

BRB No. 07-0975

H.E.)
)
 Claimant-Petitioner)
)
 v.)
)
 SEA RAY BOATS, INCORPORATED) DATE ISSUED: 06/20/2008
)
 and)
)
 INSURANCE COMPANY OF THE STATE)
 OF PENNSYLVANIA, SPECIALTY RISK)
 SERVICES, INCORPORATED)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Decision and Order on Remand of Stephen L. Purcell,
Administrative Law Judge, United States Department of Labor.

John M. Schwartz (Blumenthal, Schwartz & Saxe, P.A.), Titusville,
Florida, for claimant.

Michael F. Wilkes (Wilkes & Hedrick), Melbourne, Florida, for
employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand (2004-LHC-2452) of
Administrative Law Judge Stephen L. Purcell 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). This case is before the Board for the second time.

Claimant, a bilge assembler, was exposed to noxious chemicals during the course of his employment between November 2000 and May 2001.¹ He alleged that this exposure caused and/or aggravated his asthma and he sought compensation and medical benefits.

In his Decision and Order Denying Benefits, the administrative law judge found that claimant's asthma was aggravated by his employment, a finding which was unchallenged on appeal. He further found that claimant failed to establish he had any ongoing disability and, accordingly, denied disability compensation as well as medical benefits.

Claimant appealed, arguing that in denying medical benefits the administrative law judge failed to explain the reasons for the denial, in violation of the Administrative Procedure Act. In its Decision and Order, the Board agreed with claimant that the administrative law judge did not provide a reasoned analysis for the denial of medical benefits, noting that the absence of a disability is an insufficient basis by which to deny such care. *[H.E.] v. Sea Ray Boats, Inc.*, BRB No. 06-0279 (Sept. 22, 2006) (unpub.). Accordingly, the Board vacated the administrative law judge's decision with respect to the denial of medical benefits and remanded the case for further consideration.

On remand, the administrative law judge again denied medical benefits, finding that claimant did not establish that the medical care he received was related to the work injury. Claimant appeals, contending the administrative law judge erred in finding that he is not entitled to medical benefits. Employer responds, urging affirmance.

Section 7(a) of the Act, 33 U.S.C. §907(a), states that “[t]he employer shall furnish medical, surgical, and other attendance or treatment for such period as the nature of the injury or the process of recovery may require.” Thus, even where a claimant is not entitled to disability benefits, employer may be liable for medical benefits for a work-related injury. See *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993). Claimant must, however, establish that the treatment procured or anticipated is necessary for the treatment of his work-related injury in order to be entitled to such treatment at employer's expense, notwithstanding the finding that claimant's injury itself is work-related. See *Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112 (1996); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989). Thus, contrary to claimant's contention in this case, claimant must establish that the medical care is necessary for the treatment of the work-related aggravation of his asthma caused by his exposure to toxic chemicals, and not merely for the treatment of his asthma in and of

¹ Claimant was terminated from his employment on May 15, 2001, for reasons unrelated to his injury.

itself. Although neither Section 7 of the Act nor the regulations explicitly assign the burden of proof, claimant is not relieved of the burden of proving the elements of his claim for medical benefits. *Maryland Shipbuilding & Drydock Co. v. Jenkins*, 594 F.2d 404, 10 BRBS 1 (4th Cir. 1970); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). Therefore, the administrative law judge did not err in determining that it was claimant's burden to establish that his medical care was related to the treatment of his work injury. *See generally Newport News Shipbuilding & Dry Dock Co. v. Loxley*, 934 F.2d 511, 24 BRBS 175(CRT) (4th Cir. 1991), *cert. denied*, 504 U.S. 910 (1992).

The administrative law judge found that the treatment claimant received or is receiving is unrelated to the exposure injury he sustained while working for employer.² The administrative law judge noted that Dr. Brodnan stated that claimant's treatment is in part due to his work exposure to chemicals, but he rejected this part of Dr. Brodnan's opinion. The administrative law judge found, based on the Material Safety Data Sheets, that the chemicals to which claimant was exposed could cause only an acute respiratory reaction.³ CX 2. In this regard, the administrative law judge found that claimant did not seek any medical assistance for any respiratory ailments for more than two years after his exposure ended in 2001.⁴ HT at 52; EX 3. The administrative law judge credited Dr. Brooks's opinion that any effects of claimant's exposure would have ceased when he left employer's facility, EX 1 at 20, 34-35, 55, an opinion supported in part by Dr. Brodnan who also opined that even if claimant had suffered an exacerbation of his pre-existing asthma, this aggravation along with any symptoms would have subsided when claimant left this employment.⁵ CX 1 at 15. The administrative law judge also rejected claimant's

² Claimant seeks to hold employer liable for the treatment of Dr. Brodnan and for the bills of the Wuesthoff Hospital.

³ These sheets describe the chemicals used in boatbuilding and the possible harmful symptoms of exposure. CX 2.

⁴ Claimant first sought medical help following his employment on August 6, 2002, when he suffered a spontaneous pneumothorax unrelated to his employment. Claimant did not see Dr. Brodnan for treatment until August 29, 2003; his employment ended in May 2001.

⁵ The administrative law judge recognized that Dr. Brodnan also offered a contrary opinion, CX 1 at 20, finding that the doctor's opinion vacillated based on which attorney was asking the questions. The administrative law judge rejected that part of Dr. Brodnan's opinion supporting a relationship between the work exposure and the medical treatment because it was based on inaccurate assumptions concerning the existence of an

testimony that he sustained respiratory symptoms during his period of employment with employer, noting that he had found in his first decision that claimant's general testimony is not credible. In his decision on remand, the administrative law judge found that claimant's lack of medical treatment during his employment, his admitted ability to perform all aspects of his work, and the fact that he did not miss any days of work, belie his complaints of respiratory symptoms at that time.

The administrative law judge is entitled to determine the weight to be accorded to the evidence of record, *see Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962), and his credibility determinations must be upheld unless they are inherently incredible or patently unreasonable. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). In this case, the administrative law judge rationally relied on the Material Data Sheets to find that the chemical exposures which claimant had did not cause long-term effects. Moreover, the administrative law judge rationally credited Dr. Brooks's opinion concerning the effects of claimant's exposure on his need for medical care and that portion of Dr. Brodnan's opinion consistent with Dr. Brooks's opinion. *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). The administrative law judge reasonably rejected the remainder of Dr. Brooks's opinion due to his reliance on claimant's faulty history. As substantial evidence thus supports the conclusion that claimant did not establish that the medical care he received beginning in August 2003 is related to his work injury, the administrative law judge's denial of medical benefits is affirmed. *See Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9 (2001), *aff'd mem.*, 32 Fed.Appx. 126 (5th Cir. 2002).

asthmatic condition predating claimant's employment and claimant's symptoms, or lack thereof, during his period of employment. Decision and Order at 3.

Accordingly, the administrative law judge's Decision and Order on Remand is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge