BRB No. 97-1512

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| WILLIAM BAUDENDISTEL | ) | |
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| Claimant-Respondent | ) | DATE ISSUED:_____ |
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| v. | ) | |
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| LOEW'S L'ENFANT PLAZA | ) | |
| | ) | |
| and | ) | |
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| CNA INSURANCE COMPANIES | ) | |
| | ) | |
| Employer/Carrier-Petitioners | ) | DECISION and ORDER |

Appeal of the Decision and Order and the Amended Decision and Order of Robert G. Mahony, Administrative Law Judge, United States Department of Labor.

Browne L. Kooken, Upper Marlboro, Maryland, for claimant.

Stuart L. Plotnick, Silver Spring, Maryland, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order and the Amended Decision and Order (96-DCW-6) of Administrative Law Judge Robert G. Mahony 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). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are 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 worked as a chef for employer. On December 15, 1977, while working at a buffet table, claimant received an electrical shock from a meat slicer. The shock, 220 volts, entered at his right thigh, surged through his body, and exited at his right foot. The shock threw claimant backwards approximately five feet and rendered him temporarily unconscious. Tr. at 6, 29-30. He was off work for nine days, during which time employer paid temporary total disability benefits, and then he returned to work. Tr. at 33. Employer filed its first report of injury on January 16, 1978.[1]

In late 1978, claimant's father informed employer and its carrier of claimant's continuing neck problems and his need for further treatment. On December 22, 1978, a claims supervisor for carrier wrote to claimant's father and informed him that claimant should seek necessary medical attention and send carrier the bills and medical reports. Cl. Ex. 11. The record indicates that claimant received neck treatments in 1981 and again between 1984 and 1987, and the bills were sent to employer's carrier. Cl. Exs. 9-11. In 1988, claimant began suffering from ulcers on his right ankle. He sought and continued to receive medical treatment for this condition which has also affected the left ankle. Claimant was diagnosed as having chronic venous stasis with ulcerations. Cl. Exs. 12-13, 15-16, 18-19, 21; Emp. Exs. 2-4. Claimant ceased working on September 20, 1993, and he filed a claim for temporary total disability benefits from that date. Tr. at 22.

The administrative law judge found, based on the medical opinions, that claimant's chronic condition is causally related to his 1977 work injury, and he held employer liable for temporary total disability benefits from September, 20, 1993, through April 17, 1996, when claimant's condition reached maximum medical improvement.[2] The administrative law judge also awarded claimant medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907. Decision and Order at 6-7. In an Amended Decision and Order, the administrative law judge rejected employer's argument that it had not authorized claimant's medical treatment, stating that, given

[1]Employer reported claimant's electrical shock, loss of memory, pain through the chest, and pulled muscle in the neck. Emp. Ex. 1.

[2]Claimant did not file a claim for permanent disability benefits; hence, none were awarded.

the extensive communication between claimant, his father and employer regarding claimant's continuing problems, employer did not meet its burden of showing that treatment was not authorized. Amended Decision and Order at 3-4. Therefore, he affirmed his decision that employer is liable for claimant's medical expenses. Employer appeals the decisions, and claimant responds, urging affirmance.

Employer contends the administrative law judge erred in awarding claimant medical benefits. It argues that claimant did not satisfy his statutory obligation of requesting either consent to change physicians pursuant to Section 7(c)(2) or authorization for treatment pursuant to Section 7(d). 33 U.S.C. §907(c)(2), (d). Claimant asserts that employer had knowledge of and did not object to claimant's medical treatment.

