

BRB No. 99-0219

JOSE MARTINEZ )  
)  
Claimant-Petitioner )  
)  
v. )  
)  
COAST WIDE MARINE & SHIP ) DATE ISSUED: Nov. 12, 1999  
SERVICES )  
)  
and )  
)  
CIGNA PROPERTY & CASUALTY )  
)  
Employer/Carrier- )  
Respondents ) DECISION and ORDER

Appeal of the Decision and Order and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Andrew R. Topazio (Marciano & Topazio), Hoboken, New Jersey, for claimant.

Michael Huber (Freeman, Barton & Huber, P.A.), Haddonfield, New Jersey, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order and Order (97-LHC-0430) of Administrative Law Judge Ralph A. Romano 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).

Claimant, a welder, suffered injuries to his back, left foot and shoulder when he fell

from a hi-lo during the course of his employment on July 24, 1996. Claimant subsequently sought temporary total disability compensation from the date of injury until October 21, 1996.

In his decision, the administrative law judge denied claimant's request for compensation based on his finding that claimant failed to establish that he was disabled from performing his usual employment duties due to the work accident; the administrative law judge did, however, award claimant medical benefits for services rendered by Dr. Patel. *See* 33 U.S.C. §907. Claimant's motion for reconsideration was summarily denied by the administrative law judge.

On appeal, claimant challenges the administrative law judge's denial of his claim for temporary total disability compensation and an attorney's fee. Employer responds, urging affirmance.

Claimant initially contends that the administrative law judge erred in denying his claim for approximately three months of temporary total disability compensation. It is well established that claimant bears the burden of establishing the nature and extent of any disability sustained as a result of a work-related injury. *See Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding & Const. Co.*, 17 BRBS 56 (1985). In finding that claimant is capable of performing his usual employment duties with employer, the administrative law judge relied upon the opinion of Dr. Canario who, pursuant to his October 21, 1996, examination of claimant, diagnosed a soft tissue injury as a result of claimant's fall and opined that claimant is capable of returning to work.<sup>1</sup> *See* EXS K, I. Dr. Canario's opinion does not, however, address the extent of claimant's condition prior to the date of his examination. Thus, while Dr. Canario's opinion supports the administrative law judge's conclusion that, as of October 21, 1996, claimant is capable of returning to his usual job, it does not preclude a determination that claimant's condition was temporarily disabling prior to that date. As a result, the administrative law judge's denial of all disability compensation for the specific period sought by claimant, *i.e.*, July 24, 1996, through October 21, 1996, based on Dr. Canario's opinion cannot stand.

Moreover, in rendering his determination regarding claimant's claim for

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<sup>1</sup>In crediting the opinion of Dr. Canario, the administrative law judge declined to rely upon the contrary opinion of Dr. Ratella, who asserted that claimant's back impairment precludes his return to work. *See* CX 24.

compensation, the administrative law judge did not discuss all of the evidence of record, specifically the opinion of Dr. Patel, who treated claimant during the relevant period from the date of the accident until September 16, 1996. Dr. Patel diagnosed a contusion and sprain of claimant's left shoulder, as well as an acute lumbosacral sprain, and concluded that claimant was disabled from his usual employment duties. *See* CX 10. Thus, the record contains medical evidence not considered by the administrative law judge which, if credited, could establish claimant's inability to perform his usual employment during the period of disability alleged by claimant. *See, e.g., Curit v. Bath Iron Works Corp.*, 22 BRBS 100 (1988).

Accordingly, we hold that the administrative law judge's decision on this issue cannot be affirmed since it fails to satisfy the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §554. Hearings of claims arising under the Act are subject to the APA, *see* 33 U.S.C. §919(d), which requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record." 5 U.S.C. §557(c)(3)(A). An administrative law judge thus must adequately detail the rationale behind his decision and specify the evidence upon which he relied. *See Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988); *see also Frazier v. Nashville Bridge Co.*, 13 BRBS 436 (1981). Failure to do so will violate the APA's requirement for a reasoned analysis. *Ballesteros*, 20 BRBS at 187; *see Williams v. Newport News Shipbuilding & Dry Dock Co.*, 17 BRBS 61 (1985). In the instant case, the administrative law judge failed to consider all of the evidence of record relevant to the issue of whether claimant was incapable of resuming his usual employment duties with employer prior to October 21, 1996. Accordingly, we vacate the administrative law judge's decision regarding the ability of claimant to return to his usual job prior to October 21, 1996, and we remand the case for a reasoned analysis of all the medical evidence on this issue.

Lastly, claimant asserts that the administrative law judge erred by failing to award his counsel an attorney's fee payable by employer. Because claimant's counsel in the instant case established claimant's entitlement to certain medical expenses, claimant is a "prevailing party," and employer is liable for counsel's attorney's fee as employer contested, *inter alia*, the issue of its responsibility for payment of these charges.<sup>2</sup> *See Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14 (CRT)(5th Cir. 1993); *Hill v. Avondale Industries, Inc.*, 32 BRBS 186 (1998); *see also Hensley v. Eckerhart*, 461 U.S. 424 (1983). In the instant case, however, the administrative law judge did not address counsel's fee petition. Accordingly, on remand, the administrative law judge must consider counsel's fee petition in light of the Supreme Court's decision in *Hensley*.

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<sup>2</sup>Employer contested its liability for claimant's related medical bills. *See* EX E; HT at 8. The administrative law judge found employer liable for the payment of the outstanding bills incurred for emergency hospital services, EX 8, treatment rendered by Dr. Patel, CX 12, and an MRI, CX 9. *See* Decision and Order at 6.

Accordingly, the administrative law judge's determination that claimant was capable of performing his usual employment duties between July 24, 1996, and October 21, 1996, is vacated, and the case is remanded for further findings, including consideration of counsel's fee petition, in accordance with this opinion. In all other respects, the administrative law judge's Decision and Order and Order are affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge