BRB No. 12-0360

DENNIS GERBER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
JONES STEVEDORING COMPANY	)	DATE ISSUED: 03/27/2013
	)	
Self-Insured Employer-Respondent	)	
	)	
OREGON CHIP TERMINAL, INCORPORATED	)	
	)	
and	)	
	)	
AMERICAN HOME ASSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Compensation and Benefits of Richard M. Clark, Administrative Law Judge, United States Department of Labor.

Meagan A. Flynn (Preston, Bunnell & Flynn, LLP), Portland, Oregon, for claimant.

Jay W. Beattie and James P. McCurdy (Lindsay, Hart, Neil & Weigler, LLP), Portland, Oregon, for Jones Stevedoring Company.

Stephen E. Vertosky (Sather, Byerly & Holloway, LLP), Portland, Oregon, for Oregon Chip Terminal, Incorporated, and American Home Assurance Company.

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

DOLDER, Chief Administrative Appeals Judge:

Claimant appeals the Decision and Order Denying Compensation and Benefits (2010-LHC-01442, 2010-LHC-01443) of Administrative Law Judge Richard M. Clark 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).

Claimant worked as a longshoreman for various employers since 1970. Tr. 23-25. He worked for Oregon Chip for six shifts between August 4 and September 5, 2008. CX 1. He worked for Jones Stevedoring several times from 2001 to 2008, including the last shift he worked on September 24, 2008, before retiring two days later. Tr. 26, 43; CX 121 at 418. Claimant first sought treatment for back pain in 2001 and, on May 8, 2008, he was diagnosed with degenerative disk disease. Tr. 28; CX 6 at 39; CX 74 at 182. Claimant first complained of knee pain in October 1999. Tr. 27; CX 5 at 37. He was diagnosed with a medial meniscus tear and a Grade I medial collateral ligament strain in his left knee and underwent a left-knee arthroscopy on August 22, 2002. CX 11 at 62; CX 14 at 65; CX 15 at 67. After an MRI on October 11, 2001, which revealed a "shallow defect" in the medial meniscus, he underwent a second left-knee arthroscopy on November 9, 2006.[1] CX 20 at 77. Claimant first complained of right knee pain on April 7, 2008, was diagnosed with bilateral knee osteoarthritis, and his doctor noted for the first time that "it [was] becoming evident to [claimant] that his knee arthritis [was] compromising his current work status." CX 71 at 178. Despite his knee and back pain, claimant continued to work as a longshoreman until September 24, 2008, when he last worked for Jones Stevedoring. Tr. 26, 43; CX 121 at 418. Claimant testified that operating machinery during his last shift "beat [him] to death" and he knew he was "done" by the end of the shift. Tr. at 41-42; CX 121 at 417-18. Two days later, claimant submitted his disability retirement application on account of both his knee and back pain. CX 81 at 195.

On November 23, 2009, claimant filed a notice of injury and a claim for compensation under the Act for a lumbar spine injury caused by "work activities as a longshoreman" against both Oregon Chip and Jones Stevedoring. CX 94 at 230-234. Jones Stevedoring filed its first report of injury and notice of controversion forms with the Department of Labor on November 30, 2009. Oregon Chip filed its first report of

[1]After both arthroscopies, claimant filed claims for weekly indemnity benefits with the ILWU-PMA, stating that the injuries occurred at home. CX 13 at 64; CX 51 at 148.

injury on December 15, 2009. OX 35 at 52. It filed a notice of controversion on March 31, 2010. OX 37 at 54. On December 8, 2009, claimant filed a notice of injury and a claim for compensation under the Act against both Oregon Chip and Jones Stevedoring for a progressive bilateral knee injury due to repetitive work activities. CX 99 at 240-244. Oregon Chip filed a first report of injury on December 15, 2009, and a notice of controversion on April 16, 2010. On December 18, 2009, Jones Stevedoring filed a notice of controversion. CX 101 at 246.[2]

Among the issues raised before the administrative law judge were whether claimant's injuries arose from a traumatic injury or an occupational disease, and whether the claims were timely filed. The administrative law judge found that claimant's claims for compensation should be evaluated as claims for traumatic industrial injuries rather than occupational diseases. Decision and Order at 24. Finding that claimant was aware of the full nature and extent of his injuries by September 26, 2008, when he retired, the administrative law judge found that claimant had to have filed his claims by Monday, September 28, 2009, for them to be timely pursuant to Section 13(a) of the Act, 33 U.S.C. §913(a). *Id*. at 26-27. The administrative law judge found that the statute of limitations had not been tolled, and he rejected claimant's argument that Pacific Maritime Organization (PMA) was the agent of the employers, and, even if it were, he found that its knowledge of claimant's travel exemption as of 2003 did not put employers on notice of a compensable, work-related injury. As claimant's claims were filed in November and December 2009, the administrative law judge found claimant's claims to be untimely filed, and he denied benefits. *Id*. at 31-34.

On appeal, claimant asserts that the administrative law judge erred in failing to evaluate his knee and back injuries as "occupational diseases" such that the longer statute of limitations of Section 13(b)(2) applies, and in finding he was fully aware of the full nature and extent of his injuries as of his retirement on September 26, 2008. Claimant additionally asserts the administrative law judge erred in finding that the statute of limitations was not tolled and that, therefore, claimant's claims were untimely filed. Oregon Chip and Jones Stevedoring respond, in separate briefs, urging affirmance.[3] Claimant filed a reply brief.

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[2]In its closing brief, Jones Stevedoring stated that it controverted the knee claim on December 18, 2009, and the reference on the form to claimant's lumbar spine injury was a typographical error. ALJX 3 at 3.

[3]Before and at the hearing, claimant argued that he suffered from cumulative traumatic injuries. Claimant asserted for the first time in his post-hearing brief that his injuries should be considered occupational diseases and that PMA was an agent of employers. Employers objected, but the administrative law judge stated he would consider the issues and permit all parties to file supplemental briefs. Accordingly, we

Claimant initially contends that the administrative law judge erred in finding that his degenerative knee and back conditions are not occupational diseases and, thus, erred in applying the one-year statute of limitations under Section 13(a) of the Act, rather than the two-year statute of limitations under Section 13(b)(2). 33 U.S.C. §913(a), (b)(2). In a case involving a traumatic injury, Section 13(a) provides that a claim must be filed within one year of the date the claimant was aware, or in the exercise of reasonable diligence, should have been aware, of the relationship between the employment and the injury. 33 U.S.C. §913(a). The statute of limitations for filing a claim for an occupational disease that does not immediately result in disability is two years after the date the claimant becomes aware, or should have been aware, of the relationship between the employment, the disease, and the disability. 33 U.S.C. §913(b)(2). The Act presumes a claim was timely filed. 33 U.S.C. §920(b). Thus, the burden is on the employer to produce substantial evidence that the claim was untimely filed. *Bath Iron Works Corp. v. U. S. Dep't of Labor [Knight]*, 336 F.3d 51, 37 BRBS 67(CRT) (1st Cir. 2003); *Blanding v. Director, OWCP*, 186 F.3d 232, 33 BRBS 114(CRT) (2d Cir. 1999).

The United States Court of Appeals for the Ninth Circuit, within whose jurisdiction this case arises, has not addressed the timeliness of a claim based on whether an injury is an occupational disease or a traumatic injury. However, it has discussed the classification of certain injuries in its responsible employer and average weekly wage cases. In *Port of Portland v. Director, OWCP [Ronne II]*, 192 F.3d 933, 939-40, 33 BRBS 143, 147-48(CRT) (9th Cir. 1999), *cert. denied*, 529 U.S. 1086 (2000), an average weekly wage case, the Ninth Circuit defined an occupational disease as "any disease arising out of exposure to harmful conditions of employment, when those conditions are present in a peculiar or increased degree by comparison with employment generally." *See also LeBlanc v. Cooper/T. Smith Stevedoring, Inc.*, 130 F.3d. 157, 160, 31 BRBS 195, 197(CRT) (5th Cir. 1997); *Gencarelle v. General Dynamics Corp.*, 892 F.2d 173, 23 BRBS 13(CRT) (2d Cir. 1989). The Ninth Circuit relied on the Supreme Court's decision in *Bath Iron Works Corp. v. Director, OWCP*, 506 U.S. 153, 26 BRBS 151(CRT) (1993), and the legislative history of the 1984 Amendments to draw the conclusion that "occupational diseases" are long-latency conditions that do not immediately result in disability, thus making a distinction between conditions that immediately result in disability and those that do not. *Ronne II*, 192 F.3d at 939-40, 33 BRBS 147-48(CRT). To demonstrate the difference, the court gave examples of occupational diseases from

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reject Oregon Chip's argument that claimant was precluded from raising an occupational disease theory of recovery. Due process requirements were met as the administrative law judge has the discretion to consider new issues, and employers had the opportunity to address claimant's arguments. 20 C.F.R. §702.336; *see generally Meehan Seaway Serv., Inc. v. Director, OWCP*, 125 F.3d 1163, 31 BRBS 114(CRT) (8th Cir. 1997), *cert. denied*, 523 U.S. 1020 (1998).

New York law: poisonings, dust diseases, respiratory disorders, and nerve conditions. The court concluded that "[b]ack problems arising from a traumatic injury" which was apparent before retirement "clearly were not intended as occupational diseases under this scheme." *Id.* Thus, in *Ronne II*, the claimant was to receive benefits based on his average weekly wage on the date his injury occurred and not when the effects manifested themselves. *See also LeBlanc*, 130 F.3d 157, 31 BRBS 195(CRT).

The Ninth Circuit also has addressed the traumatic injury versus occupational disease issue in its line of responsible employer cases. *Metropolitan Stevedore Co. v. Crescent Wharf & Warehouse Co. [Price]*, 339 F.3d 1102, 37 BRBS 89(CRT) (9th Cir. 2003), *cert. denied*, 543 U.S. 940 (2004); *Foundation Constructors, Inc. v. Director, OWCP*, 950 F.2d 621, 25 BRBS 71(CRT) (9th Cir. 1991); *Kelaita v. Director, OWCP*, 799 F.2d 1308 (9th Cir. 1986). In *Foundation Constructors*, the Ninth Circuit concluded that the claimant's disabling back condition, which resulted from operating a jackhammer and heavy lifting on the job, was a cumulative trauma injury, not an occupational disease, and drew a distinction between back injuries and obvious occupational diseases like work-related cancer and asbestosis. In *Kelaita*, the court rejected the argument that cumulative trauma cases "are more akin to occupational disease cases," and instead applied the responsible employer rule that applied to traumatic injuries. In *Price*, the court applied the responsible employer rule pertaining to traumatic injuries to a claim for a cumulative knee injury. Claimant correctly asserts that these cases do not address the specific issue before the Board, *i.e.*, which provision of Section 13 is applicable; however, they are informative in that the Ninth Circuit has specifically labeled cumulative back and knee injuries as traumas and not occupational diseases for application of other provisions of the Act. *See Foundation Constructors*, 950 F.2d 621, 25 BRBS 71(CRT); *see also Price*, 339 F.3d 1102, 37 BRBS 89(CRT).

In this case, claimant's doctors opined that his back and knee conditions were aggravated by prolonged exposure to vibration, walking on steel docks and ship decks, climbing ladders and gang planks, prolonged standing, and carrying significant weights at work. CXs 92, 117, 119. Claimant argued before the administrative law judge that these conditions were "peculiar" to his longshore employment; therefore, the alleged resulting injury was an occupational disease for purposes of Section 13. However, based on the Ninth Circuit cases discussed above, the administrative law judge found that claimant's knee and back injuries are traumatic injuries. The administrative law judge also stated that claimant did not put forth the evidence necessary to establish that his injuries were occupational diseases.[4] Decision and Order at 22-24.

[4]We reject claimant's assertion that it is employers' burden to establish that his injuries were not occupational diseases because they bear the burden of showing that the claims were untimely filed. Claimant, as a proponent of the argument that the extended

Upon review of the administrative law judge's analysis and findings, we cannot state that he reached an unreasonable result or one that is plainly contrary to law.[5] Given the long-latency nature of occupational diseases and claimant's testimony that he knew immediately when work bothered his knees and back, the evidence and case law support the administrative law judge's finding.[6] *See Price*, 339 F.3d 1102, 37 BRBS 89(CRT); *Ronne II*, 192 F.3d at 939-40, 33 BRBS 147-48(CRT); *Foundation Constructors*, 950 F.2d 621, 25 BRBS 71(CRT). Moreover, the administrative law judge addressed the "peculiar to work" element and reasonably concluded that the walking, standing, lifting, bending, etc., aspects of claimant's job were not "peculiar to" his employment. *See* Decision and Order at 23 n. 10; *Ronne II*, 192 F.3d at 939-40, 33 BRBS 147-48(CRT). Based on the foregoing, we affirm the administrative law judge's findings that claimant's cumulative back and knee injuries are traumatic injuries and that the one-year statute of limitations at Section 13(a) is applicable, as they are rational, supported by substantial evidence, and in accordance with law. *See Steed v. Container Stevedoring Co.*, 25 BRBS 210 (1991).

Claimant next asserts the administrative law judge erred in finding he was "aware of the full character, extent, and impact of the harm done to him" by his employment activities at the time he retired, because, he asserts, there is no evidence he was aware work was worsening the pathology of his underlying conditions. As we have affirmed application of the Section 13(a) statute of limitations, the time for filing claimant's claim began to run only after he became aware, or reasonably should have been aware, of the full character, extent, and impact of his work-related injuries. This inquiry encompasses claimant's awareness of a work-related injury that caused a permanent loss in his earning capacity. *See Abel v. Director, OWCP*, 932 F.2d 819, 24 BRBS 130(CRT) (9th Cir.

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statute of limitation applies, bears the burden on this issue. *See generally Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

[5]The administrative law judge, in footnote numbers eight through ten, discussed cases from other circuits that addressed "occupational diseases" versus "traumatic injuries." Specifically, he noted that "diseases" are usually of a class that is caused by exposure to a harmful substance as opposed to a repetitive action. *See LeBlanc v. Cooper/T. Smith Stevedoring, Inc.*, 130 F.3d 157, 31 BRBS 195(CRT) (5th Cir. 1997), *Gencarelle v. General Dynamics Corp.*, 22 BRBS 170, *aff'd*, 892 F.2d 173, 23 BRBS 13 (CRT) (2d Cir. 1989); *but see Bunge Corp. v. Carlisle*, 227 F.3d 934, 34 BRBS 79(CRT) (7th Cir. 2000)(repetitive use of joystick leading to carpal tunnel syndrome found to be occupational disease).

[6]In addressing the awareness issue, the administrative law judge found claimant was aware that the effects of his work activities were immediate. Decision and Order at 26.

1991); *Todd Shipyards v. Allan*, 666 F.2d 399, 14 BRBS 427 (9th Cir.), *cert. denied*, 459 U.S. 1034 (1982); *J.M. Martinac Shipbuilding v. Director, OWCP*, 900 F.2d 180, 23 BRBS 127(CRT) (9th Cir. 1990).

In this case, claimant contended that he first became aware of the connection between his back condition and his employment upon receipt of an October 22, 2009, letter from his attorney with the concurrence report signed by Dr. Gerber on October 23, 2009. CX 115 at 321; CX 92. He averred he first became aware of the relationship between his knee condition and his employment upon receipt of a November 24, 2009, letter from his attorney which included a note from his doctor. CX 115 at 322; CX 95. However, the administrative law judge found that claimant was "aware" of the connection between his injuries, his disability, and his employment on September 26, 2008, when he retired. Substantial evidence supports the administrative law judge's finding. Specifically, claimant testified that his work caused him pain and that his final shift "beat [him] to death" and he was "done" by the end of the shift. CX 121. Additionally, prior to his retirement, claimant reported work injuries to his physicians, and they told him that his work activities were making his problems worse. CXs 7, 15, 35, 39, 71, 80, 117; Tr. at 29. Further, claimant filed a Disability Retirement Application indicating he could no longer work due to his injuries, and Dr. Gerber concluded claimant was permanently disabled in April 2008. Decision and Order 26; CX 81. Contrary to claimant's assertion, the record need not establish he was aware that work was worsening his underlying conditions as he was aware that his work caused pain and disability. *Gardner v. Bath Iron Works Corp.*, 11 BRBS 556 (1979), *aff'd sub nom. Gardner v. Director, OWCP*, 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981). Because it is supported by substantial evidence, we affirm the administrative law judge's finding that claimant was or should have been aware of the full nature and extent of his disabling injuries by September 26, 2008, and we reject claimant's assertion that he did not become aware until he received the letters from his attorney. *V.M. [Morgan] v. Cascade General, Inc.*, 42 BRBS 48 (2008), *aff'd*, 388 F.App'x 695 (9th Cir. 2010) *see also Abel*, 932 F.2d 819, 24 BRBS 130(CRT). Thus, he should have filed his claims by September 28, 2009, unless the time for filing was tolled.

In the absence of substantial evidence to the contrary, it is presumed, pursuant to Section 20(b) of the Act, 33 U.S.C. §920(b), that the claims were timely filed. *Knight*, 336 F.3d 51, 37 BRBS 67(CRT); *Steed*, 25 BRBS 210. In order to rebut the Section 20(b) presumption, an employer must establish that it complied with the requirements of Section 30(a) of the Act, 33 U.S.C. §930(a), by filing a first report of injury. *See Bustillo v. Southwest Marine, Inc.*, 33 BRBS 15 (1999); 20 C.F.R. §§702.201-205. Section 30(f), 33 U.S.C. §930(f), provides that where an employer has been given notice or has knowledge of any injury and fails to file the Section 30(a) report, the statute of limitations provided in Section 13(a) does not begin to run until such report has been filed. *Blanding*, 186 F.3d 232, 33 BRBS 114(CRT); *Ryan v. Alaska Constructors, Inc.*, 24 BRBS 65 (1990). Thus, for Section 30(a) to apply, the employer or its agent must have

notice of the injury or knowledge of the injury and its work-relatedness; the employer may overcome the Section 20(b) presumption by providing substantial evidence that it never gained knowledge or received notice of the injury for Section 30 purposes. *See Blanding*, 186 F.3d 232, 33 BRBS 114(CRT); *Bustillo*, 33 BRBS 15; *see also Stark v. Washington Star Co.*, 833 F.2d 1025, 20 BRBS 40(CRT) (D.C. Cir. 1987). Knowledge of the work-relatedness of an injury may be imputed where the employer knows of the injury and has facts that would lead a reasonable person to conclude that compensation liability is possible and further investigation is warranted. *See Steed*, 25 BRBS 210; *Kulick v. Continental Baking Corp.*, 19 BRBS 115 (1986).

Claimant asserts that the time to file the claim for his back injury was tolled because employers failed to timely file their first reports of injury. Specifically, claimant asserts that both employers were put on notice of a work-related back injury in 2003 when he first sought a travel exemption from PMA, but did not file notices of injury until 2009 and 2010.[7]

In requesting a travel exemption in 2003 from PMA, claimant provided PMA with a note from Dr. Gerber stating that he has a "progressive back disease that will worsen with long drives . . . [t]ravel should be restricted."[8] CX 32. Claimant contended that, as PMA is an agent of Jones Stevedoring and Oregon Chip, the travel exemption put them on notice of a work-related back injury. The administrative law judge rejected claimant's arguments, finding that PMA is not the agent for either employer for the purposes of receiving notice of workers' compensation claims, and even if PMA was their agent and its knowledge could be imputed to them, nothing in claimant's travel exemption applications suggested that his back condition was work-related and warranted further investigation. Decision and Order at 31-34. Thus, the administrative law judge found that PMA's knowledge of claimant's travel exemption would not lead either employer to conclude that compensation liability was probable or to further investigate these claims. *Id*. at 34. Therefore, the administrative law judge found that employers did not have knowledge of a work injury in 2003 and the statute of limitations had not been tolled. As the administrative law judge found claimant was aware of the full nature and extent of his conditions, by September 26, 2008, and the statute of limitations was not tolled, he determined that employer rebutted the Section 20(b) presumption of timeliness.

[7]Both Jones Stevedoring and Oregon Chip are members of PMA.

[8]Dr. Gerber advised that "due to a medical condition," claimant should avoid long drives "as this activity especially exacerbates his condition." CX 32. This travel restriction related to claimant's inability to drive to job sites more than 30 minutes from his home, and not to driving on the job. Tr. at 30-31.

It was rational for the administrative law judge to find that PMA was not an agent for either employer, on the facts presented in this case. PMA is the organization that serves as the collective bargaining and centralized payroll representative for West Coast employers of longshoremen and maritime clerks. Representatives from both employers testified that PMA is not authorized to act as an agent for either employer's workers' compensation claims or other legal affairs.[9] ALJX 7 at EX A; CX 123 at 506-08; JX 99-100. Thus, substantial evidence supports the administrative law judge's finding. Moreover, even if PMA was an agent of employers, it was reasonable for the administrative law judge to find that claimant's travel exemption did not put it on notice of a work-related injury that could be compensable. Contrary to claimant's assertion, the administrative law judge rationally found that Dr. Gerber's travel restriction was vague and did not relate claimant's back condition to his work at that time. CX 32; *see Steed,* 25 BRBS 210.

The administrative law judge rationally concluded that employers had no notice or knowledge of claimant's injuries until 2009 when claimant filed his claims. As stated above, the administrative law judge found claimant's travel exemption for his back vague and not indicative of a work injury. Moreover, following his knee surgeries, claimant filed for PMA benefits in 2002 and 2006 for "non-work-related" meniscus tears, and no medical reports were sent to employers. Thus, prior to 2009 when claimant filed his claims, the administrative law judge found that employers had no notice or knowledge of any work-related injuries. Therefore, because they are supported by substantial evidence and are rational, we affirm the administrative law judge's findings that the one-year statute of limitations for filing claimant's traumatic injury claims was not tolled and that employers successfully rebutted the Section 20(b) presumption of timeliness. *See Bustillo,* 33 BRBS 15; *Steed,* 25 BRBS 210. As claimant did not file his claims within

[9]This case is distinguishable from *Steed*, 25 BRBS 210, and *Derocher v. Crescent Wharf & Warehouse*, 17 BRBS 249 (1985), in which PMA was found to be an agent for the employers, because in those cases the claimants actually filed a claim or notice of intent to file a claim with PMA and there was evidence of an agency relationship.

one year of his date of awareness, we affirm the denial of disability benefits as claimant's claims were untimely filed.[10]

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

SO ORDERED.

NANCY S. DOLDER
Administrative Appeals Judge

I concur:

BETTY JEAN HALL
Administrative Appeals Judge

McGRANERY, Administrative Appeals Judge, concurring and dissenting:

I respectfully dissent from my colleagues' decision to affirm the administrative law judge's finding that claimant did not establish that he suffers from an occupational disease to his back. Claimant argued before the administrative law judge that he suffered from an occupational disease because his degenerative back condition was worsened by his exposure to a peculiar degree of jarring vibrations at work. Although the administrative law judge addressed relevant case law establishing that walking, standing, lifting, bending, stooping, squatting, and climbing are not activities that are peculiar to a particular line of employment, the administrative law judge did not specifically address claimant's vibration theory. Consequently, I would remand this case for him to do so. *See Bunge Corp. v. Carlisle*, 227 F.3d 934, 34 BRBS 79(CRT) (7th Cir. 2000)(repetitive use of joystick leading to carpal tunnel syndrome found to be occupational disease). If the administrative law judge were to find that claimant's back injury resulted from an occupational disease, the extended time limitation of Section 13(b)(2) would apply.

[10]Because the administrative law judge did not address whether claimant is entitled to medical benefits, and a claim for medical benefits is never time-barred, *see Siler v. Dillingham Ship Repair*, 28 BRBS 38 (1994) (*en banc*), we note that claimant's entitlement to medical benefits was not disposed of by the administrative law judge's Decision and Order. Upon a request for medical benefits in the future, claimant would have to establish that the treatment is related to a compensable injury. 33 U.S.C. §907(a).

I concur in my colleagues' decision that PMA was not employers' agent, that the statute of limitations was not tolled, and that claimant's bilateral knee claim is time-barred pursuant to Section 13(a).

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REGINA S. McGRANERY
Administrative Appeals Judge