BRB No. 02-0878

MICHAEL J. PRESTON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
BATH IRON WORKS CORPORATION	)	DATE ISSUED: 09/12/2003
	)	
	)	
Self-Insured Employer-Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order on Remand - Awarding Benefits of David W. Di Nardi, Administrative Law Judge, United States Department of Labor.

Marcia J. Cleveland, Brunswick, Maine, for claimant.

Stephen Hessert (Norman, Hanson & DeTroy, L.L.C.), Portland, Maine, for self-insured employer.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand - Awarding Benefits (1999-LHC-2444) of Administrative Law Judge David W. Di Nardi 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 rigger and substitute crane operator for employer. In 1998, his hereditary condition of myoclonus multiplex, the involuntary twitching and jerking of his head, neck and upper extremities, allegedly reached sufficient proportions to cause him concern over his ability to safely perform his job. Employer's Exhibit (EX) 9. Based on his assertions, claimant=s doctor, Dr. Carinci, removed him from work as of August 28, 1998. EX 24. Claimant maintained that his increased symptoms were due to stress and harassment at work, Hearing Transcript (HT) at 27-33, and he sought temporary total disability and medical benefits.

The administrative law judge denied benefits, finding the Section 20(a) presumption, 33 U.S.C. '920(a), rebutted and concluding that claimant=s condition is familial and not work-related. Decision and Order at 34-35. Claimant thereafter appealed, asserting that the administrative law judge erred in his application of Section 20(a), and in his evaluation of the evidence pursuant to that provision. In its decision, the Board held that the administrative law judge did not make the requisite findings for invoking the Section 20(a) presumption and erred in finding it rebutted; the Board therefore remanded the case for further consideration. *Preston v. Bath Iron Works Corp.*, BRB No. 01-0398 (Jan. 15, 2002) (unpub.). The Board further directed that if the administrative law judge determined on remand that claimant sustained a work-related injury, then he must consider the other outstanding issues associated with claimant's claim for benefits. *Id.*

On remand, the administrative law judge determined that claimant is entitled to the Section 20(a) presumption, that employer could not establish rebuttal thereof, and thus that claimant established a work-related injury. He then determined that claimant's claim was timely pursuant to Sections 12 and 13 of the Act. 33 U.S.C. §§912, 913. On the merits, the administrative law judge determined that claimant is entitled to an award of temporary total disability benefits from August 28, 1998, as he is incapable of returning to his usual employment and employer has not established the availability of suitable alternate employment. The administrative law judge also awarded all relevant medical benefits, and interest.

On appeal, employer challenges the administrative law judge's findings that claimant's myoclonus multiplex is work-related, that the claim was timely filed, that claimant is entitled to total disability and medical benefits, and interest, as well as his calculation of claimant's average weekly wage. Claimant responds, urging affirmance.

Section 20(a)

Employer asserts that the Board, in its prior decision, exceeded the scope of its review and usurped the administrative law judge's function as a fact-finder in vacating the administrative law judge's findings pursuant to Section 20(a) and remanding the case for reconsideration of that issue. Employer maintains that the Board reweighed the evidence and made inappropriate factual determinations in concluding that employer did not establish rebuttal of the Section 20(a) presumption as a matter of law. Employer further asserts that, contrary to relevant precedent, the Board required employer to "rule out" any possible causal connection between claimant's employment and his condition in order to establish rebuttal. In short, employer contends that the administrative law judge's original decision was appropriate and supported by substantial evidence and therefore should have been affirmed.

The Board has held that it will adhere to its initial decision when a case is before it for a second time unless there has been a change in the underlying factual situation, intervening controlling authority demonstrates the initial decision was erroneous, or the first decision was clearly erroneous and to let it stand would produce a manifest injustice. *See Jones v. U.S. Steel Corp.*, 25 BRBS 355 (1992); *Williams v. Healy-Ball-Greenfield*, 22 BRBS 234 (1989)(Brown, J., dissenting). Employer's contentions herein do not fall within any of the exceptions to the law of the case doctrine.

First, no party contends there has been a change in the underlying factual situation in this case. A review of the Board's previous decision reveals no error in the Board's discussion of the applicable statutory provisions and legal standards. Contrary to employer's contention, the Board did not usurp the administrative law judge's authority as fact-finder in this case. Rather, the Board reviewed the record in order to determine whether the administrative law judge's conclusions that Section 20(a) had been invoked and rebutted were supported by substantial evidence.

With regard to the invocation of the Section 20(a) presumption, the Board found that the administrative law judge did not make specific findings with regard to claimant's allegations of "harm" and "working conditions," and that most importantly he "did not determine whether the stress and harassment in the workplace, which claimant asserted aggravated his condition, in fact occurred." *Preston*, slip op. at 4. The Board specifically outlined the conflicting evidence of record relevant to determining whether the stressful working conditions alleged by claimant existed and instructed the administrative law judge to "address this evidence and determine whether claimant's working conditions were stressful." *Preston*, slip op. at 5. On remand, the administrative law judge concluded that the name-calling and other harassment claimant alleged he experienced due to his underlying genetic condition occurred and resulted in stressful working conditions, thus invoking Section 20(a). On appeal, employer asserts that the administrative law judge initially relied on claimant's

credible testimony in finding Section 20(a) invoked, and thus there was no basis for remand on this issue. As employer essentially concedes that Section 20(a) is invoked, it raises no basis for overturning this aspect of the decision.

With regard to rebuttal, the Board held that substantial evidence did not support the administrative law judge's determination that employer established rebuttal of the Section 20(a) presumption. In this regard, the Board did not, as employer argues, apply a "rule out" standard to rebuttal, but rather reviewed the record to determine whether the administrative law judge properly found that employer produced substantial evidence to rebut the presumption. *See Bath Iron Works Corp. v. Director, OWCP [Shorette]*, 109 F.3d 53, 31 BRBS 19(CRT) (1st Cir. 1997). In this regard, the Board applied the well-established aggravation rule, which provides that where a claimant's employment aggravates, accelerates or combines with a pre-existing condition, the entire resulting disability is compensable. *Preston*, slip op. at 5-6. *See also Norfolk Shipbuilding & Drydock Corp. v. Faulk*, 228 F.3d 378, 34 BRBS 71(CRT) (4th Cir. 2000), *cert. denied*, 531 U.S. 1112 (2001). Particularly relevant to this case, the Board cited precedent holding that an aggravation is compensable regardless of whether the employment actually altered the underlying disease process or whether it merely induced the manifestation of symptoms, since symptoms which are aggravated or exacerbated, even temporarily, by working conditions constitute a compensable injury. *Citing Crum v. General Adjustment Bureau,* 738 F.2d 474, 16 BRBS 115(CRT) (D.C. Cir. 1984); *Gardner v. Director, Office of Workers' Compensation Programs,* 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981). Applying the aggravation rule to the evidence of record, the Board held that Dr. Kolkin's opinion that stress would exacerbate claimant's pre-existing condition, Kolkin Dep. at 28, 36, is insufficient to establish rebuttal. Since Dr. Kolkin agreed with Dr. Standaert that stress would exacerbate claimant's symptoms, albeit temporarily, his opinion supports a finding of a work-related injury under *Crum* and *Gardner*. It follows that this opinion cannot provide substantial evidence that claimant's condition was not aggravated by his employment. Thus, as there is no other evidence of record controverting the connection between work-related stress and the aggravation or exacerbation of the symptoms of claimant's underlying condition, the Board properly held that the Section 20(a) presumption is not rebutted.

On appeal, employer does not point to any evidence sufficient to rebut Section 20(a), but argues that the administrative law judge's initial analysis of the evidence in the record as a whole should have been affirmed as the administrative law judge found Drs. Kolkin and Bourne to be the most credible experts and none of these physicians specifically stated that the name-calling or alleged harassment at work caused the worsening of claimant's physical condition.[1] Empl. br. at 17. Employer's argument misperceives its burden of producing

[1]In its initial decision, the Board noted that Dr. Bourne addressed only claimant's alleged psychiatric injury, and affirmed the finding that any psychological condition is not

substantial evidence that claimant's condition was not aggravated by his working conditions. As none of the physicians opined to "a reasonable degree of medical certainty" that claimant's working conditions did not aggravate his underlying physical condition, employer did not meet its burden of production. *Shorette*, 109 F.3d at 55, 31 BRBS at 21(CRT). *See Crum*, 738 F.2d 474, 16 BRBS 115(CRT); *Gardner*, 640 F.2d 1385, 13 BRBS 101. As the Board's prior decision regarding rebuttal reflects application of the proper standards, we reject employer's contentions on appeal. As employer does not challenge the administrative law judge's findings invoking Section 20(a), and rebuttal is not established, we affirm the administrative law judge's conclusion that claimant sustained a work-related aggravation of his underlying myoclonus multiplex.

Sections 12 and 13

Employer argues that claimant's claim is barred for failure to give timely notice and to timely file his claim in accordance with Sections 12 and 13 of the Act, 33 U.S.C. §§912, 913. