BRB Nos. 98-1352
and 98-1352A

JEPHET HUTCHINSON	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
INTERMARINE, USA	)	DATE ISSUED: July 12, 1999
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	
Cross-Petitioners	)	DECISION and ORDER

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

Ralph R. Lorberbaum (Zipperer & Lorberbaum), Savannah, Georgia, for claimant.

Charles W. Barrow (Barrow, Sims, Morrow Lee & Gardner), Savannah, Georgia, for employer/carrier.

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

PER CURIAM:

Claimant appeals and employer cross-appeals the Decision and Order (95-LHC-0315) of Administrative Law Judge Edward J. Murty, Jr., 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). We must affirm the findings of fact and conclusions of law of the administrative law judge which 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).

Claimant, a welder, suffered an electrical shock on December 15, 1993, during the course of his employment and subsequently has been treated for headaches, dizziness, pain, vertigo, blackouts, and hearing loss. He returned to light duty work in employer's tool room on June 14, 1994, but was involved in an automobile accident on August 11, 1994, while commuting between his home and work when he passed out as a result of dizziness arising out of his work injury.[1] Claimant was released to attempt to return to light duty work for three months on May 10, 1995, by his oral surgeon, but he did not return to work until September 11, 1995, when he obtained a job with a different employer located in the area in which he resides. Employer voluntarily paid claimant temporary total disability compensation from December 16, 1993, to June 14, 1994, and from August 16, 1994, to May 9, 1995. 33 U.S.C. §908(b). In his claim filed under the Act, claimant sought temporary total disability compensation from May 10, 1995, until September 11, 1995, as well as additional medical benefits.

In his decision, the administrative law judge found that claimant was entitled to temporary total disability compensation for the periods of December 16, 1993, through June 14, 1994, and from August 16, 1994, until May 9, 1995. He further found that, as employer denied authorization for the medical treatment of a physician located within the area in which claimant resides, claimant was excused from seeking such authorization; accordingly, the administrative law judge found employer liable for the payment of "any medical treatments, including that of Dr. Jorquera." *See* Decision and Order at 3. Lastly, the administrative law judge found employer liable for claimant's counsel's attorney fee.

Claimant now appeals, alleging that the administrative law judge erred in denying him disability compensation subsequent to May 10, 1995. Employer, in a cross-appeal, challenges the administrative law judge's award of medical benefits as being too vague. Lastly, employer contends that the administrative law judge erred in

[1]At the time of his work injury, claimant worked at employer's facility in Savannah, Georgia, from Monday through Friday, commuting 138 miles to his home in Jacksonville, Florida, on the weekends.

finding it liable for counsel's fee.

Based on our review of the record in this case, the contentions raised by both parties, and the decision on appeal, we conclude that the case must be remanded, as we are unable to fully review it due to the inadequacies of the decision and the complexities of the claim. Section 19(d), 33 U.S.C. §919(d), of the Act requires that hearings conducted by an administrative law judge comply with the provisions of the Administrative Appeals Act (APA), 5 U.S.C. §554. Section 557(c), 5 U.S.C. §557(c), requires that decisions rendered include a statement of

> findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion presented on the record.

5 U.S.C. §557(c)(3)(A). An administrative law judge must adequately detail the rationale behind his decision and specify the evidence upon which he relied. *See Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988); *see also Frazier v. Nashville Bridge Co.*, 13 BRBS 436 (1981). Failure to so will violate the APA's requirements for a reasoned analysis. *Ballesteros*, 20 BRBS at 187; *see Williams v. Newport News Shipbuilding & Dry Dock Co.,* 17 BRBS 61 (1985).

Initially, employer asserts that claimant's complaints of vertigo, numbness, heart problems, blackouts, and hearing loss are non-compensable under the Act since they are unrelated to claimant's work injury.[2] The administrative law judge, however, rendered no findings in the instant case regarding whether these conditions are causally related to claimant's work injury. Without specific findings by the administrative law judge as to which of these other complaints, if any, arose out of claimant's work accident, it is impossible to determine either claimant's possible entitlement to further disability compensation or employer's liability for medical benefits. Accordingly, we must remand the case for the administrative law judge to address the existence of a causal nexus between claimant's conditions and his employment, consistent with Section 20(a) of the Act, 33 U.S.C. §920(a).

Next, claimant argues that the administrative law judge erred in denying his request for additional temporary total disability compensation. Claimant sought

[2]Employer does not challenge its liability for claimant's TMJ condition, which it concedes is related to claimant's work-injury. *See* Employer's brief at 10.

temporary total disability compensation for the period of May 10, 1995, to September 11, 1995, the date upon which he returned to work with a new employer. In the present case, neither of the parties argues that claimant was capable of returning to his usual pre-injury job during the contested period of time; thus, claimant has established a *prima facie* case of total disability. *See White v. Peterson Boatbuilding Co.*, 29 BRBS 1 (1995). Accordingly, the burden shifted to employer to demonstrate the availability of suitable alternate employment within the geographic area where claimant resides which claimant is capable of performing given his age, education, physical restrictions and work experience, and which he could secure if he diligently tried; employer may meet this burden by offering claimant an appropriate position within its own facility. *See Darby v. Ingalls Shipbuilding Corp.*, 99 F.3d 685, 30 BRBS 95 (CRT)(5th Cir. 1996). In controverting claimant's claim, employer asserted that it met its burden by offering claimant a light duty position in its tool room. In contrast, claimant alleged that he was foreclosed from returning to work due to injuries resulting from his electrocution at work, including headaches, dizziness, chest pains, numbness, traumatic trans-mandibular jaw syndrome, vertigo, blackouts and hearing loss; in support of this position, claimant submitted documented opinions from cardiologists, neurologists, dentists, oral surgeons, audiologists, and chiropractors. *See* CXS 8, 11, 19, 23, 27. In addressing this issue, however, the administrative law judge summarily concluded that the evidence of record failed to establish that claimant suffered any disability after May 10, 1995, and, thus, that claimant was not entitled to compensation after that date. We agree with claimant that the administrative law judge's decision cannot be affirmed since it fails to satisfy the requirements of the APA.

The administrative law judge reached his conclusion that claimant suffered no work related loss after May 10, 1995, without consideration of claimant's medical restrictions or the physical requirements of the proffered job in employer's tool room.[3] In so doing, the administrative law judge failed to discuss the opinion of Dr. Jorquera that claimant should not return to work without further testing, CX 11, or of Dr. Hartwig that claimant may only work around equipment or drive with supervision. CX 19. Further the administrative law judge did not address the opinions of Drs. Kanter and Hartwig regarding claimant's chest pains and blackouts, CXS 27, 19, nor Dr. Gilliom's report documenting claimant's hearing loss. CX 23. The administrative

[3]The fact that claimant performed the job in the tool room at one point in time may not be dispositive of whether he could perform it after May 10, 1995, especially in light of the intervening automobile accident which occurred as a result of his work-related condition. *See generally Wilson v. Crowley Maritime*, 30 BRBS 199 (1996).

law judge's failure to analyze the conflicting medical evidence requires remand.[4] *Frye v. Potomac Electric Power Co.*, 21 BRBS 194 (1988). Accordingly, the administrative law judge's finding that claimant is not entitled to compensation subsequent to May 10, 1995, is vacated, and the case remanded for a complete analysis of all the evidence under the proper legal standards.

Employer next challenges the administrative law judge's award of medical benefits to claimant. Section 7 of the of the Act, 33 U.S.C. §907, generally describes an employer's duty to provide medical and related services and costs necessitated by its employee's work- related injury, employer's rights regarding control of those services, and the Secretary's duty to oversee them. *See Anderson v. Todd Shipyards Corp*., 22 BRBS 20 (1989). In this regard, Section 7(a) of the Act states that

> [t]he employer shall furnish such medical, surgical, and other attendance or treatment...medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require.

33 U.S.C. §907(a); *see Ballesteros*, 20 BRBS at 184. In order for a medical expense to be assessed against employer, however, the expense must be both reasonable and necessary, and it must be related to the injury at hand. *Pardee v. Army & Air Force Exchange Service*, 13 BRBS 1130 (1981); 20 C.F.R. §702.402.

Section 7(d) of the Act, 33 U.S.C. §907, requires that a claimant request employer's authorization for the medical services performed by any physician, including claimant's initial choice. *See Anderson*, 22 BRBS at 20. However, where a claimant's request for authorization is refused by the employer, claimant is released from the obligation of continuing to seek approval for his subsequent treatment and thereafter need only establish that the treatment he subsequently procured on his own initiative was necessary for the injury in order to be entitled to

[4]Additionally, the administrative law judge's reliance on Dr. Brancato's opinion that claimant may return to light duty work after May 9, 1995, may be misplaced, since Dr. Brancato, who is an oral surgeon, released claimant to light duty work based upon his TMJ condition and then only for three months. CX 8.

such treatment at employer's expense. *See 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 instant case, the administrative law judge found claimant relieved of the necessity of seeking authorization for further treatment without addressing either employer's contentions regarding its willingness to provide medical services in Savannah, Georgia, or its argument that such treatments were unrelated to any condition arising out of the work accident. Moreover, the administrative law judge failed to address the issue of whether the treatments provided to claimant were reasonable and necessary to claimant's work-related conditions. We therefore vacate the administrative law judge's award of medical benefits to claimant; on remand, the administrative law judge must address the specific services rendered, determine their compensability under the relevant standards, and determine employer's liability for them.

Finally, employer contends that the administrative law judge erred in finding it liable for an attorney's fee. Given our disposition of this case on appeal and its remand for further consideration of claimant's entitlement to benefits, it is not necessary to address employer's contentions at this time. However, we note that an award of medical benefits may be sufficient to support an award of an attorney's fee. *See Hill v. Avondale Industries, Inc.*, 32 BRBS 186 (1998).

Accordingly, the administrative law judge's Decision and Order is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge