimant's complaints of severe back pain credible and "consider them greatly representative of the exacerbation" of his arachnoiditis. *Id*. at 31. Accordingly, she concluded that claimant sustained a work-related aggravation of his pre-existing back condition that caused him to become symptomatic.[2] *Id*.

Employer appeals the administrative law judge's finding that claimant aggravated his pre-existing back condition in the work accident. Claimant responds, urging affirmance. Employer filed a reply brief.

Where, as here, the Section 20(a) presumption is invoked and rebutted, it no longer controls and the issue of causation must be resolved on the evidence of record as a whole, with the claimant bearing the burden of persuasion. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). The aggravation rule provides that employer is liable for the totality of the claimant's disability if the work injury aggravates a pre-existing condition. *See Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45(CRT) (5th Cir. 1986) (en banc). If the work accident causes claimant to become symptomatic, the fact that the underlying disease process is not accelerated is immaterial.

[2] The administrative law judge also relied on the opinion of Dr. Derasari to find that claimant's back condition reached maximum medical improvement on May 23, 2016, and that he is unable to perform any work. Decision and Order at 33-36. The administrative law judge awarded claimant compensation for temporary total disability from the date of injury to May 22, 2016, and continuing compensation for permanent total disability, 33 U.S.C. §908(a), from May 23, 2016. *Id*. at 41. Employer was found entitled to Section 8(f) relief, 33 U.S.C. §908(f). *Id*. at 37-40.

Gardner v. Director, OWCP, 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981); *see also Pittman v. Jeffboat, Inc.*, 18 BRBS 212 (1986).

Employer avers the administrative law judge erred by relying on Dr. Derasari's opinion because he was unfamiliar with claimant's pre-accident medical treatment and relied on false and misleading information from claimant. We disagree.[3] Claimant was referred to Dr. Derasari in September 2014 by Dr. Maniscalco, a neurosurgeon, who opined there was nothing surgically he could do for claimant's back. CX 9 at 355. Dr. Derasari's September 24, 2014 report states he reviewed Dr. Maniscalco's medical records, which note the prior back surgeries in 1999 and 2005 and MRIs conducted prior to and after the work accident. CX 1 at ex 3 pp. 163-168, 170-172. Contrary to employer's contention that Dr. Derasari relied on an inaccurate medical history, claimant's testimony that he was not on pain medication at the time of the work accident is supported by an October 2013 drug test that showed no Nucynta, an opioid, in his system.[4] Tr. at 60; EX Vol. 3, tab 2 p. 7. Moreover, there is no evidence of urological treatment in the record after October 2007. *See* EX Vol. 2, tab 5. Therefore, the administrative law judge's reliance on Dr. Derasari's opinion that claimant's current back pain and urological symptomatology started after the work accident is supported by substantial evidence. CX 1 at 23, 57.

Employer also avers the administrative law judge erred by relying on Dr. Derasari's opinion because he is not an expert on arachnoiditis, whereas Dr. Burton is such an expert and Dr. Kagan is a well-credentialed radiologist. The administrative law judge gave "significant weight" to Dr. Derasari's opinion because he examined claimant's lumbar spine numerous times, testified he evaluated claimant's credibility, and opined that claimant's symptoms and complaints are consistent and credible. Decision and Order at 30. In weighing a treating physician's opinion, the administrative law judge may accord

[3] The administrative law judge addressed claimant's credibility as employer asserted that the back injury claim is dependent on his subjective complaints. Decision and Order at 23-25. She recognized "certain apparent inconsistencies in claimant's statements and job applications," but she rejected employer's argument that "every aspect of his claim and supporting testimony is tainted as a result." *Id*. at 25. The administrative law judge found claimant credible based on his hearing and deposition testimony, as "[h]is descriptions of the incident, his injuries, and his complaints are consistent throughout the record and are consistent with the medical evidence." *Id*. Credibility determinations are the prerogative of the administrative law judge, and employer has not established error in this regard. *Del Monte Fresh Produce v. Director, OWCP [Gates]*, 563 F.3d 1216, 43 BRBS 21(CRT) (11th Cir. 2009).

[4] Claimant also testified, without contradiction, that he had no work absences due to back pain for 19 months before the date of injury. Tr. at 61-62.

determinative weight to the opinion but she also must consider its underlying rationale, as well as the other medical evidence of record. *Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir. 1998), *amended*, 164 F.3d 480, 32 BRBS 144(CRT) (9th Cir.), *cert. denied*, 528 U.S. 809 (1999). Moreover, an administrative law judge is not obligated to rule in favor of the party whose medical experts are more highly trained. *Avondale Shipyards, Inc. v. Kennel*, 914 F.2d 88, 24 BRBS 46(CRT) (5th Cir. 1990). In this case, the administrative law judge relied on Dr. Derasari's numerous interactions with claimant, as supported by her assessment of the evidence, to find his opinion well-documented and well-reasoned. Drs. Burton and Kagan only reviewed the medical records.

It is well-established that an administrative law judge is entitled to weigh the medical evidence and to draw his own inferences therefrom; she has the prerogative to credit one medical opinion over that of another and is not bound to accept the opinion or theory of any particular medical examiner. *Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 29 BRBS 79(CRT) (5th Cir. 1995); *see also Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999. Moreover, it is impermissible for the Board to substitute its views for those of the administrative law judge; thus, the administrative law judge's findings may not be disregarded merely on the basis that other inferences might appear to be more reasonable. *See Newport News Shipbuilding & Dry Dock Co. v. Winn*, 326 F.3d 427, 37 BRBS 29(CRT) (4th Cir. 2003); *Duhagon*, 169 F.3d at 618, 33 BRBS at 2-3(CRT); *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27(CRT) (9th Cir. 1988. Thus, the administrative law judge had the discretion to credit Dr. Derasari's opinion over those of Drs. Burton and Kagan, and she provided a rational basis for doing so.[5] *Amos*, 164 F.3d 480, 32 BRBS 144(CRT); *Kennel*, 914 F.2d 88, 24 BRBS 46(CRT). Substantial evidence supports the conclusion that claimant's pre-existing back condition was made symptomatic by the work injury on January 2, 2014.[6] *Cooper/T.*

[5] The administrative law judge permissibly found Dr. Burton's opinions inconsistent and not well-reasoned. Dr. Burton stated claimant's work injury did not cause a permanent aggravation but appeared to exacerbate claimant's arachnoiditis. He stated that, "on a presumptive basis," claimant "probably" sustained a soft tissue injury. The administrative law judge thus found Dr. Burton's opinion was not given to a reasonable degree of medical certainty. The administrative law judge noted Dr. Kagan addressed only claimant's arachnoiditis and not his urological symptoms. Thus, she permissibly gave his opinion that the work accident did not permanently aggravate claimant's condition minimal weight. Decision and Order at 29-31; CXs 2, 4, 9, 10; EXs Vol. 2, tab 5; Vol. 3, tab 2; *see James J. Flanagan Stevedores, Inc. v. Gallagher*, 219 F.3d 426, 34 BRBS 35(CRT) (5th Cir. 2000); *Mendoza*, 46 F.3d 498, 29 BRBS 79(CRT); *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991).

[6] We reject employer's contention that the administrative law judge erred in finding claimant's work injury permanently aggravated his arachnoiditis. The administrative law

Smith Stevedoring Co., Inc. v. Liuzza, 293 F.3d 741, 36 BRBS 18(CRT) (5th Cir. 2002); *Gardner*, 640 F.2d 1385, 13 BRBS 101; *Uglesich v. Stevedoring Services of America*, 24 BRBS 180 (1991). Thus, we affirm the award of benefits.

Accordingly, we affirm the administrative law judge's Decision and Order Awarding Benefits.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

judge relied on Dr. Derasari's testimony that claimant's adhesive arachnoiditis is an incurable, progressive condition that did not prevent him from working or require pain medication before the work accident but, afterwards, claimant is unable to perform any type of work due to his pain medication and inability to control his bodily functions. Decision and Order at 30, 33-34, 36; *see also* n.5, *supra.* Based on these findings, the administrative law judge permissibly inferred that the work accident is a cause of claimant's permanent total disability. *See Director, OWCP v. Vessel Repair, Inc.*, 168 F.3d 190, 193, 33 BRBS 65, 67(CRT) (5th Cir. 1999) ("The only legally relevant question is whether the [work] injury is *a cause* of that disability."); *see generally Gulf Best Electric, Inc. v. Methe*, 396 F.3d 601, 38 BRBS 99(CRT) (5th Cir. 2004); *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649 (5th Cir. 1968), *cert. denied*, 394 U.S. 976 (1969).