Under the Act, an employer is liable for all reasonable and necessary medical expenses related to the work injury. 33 U.S.C. §907(a); *see Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988). A claimant is entitled to his initial free choice of physician. 33 U.S.C. §907(b); *Hunt v. Newport News Shipbuilding & Dry Dock Co.*, 28 BRBS 364 (1994), *aff'd mem.*, 61 F.3d 900, 29 BRBS 105 (CRT) (4th Cir. 1995). If, however, the claimant wishes to change physicians, he must seek prior written consent from his employer or the district director, and the employer or the district director shall give consent if the original physician was not an appropriate specialist. In other circumstances, the employer or district director may give consent upon a showing of good cause. 33 U.S.C. §907(c)(2); *Slattery Assoc. v. Lloyd*, 725 F.2d 780, 16 BRBS 44 (CRT) (D.C. Cir. 1984); 20 C.F.R. §702.406(a). Additionally, in order to recover medical expenses, a claimant must request authorization prior to receiving medical treatment even if he is unsure of whether the injury is work-related. 33 U.S.C. §907(d); *see Pozos v. Army & Air Force Exchange Service*, 31 BRBS 173 (1997); *Mattox v. Sun Shipbuilding & Dry Dock Co.*, 15 BRBS 162 (1982). Where the claimant does not seek authorization prior to obtaining medical care, the employer is not liable for reimbursing his medical expenses. *Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988); *White v. Sealand Terminal Corp.*, 13 BRBS 1021 (1981) (Miller, J., dissenting). If the claimant requests treatment but the request is not answered, it is considered refused and the employer is liable for reasonable and necessary treatment. *Schoen v. United States Chamber of Commerce*, 30 BRBS 112 (1996). Further, although it is an employer's burden to show that it has not authorized medical treatment, *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), its mere knowledge of medical care is insufficient to render it obligated to pay medical benefits. *Parklands, Inc. v. Director, OWCP*, 877 F.2d 1030, 22 BRBS 57 (CRT) (D.C. Cir. 1989).

In this case, claimant testified that he did not request authorization for treatment for his leg ulcers from employer. Tr. at 58. The administrative law judge cited the law requiring an employer to pay for reasonable and necessary treatment and permitting a claimant to recover medical expenses if his employer neglects to provide treatment. He relied heavily on the correspondence dated between 1993 and 1994 from claimant's doctors to employer's carrier to conclude that employer

was aware of, and in effect approved, the medical treatment for claimant's ulcers. Additionally, the administrative law judge relied on a December 22, 1978, letter from carrier to claimant's father which stated that if claimant was still having problems, he could seek medical treatment and send the bills to carrier. Cl. Ex. 11. Based on this evidence, the administrative law judge held that employer did not satisfy its burden of showing that treatment was unauthorized.

We hold that the administrative law judge erred in failing to address the issue of whether claimant requested both medical treatment and consent to change physicians, as is required by Section 7(c)(2), (d) of the Act, before awarding medical benefits. *See Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989). Further, contrary to the administrative law judge's finding, employer's mere knowledge of treatment is not sufficient to obligate employer to pay medical benefits. *Parklands*, 877 F.2d at 1030, 22 BRBS at 57 (CRT). Consequently, we vacate the award of medical benefits, and we remand the case for the administrative law judge to determine whether claimant has satisfied the Section 7 requirements. *See Parklands*, 877 F.2d at 1030, 22 BRBS at 57 (CRT); *Hite v. Dresser Guiberson Pumping*, 22 BRBS 87 (1989). Although, as the administrative law judge stated, it is clear that claimant sought and obtained authorization for treatment of his neck condition in 1978, the administrative law judge must explicitly consider whether the December 1978 letter applies to claimant's chronic venous stasis ankle condition, as it appears that this condition was not yet diagnosed at the time the letter was written. In light of the fact that claimant later suffered from a different medical condition and was treated by different doctors, on remand the administrative law judge should re-evaluate the relevance of the 1978 letter as it pertains to the ulcerous condition.

The record, however, supports the administrative law judge's finding that considerable correspondence has passed between the physicians treating claimant's ankle problems and employer/carrier. *See, e.g.,* Cl. Exs. 16, 23; Emp. Ex.4. Given the reports employer/carrier has received, the administrative law judge must consider whether employer's knowledge of claimant's condition and treatment exceeded "mere knowledge," *see Parklands*, 877 F.2d at 1030, 22 BRBS at 57, and determine whether it serves to satisfy claimant's burden under the Act. If employer can be considered to have refused or neglected claimant's request for treatment, then employer is liable for claimant's reasonable and necessary medical expenses for his ulcerous condition. *See Schoen*, 30 BRBS at 112.

Accordingly, the administrative law judge's award of medical benefits is vacated, and the case is remanded for further consideration consistent with this opinion. In all other respects, the administrative law judge's decisions are affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JAMES F. BROWN
Administrative Appeals Judge