

PATRICK COLLIS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
NATIONAL STEEL AND SHIPBUILDING	)	DATE ISSUED: 03/30/2010
COMPANY	)	
	)	
Self-Insured	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Compensation Order Awarding Medical Apparatus and Treatment Pursuant to 33 USC 907 of Eric L. Richardson, District Director, United States Department of Labor.

Patrick Collis, Chula Vista, California, *pro se*.

Roy D. Axelrod (Law Offices of Roy Axelrod), Solana Beach, California, for self-insured employer.

Kathleen H. Kim (M. Patricia Smith, Solicitor of Labor; Rae Ellen Frank James, associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals the Compensation Order Awarding Medical Apparatus and Treatment Pursuant to 33 USC 907 (Case No. 18-11284) of District Director Eric L. Richardson 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). The determinations of the district director must be affirmed unless they are shown to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *See Sans v. Todd Shipyard Corp.*, 19 BRBS 24 (1986).

The procedural history of this case has been gleaned from the parties respective briefs. Claimant sustained a work-related injury while working for employer. On June 17, 1987, the district director approved, pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i), a settlement between the parties regarding the amount of disability benefits due claimant as a result of his work-injury; the settlement did not resolve employer's liability for future medical treatment related to the subject work-injury. Subsequently, a dispute arose between the parties regarding employer's liability for various medical expenses allegedly incurred by claimant. Specifically, claimant presented to the district director a claim for reimbursement for the cost of an orthopedic bed, prescription medication, and mileage related to his work-related condition.

On April 23, 2009, the district director issued a Compensation Order awarding claimant reimbursement or payment for his claimed medical expenses. Subsequently, the district director denied employer's requests for reconsideration and modification of his Compensation Order.

Employer appeals the district director's Compensation Order, contending that the district director is without authority to issue an order awarding medical benefits to claimant where there are disputed issues of fact in existence between the parties. It therefore seeks reversal of the district director's Compensation Order and remand of the case to the Office of Workers' Compensation Programs. Alternatively, employer asserts that the district director's award must be reversed and remanded as it is vague and ambiguous.

In his response brief, the Director argues that since the district director is empowered to supervise claimant's medical care and the instant case involves no questions of fact that would require a hearing before an administrative law judge, the district director had the authority to award the medical benefits sought by claimant in this case. The Director concedes, however, that the district director's order is inadequate and too indefinite with regard to the expenses to be paid by employer; accordingly, the Director requests that the district director's order be vacated and the case remanded for the issuance of a more definitive compensation order. Claimant, representing himself,

has filed two responses addressing employer's appeal. Employer has filed a reply brief in which it asserts that, contrary to the statement contained in the Director's brief, numerous disputed issues of fact are present in the case at bar.

A claimant's entitlement to medical benefits is governed by Section 7 of the Act. 33 U.S.C. §907. Active supervision of a claimant's medical care is performed by the Secretary of Labor and her delegates, the district directors. 33 U.S.C. §907(b), (c); 20 C.F.R. §702.401 *et seq.* While the district director thus exercises discretion in supervising treatment, factual disputes regarding employer's liability must be resolved by an administrative law judge. Disputes over whether authorization for treatment was requested by the claimant, whether the employer refused the request for treatment, whether the treatment obtained was reasonable and necessary, or whether a physician's report was filed in a timely manner, are all factual matters within the administrative law judge's authority to resolve.<sup>1</sup> See *Weikert v. Universal Maritime Service Corp.*, 36 BRBS 38 (2002); *Sanders v. Marine Terminals Corp.*, 31 BRBS 19 (1997); *Toyer v. Bethlehem Steel Corp.*, 28 BRBS 347 (1994) (McGranery, J., dissenting). Consequently, despite the district director's discretionary authority over certain medical matters, neither the statute nor the regulations exclude the administrative law judge from the administrative process when questions of fact are raised. *Sanders*, 31 BRBS at 21, 23; *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989).

In this case, the parties have disputed claimant's entitlement to reimbursement by employer for the cost of a new bed.<sup>2</sup> This issue does not involve an exercise of discretion

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<sup>1</sup> In this regard, the Board has stated that the regulations concerning claims processing support the conclusion that disputed questions of fact in a claim for medical benefits are to be resolved by an administrative law judge. Specifically, Section 702.315(a) of the regulations, 20 C.F.R. §702.315(a), provides that following an informal conference at which agreement is reached on all issues, the district director shall embody the agreement in a memorandum or formal compensation order. In contrast, Section 702.316, 20 C.F.R. §702.316, directs the district director to transfer the case to the Office of Administrative Law Judges when agreement cannot be reached on all issues. *Sanders v. Marine Terminals Corp.*, 31 BRBS 19 (1997).

<sup>2</sup> Specifically, the file indicates that the district director, in a letter to employer dated February 27, 2009, acknowledged a January 5, 2009 letter from employer in which employer stated that since it had previously provided claimant with a bed that had been prescribed by Dr. Greenfield, it denied its liability to claimant for the cost of a new bed. Thereafter, in a letter dated April 17, 2009, employer stated that while it had resolved claimant's claim for the cost of prescription medications, it continued to deny claimant's request that it reimburse claimant for the cost of a new bed.

but a finding as to whether this expense is reasonable and necessary. As we have stated, such issues involve questions of fact and, where the parties disagree, must be resolved by an administrative law judge. In this case, there is no indication that the parties agreed to the issuance of a compensation order, *see* 20 C.F.R. §702.315, and, indeed, employer's letters to the district director and its appeal indicate otherwise. Thus, the district director was without authority to issue an order awarding these contested medical benefits to claimant. *See Durham v. Embassy Dairy*, 40 BRBS 15 (2006); *Roulst v. Marco Constr. Co.*, 15 BRBS 443 (1983). We therefore vacate the district director's award of medical benefits and remand this case to the district director. If the parties are unable to reach agreement on the issues in dispute, the district director must refer the case for a hearing before an administrative law judge in accordance with the procedures set forth in the regulations, 20 C.F.R. §§702.315-702.317.

Accordingly, the Compensation Order Awarding Medical Apparatus and Treatment Pursuant to 33 USC 907 is vacated, and the case is remanded to the district director.

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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BETTY JEAN HALL  
Administrative Appeals Judge