BRB No. 01-0744

MAE FRANCES JOHNSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
GREATER SOUTHEAST COMMUNITY HOSPITAL	)	DATE ISSUED: June 19, 2002
	)	
and	)	
	)	
HARTFORD INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeal of the Decision and Order - Awarding Medical Benefits of David W. Di Nardi, Administrative Law Judge, United States Department of Labor.

Mae Frances Johnson, Washington, D.C., *pro se*.

Kevin J. O'Connell and Ann Wittik-Bravmann (O'Connell & O'Connell), Rockville, Maryland, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order - Awarding Medical Benefits (2000-DCW-0012) of Administrative Law Judge David W. Di Nardi 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 *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 receptionist/emergency room technician, injured her back after slipping and falling while reporting to work on September 2, 1976. Employer voluntarily paid claimant various periods of disability benefits from 1976-1985, and ultimately settled her claim for compensation, exclusive of her right to medical benefits, for $20,000 in 1985.[1] In 1999, claimant sought authorization for physical therapy recommended by Dr. Liberman. The administrative law judge found that claimant's current back condition is related to her 1976 work injury, that Dr. Liberman is claimant's treating neurologist, that claimant requested authorization for her physical therapy and that employer refused her request, and that the physical therapy sought is reasonable and necessary for treatment of her current back condition.

On appeal, employer challenges the administrative law judge's finding that claimant's current back condition is related to her 1976 injury and his award of medical benefits. Claimant, without the assistance of counsel, responds in support of the administrative law judge's award of medical benefits.

We first address employer's contention that the administrative law judge erred in finding that claimant established that her current back condition is related to her 1976 work injury. The Section 20(a), 33 U.S.C. §920(a), presumption is invoked if claimant establishes her *prima facie* case by showing the existence of a physical harm and that an accident occurred at work which could have caused the harm. *Brown v. I.T.T./Continental Baking Co.*, 921 F.2d 289, 24 BRBS 75(CRT) (D.C. Cir. 1990); *see generally U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption by presenting substantial evidence sufficient to sever the causal connection between the injury and the employment. *Brown*, 921 F.2d 289, 24 BRBS 75(CRT). If the administrative law judge finds that the Section 20(a) presumption is rebutted, then all relevant evidence must be weighed to determine if a causal relationship has been established with claimant bearing the burden of persuasion by a preponderance of the evidence. *Brown*, 921 F.2d 289, 24 BRBS 75(CRT)*; see also Director, OWCP v. Greenwich Collieries [Santoro]*, 512 U.S. 267, 28 BRBS 43(CRT)(1994).

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[1]In a Decision and Order issued on July 31, 1990, the Board affirmed an administrative law judge's finding that claimant was not entitled to reimbursement of medical expenses incurred with physicians other than Dr. Mills, who was her authorized treating physician. The Board affirmed the findings that claimant had not requested authorization for treatment with other providers and that Dr. Mills did not misdiagnose or fail to treat claimant's condition. *Johnson v. Greater Southeast Community Hospital*, BRB No. 89-1206 (July 31, 1990).

We affirm the administrative law judge's finding of a causal relationship between claimant's current back complaints and her 1976 work injury. After giving claimant the benefit of the Section 20(a) presumption, the administrative law judge rationally accorded greater weight to the opinions of Drs. Mill and Liberman, who related her current back condition to her 1976 injury, than to the contrary opinions of Drs. Cohen and Dennis as the former physicians are claimant's treating physicians.[2] *See generally Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir. 1998), *amended by*, 164 F.3d 480, 32 BRBS 144(CRT)(9th Cir.), *cert. denied*, 528 U.S. 809 (1999); *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 84(CRT) (2d Cir. 1997); Decision and Order at 32-33; Cl. Exs. 4, 5, 15; Emp. Exs. 2, 7, 16. Dr. Mills treated claimant from 1979 until 1996 for her low back pain, and he related her condition to her employment. Cl. Exs. 4, 5. Dr. Liberman stated on April 14, 2000, that he was treating claimant for low back pain which began in 1976. Cl. Ex. 15. Thus, as substantial evidence supports the administrative law judge's finding that claimant's current back pain is related to her work injury, it is affirmed.[3]

We next address employer's challenge to the administrative law judge's award of medical benefits. Section 7(d) of the Act, 33 U.S.C. §907(d), sets forth the prerequisites for an employer's liability for payment or reimbursement of medical expenses incurred by claimant. 33 U.S.C. §907(d). The Board has held that Section 7(d)(1) requires that a claimant request her employer's authorization for medical services performed by any physician, including the claimant's initial choice. *See Shahady v. Atlas Tile & Marble*, 13 BRBS 1007 (1981)(Miller, J., dissenting), *rev'd on other grounds*, 682 F.2d 968 (D.C. Cir.

[2] Dr. Cohen stated that claimant's 1976 work injury had resolved, and Dr. Dennis stated that he could not relate claimant's current back condition to her 1976 injury because the records he reviewed were insufficient to establish such a nexus. Emp. Exs. 2, 7, 16.

[3] As substantial evidence supports the administrative law judge's finding that claimant's back pain is work-related, we need not address employer's contention that the administrative law judge erred in finding that employer did not rebut the Section 20(a) presumption. Any error the administrative law judge made in this regard is harmless based on his weighing of the medical evidence as a whole.

1982), *cert. denied*, 459 U.S. 1146 (1983). An employer must consent to a change of physician where claimant has been referred by her treating physician to a specialist skilled in treating her injury. *See Slattery Assocs., Inc. v. Lloyd*, 725 F.2d 780, 16 BRBS 44(CRT) (D.C. Cir. 1984); *Ferrari v. San Francisco Stevedoring Co.*, 34 BRBS 78 (2000). Under Section 7(d)(1), 33 U.S.C. §907(d)(1), an employee is entitled to recover medical benefits if she requests employer's authorization for treatment, the employer refuses the request, and the treatment thereafter procured on the employee's own initiative is reasonable and necessary. *See Lloyd*, 725 F.2d 780, 16 BRBS 44(CRT); *Bazor v. Boomtown Belle Casino*, 35 BRBS 121 (2001); 33 U.S.C. §907(d)(1); 20 C.F.R. §702.406.

We affirm the administrative law judge's award of medical benefits. The administrative law judge rationally found that Dr. Liberman is claimant's treating physician since Dr. Mills, a neurosurgeon, referred claimant to Dr. Liberman, a clinical neurologist, on April 9, 1996, by stating that claimant would be "followed by Dr. Lieberman [sic] on an ongoing basis." *See Armfield v. Shell Offshore, Inc.*, 25 BRBS 303 (1992)(Smith, J., dissenting on other grounds); Decision and Order at 31; Cl. Ex. 4. Based on Dr. Mills's referral of claimant to Dr. Liberman, claimant was not required to obtain new authorization for her change of physicians. *Id.* Even if she were, employer consented to claimant's change of physicians from Dr. Mills to Dr. Liberman by paying for Dr. Liberman's care up until November 4, 1996, and also by paying for claimant's physical therapy, prescribed by Dr. Liberman, in 1996 and 1997. *Cf. Parklands, Inc. v. Director, OWCP*, 877 F.2d 1030, 22 BRBS 57(CRT)(D.C. Cir. 1989) (mere knowledge of medical care does not obligate employer to pay for it); Decision and Order at 31-32; Cl. Ex. 1; Emp. Exs. 11, 13, 15. Thus, we affirm the administrative law judge's finding that Dr. Liberman is claimant's treating physician.

The administrative law judge also rationally found that employer was liable for claimant's 1999 physical therapy bills because claimant requested authorization and employer consistently ignored and/or refused her requests. *See Parklands*, 877 F.2d 1030, 22 BRBS 57(CRT); *Shahady v. Atlas Tile & Marble Co.*, 682 F.2d 968 (D.C. Cir. 1982), *cert. denied*, 459 U.S. 1146 (1983); Decision and Order at 31-32; Cl. Exs. 1, 6-13; Emp. Exs. 12, 14, 15. Claimant requested authorization for physical therapy as early as May 1998 and as late as 2000, and employer last responded in August 1999 refusing authorization until additional information was submitted, which claimant did submit three weeks later. No additional correspondence from employer to claimant was exchanged, despite claimant's subsequent correspondence to employer. Thus, the administrative law judge rationally found that employer refused claimant's request for medical treatment. *See Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112 (1996).

The administrative law judge's finding that claimant's physical therapy was

necessary for treatment of her 1976 work injury is based on Dr. Liberman's opinion, and thus we affirm this finding as well. *See Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989); *see also Amos,* 164 F.3d 480, 32 BRBS 144(CRT); Decision and Order at 33; Cl. Ex. 15. Dr. Liberman prescribed two courses of physical therapy for claimant's chronic low back pain in 1999, and in 2000 stated that "periodic sessions of physical therapy" are needed for claimant's acute flare-ups of low back pain. Cl. Ex. 15. Consequently, we affirm the administrative law judge's award of medical benefits for services prescribed by Dr. Liberman, as claimant requested authorization for it, employer refused authorization, and claimant subsequently obtained reasonable and necessary medical treatment. *See Schoen*, 30 BRBS 112.

Lastly, we affirm the administrative law judge's award of future medical benefits recommended by Dr. Liberman, claimant's treating physician, subject to the terms of Section 7. *See generally Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993); *Romeike*, 22 BRBS 57; Decision and Order at 33; Cl. Ex. 15.

Accordingly, the administrative law judge's Decision and Order - Awarding Medical Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge