BRB No. 07-0875

R.G.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 03/28/2008
	)	
LOGISTEC OF CONNECTICUT, INCORPORATED	)	
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LIMITED	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Medical Benefits of Colleen A. Geraghty, Administrative Law Judge, United States Department of Labor.

David A. Kelly (Montstream & May, L.L.P.), Glastonbury, Connecticut, for claimant.

Lawrence P. Postol (Seyfarth Shaw LLP), Washington, D.C., for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Medical Benefits (2006-LHC-944) of Administrative Law Judge Colleen A. Geraghty 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 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).

On October 22, 1998, claimant sustained multiple injuries while working for employer when he was struck in the face and head by a chain being used to hoist I-beams from the hold of a vessel. As a result of this incident, claimant has undergone several surgical procedures and extensive medical treatment. Although the parties subsequently disputed the amount of compensation and medical benefits to be paid by employer, the present case involved only employer's liability for various, specific medical charges incurred by claimant. Following the submission of motions by both parties, the administrative law judge on June 13, 2006, issued an Order Granting in Part And Denying in Part Employer's Motion for Summary Judgment and an Order Denying Claimant's Motion for Summary Decision in which she resolved most of the issues in dispute. After the issuance of these two Orders, the sole remaining issue presented for adjudication involved employer's liability for a series of medical bills provided by Dr. Kudej for services performed between May 11 and June 3, 2005.

In her Decision and Order, the administrative law judge found that claimant had not established that Dr. Kudej's treatment was reasonable and necessary and, thus, that employer was not liable for the payment of that physician's charges pursuant to Section 7 of the Act. The administrative law judge subsequently denied claimant's petition for reconsideration.

On appeal, claimant challenges the administrative law judge's denial of his claim for reimbursement of his May 11 through June 3, 2005, medical expenses. Employer responds, urging affirmance of the administrative law judge's decision in its entirety.

Claimant argues that the administrative law judge erred in failing to find employer liable for the medical treatment that he received from Dr. Kudej, a chiropractor and registered physical therapist, between May 11 and June 3, 2005. Section 7(a) of the Act, 33 U.S.C. §907(a), states that "[t]he employer shall furnish such medical, surgical, and other attendance or treatment . . . for such period as the nature of the injury or the process of recovery may require." *See Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988). In order for a medical expense to be awarded, it must be reasonable and necessary for the treatment of the injury at issue. *See Dupre v. Cape Romain Contractors, Inc.*, 23 BRBS 86 (1989); *Pardee v. Army & Air Force Exch. Serv.*, 13 BRBS 1130 (1981); 20 C.F.R. §702.402. While a claimant may establish his *prima facie* case for compensable medical treatment when a qualified physician indicates that treatment is necessary for a work-related condition, *see Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989), whether a particular medical expense is necessary is a factual issue within the administrative law judge's authority to resolve. *See Weikert v. Universal Maritime Serv. Corp*., 36 BRBS 38 (2002*); Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988).

In her decision, the administrative law judge found that claimant failed to establish that the treatment rendered by Dr. Kudej between May 11 and June 3, 2005, was

reasonable and necessary.[1] In making this determination, the administrative law judge initially found that on April 19, 2005, Dr. Katz, claimant's treating physician, diagnosed claimant with persistent pain in the low back region with bending and lifting. EX 21. Pursuant to this diagnosis, Dr. Katz recommended, and employer subsequently approved, that claimant undergo a short term trial of "manipulative treatment" with Dr. Kudej.[2] *Id.*; EX 8. Thereafter, between May 11 and June 3, 2005, claimant treated with Dr. Kudej on eight occasions. The billing codes documenting the services rendered to claimant by Dr. Kudej on these dates indicate that Dr. Kudej performed physical therapy, rather than manipulative treatment on claimant.[3] CXs 1, 6; EX 22. After considering this uncontroverted evidence of record, the administrative law judge determined that the precise nature of Dr. Katz's referral is not clear, as the record contains no evidence as to the specific treatment that Dr. Katz intended that claimant undergo when he recommended "manipulative treatment" and that this term itself is subject to differing interpretations.[4] Decision and Order at 5 – 6. After additionally finding that the record contains no evidence from either Dr. Katz explaining his recommendation for treatment, or Dr. Kudej explaining the treatment that he rendered to claimant, the administrative law judge found claimant's contention that he was referred by Dr. Katz to Dr. Kudej for physical therapy to be unsupported by the evidence of record. *Id.* at 6. Based upon this evaluation of the evidence, the administrative law judge concluded that as claimant failed to establish either the specific treatment recommended by Dr. Katz or that the physical therapy treatment rendered by Dr. Kudej was that which was recommended by Dr. Katz,

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[1] Contrary to claimant's assertion on appeal, the issue presented for adjudication before the administrative law judge was not whether Dr. Katz *recommended* treatment that was necessary for claimant's work-related condition, *see* Clt's brief at 4 - 5, 9, but rather whether Dr. Kudej *rendered* treatment that was reasonable and necessary.

[2] Section 702.404 of the Act's regulations provides that chiropractors are included in the definition of the term "physician" within the meaning of Section 7, subject to the limitation that their services are reimbursable only for "treatment consisting of manual manipulation of the spine to correct a subluxation shown by x-rays or clinical findings." 20 C.F.R. §702.404. In the instant case, Dr. Kudej is both a chiropractor and a physical therapist.

[3] The billing codes set forth in Dr. Kudej's Health Insurance Claim Forms reference series 97000, which documents physical therapy; in contrast, series 98000 indicate services involving manipulative treatment. *Compare* CX 1 *with* CX 6. The total charges associated with these eight visits amount to a sum of $1,229. CX 1.

[4] In this regard, the administrative law judge found that the billing codes reflect that one meaning of the phrase "manipulative treatment" is chiropractic manipulative treatment. Decision and Order at 5.

claimant did not establish that the physical therapy treatment performed by Dr. Kudej was necessary and thus employer could not be held liable for the medical charges associated with that treatment.[5] It is well-established that an administrative law judge, as the trier-of-fact, is entitled to weigh the evidence and draw her own inferences therefrom. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). The administrative law judge acted within her discretionary authority evaluating the evidence of record, and claimant has established no reversible error in her findings. We therefore affirm the administrative law judge's determination that employer is not liable for the medical treatment rendered to claimant by Dr. Kudej between May 11 and June 3, 2005, as that finding is rational and in accordance with law.[6] *See generally Wheeler*, 21 BRBS at 35.

[5] While the administrative law judge additionally found that neither the Director nor employer consented to a change in claimant's physical therapy provider, *see Ferrari v. San Francisco Stevedoring Co.*, 34 BRBS 78 (2000), employer did authorize Dr. Kudej to perform manipulative treatment. *See* EX 8.

[6] Claimant lastly argues that he should not bear the burden of paying for his medical treatment simply because Dr. Kudej did not file a timely first report of treatment, *see* 20 C.F.R. §702.422(a); rather, claimant contends that the interests of justice dictate that Dr. Kudej's failure to file an attending physician's report within 10 days of treatment should be excused. *See* 33 U.S.C. §907(d); 20 C.F.R. §702.422(b). The administrative law judge properly found that this contention had not been raised before and that, if it had, she did not have the authority to consider whether claimant was excused from complying with the requirements of Section 7(d)(2) of the Act. *See Ferrari v. San Francisco Stevedoring Co.*, 34 BRBS 78 (2000).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge