U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 14-0322

RONALD CARPENTER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
KBR GOVERNMENT OPERATIONS	)	DATE ISSUED: June 11, 2015
	)	
and	)	
	)	
CONTINENTAL CASUALTY COMPANY c/o CNA INTERNATIONAL	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order and Decision and Order on Claimant's Petition for Reconsideration of Larry W. Price, Administrative Law Judge, United States Department of Labor.

Donald R. Rhea (Rhea, Boyd & Rhea), Gadsden, Alabama, for claimant.

Gregory P. Sujack (Law Offices of Edward J. Kozel), Chicago, Illinois, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order and Decision and Order on Claimant's Petition for Reconsideration (2013-LDA-00282) of Administrative Law Judge Larry W. Price 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.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (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 injured his back on January 3, 2010, when he fell into a hole during the course of his employment for employer as a construction project superintendent in Baghdad, Iraq. He returned to the United States a few days later for previously scheduled eye surgery. Claimant's back was examined by Dr. Stephenson, who, on January 25, 2010, interpreted a lumbar MRI as normal. Dr. Stephenson stated that claimant had improved and that he should return only if needed. CX 5 at 23. Claimant received intermittent treatment from Dr. Maddox from June 1, 2010 to January 6, 2012. Dr. Maddox noted on April 11, 2011, that claimant's back was at maximum medical improvement and that he could work without restrictions. CX 12 at 73, 95-96. After his work injury, claimant was laid-off by employer; he worked for various employers in Haiti and the United States as a construction superintendent from March 2010 to December 2012, when he stopped working. Claimant sought compensation for disability due to his work injury.

In his decision, the administrative law judge found that claimant did not establish that he is unable to return to his usual employment for employer due to his injury. The administrative law judge also denied a nominal award because claimant did not present evidence of a reasonable expectation that he would incur a loss in wage-earning capacity in the future due to his injury. Decision and Order at 14-16. The administrative law judge, therefore, denied claimant's claim.[1] The administrative law judge denied claimant's motion for reconsideration.

On appeal, claimant challenges the administrative law judge's finding that his work injury does not prevent his return to his usual employment. Employer responds, urging affirmance. Claimant filed a reply brief.

In order to establish a prima facie case of total disability, claimant must establish that he is unable to perform his usual work due to the work injury.[2] *See, e.g., Ceres*

[1] The administrative law judge, however, awarded claimant future medical treatment, as prescribed by Dr. Maddox, such as epidurals, trigger point injections, and/or facet blocks, for his work-related arthritic back condition. Decision and Order at 15.

[2] We reject claimant's contention that he was erroneously required to show he could not return to any employment. The administrative law judge stated the proper standard in both his decision and on reconsideration, and he addressed the evidence pursuant to this standard. *See* Decision and Order at 13-14; Decision and Order on Recon. at 2-4. Moreover, we reject claimant's contention that the administrative law judge should also have considered his lower post-injury wage-earning capacity as this factor is relevant only after claimant establishes his prima facie case. *See generally Bath Iron Works Corp. v. White*, 584 F.2d 569, 8 BRBS 818 (1978) (1st Cir. 1978).

Marine Terminal v. Hinton, 243 F.3d 222, 35 BRBS 7(CRT) (5th Cir. 2001); *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 his decision, the administrative law judge found that Dr. Stephenson had not imposed any work restrictions on claimant, and, on January 25, 2010, Dr. Stephenson noted claimant's report that he was "getting better." Decision and Order at 14; *see* CX 5 at 23. The administrative law judge found that Dr. Maddox did not issue any work restrictions and released claimant to work without restrictions as of claimant's first appointment with him on June 1, 2010. Decision and Order at 14; *see* CX 12 at 73, 77, 83, 86, 95-97; EX 7 at 45, 55-56. The administrative law judge noted that the physician's assistant overseeing claimant's physical therapy applied work restrictions,[3] but claimant continued working as a construction superintendent and was discharged from treatment on March 29, 2011. The administrative law judge found there is no evidence, other than claimant's complaints of back pain, to support his contention that he cannot return to his usual employment and that none of the physicians found any functional impairment. Accordingly, the administrative law judge concluded that claimant did not establish he cannot return to his usual work as a construction engineer and that he is not entitled to disability benefits.

In denying claimant's motion for reconsideration, the administrative law judge found that claimant's pain complaints are not sufficient to establish total disability without some other functional limitation established through the medical evidence. In this regard, the administrative law judge found that no physician determined that claimant was unable to return to his former, or any other, employment. Decision and Order on Reconsideration at 3-4. The administrative law judge discussed the testimony of Dr. Kimberly Brown that claimant has no restrictions from working in a contract supervisor position due to his injury.[4] *Id*. at 3. The administrative law judge, therefore, concluded that, "claimant's injury did not result in disability as he has not established any functional impairment." *Id*. at 4.

In adjudicating a claim, it is well established that the administrative law judge is entitled to weigh the evidence, and is not bound to accept the opinion or theory of any particular witness; rather, the administrative law judge may draw his own conclusions and inferences from the evidence. *See Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 29 BRBS 79(CRT) (5th Cir. 1995); *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991). In this case, the administrative law judge

[3] On December 13, 2010, claimant was prescribed restrictions of no repetitive climbing, bending, pulling, pushing, and lifting over 10 pounds at a walk-in clinic where he received physical therapy. CX 7 at 35.

[4] Dr. Brown examined claimant at employer's request. EX 1.

rationally rejected claimant's subjective complaints of disabling back pain based on the absence of corroborating objective medical evidence as set out in the records of Drs. Stephenson and Maddox, and the deposition testimony of Drs. Brown and Maddox.[5] *See Ceres Gulf, Inc. v. Director, OWCP* [*Plaisance*], 683 F.3d 225, 46 BRBS 25(CRT) (5th Cir. 2012). Thus, the administrative law judge rationally concluded, based on this medical evidence and claimant's ability to continue working in similar post-injury employment, that claimant failed to sustain his burden of establishing that his work injury precludes him from performing his usual work for employer. Therefore, as the administrative law judge's conclusion is supported by substantial evidence of record, we affirm the denial of disability benefits.[6] *See generally Gacki v. Sea-Land Service, Inc.*, 33 BRBS 128 (1998).

[5] Dr. Brown stated that claimant is not restricted from walking or driving and climbing and that he has no restrictions from working in a contractor position. EXs 1 at 3; 4 at 17-18, 21-22. Dr. Maddox recommended that claimant undergo a Functional Capacity Examination. He stated the work injury had resolved and that he had not restricted claimant from employment. CX 10 at 35, 55-56, 61. We reject claimant's contention that Dr. Maddox's deposition testimony that claimant's employment may have caused radicular symptoms or aggravated his stenosis establishes claimant's inability to perform his usual work. *See id.* at 65-68. Dr. Maddox was not asked if walking and standing are contraindicated, and he stated the aggravation had resolved. *Id*. at 8, 36, 61.

[6] Claimant does not challenge the administrative law judge's denial of a nominal award.

Accordingly, the administrative law judge's Decision and Order and Decision and Order on Claimant's Petition for Reconsideration are affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge

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RYAN C. GILLIGAN
Administrative Appeals Judge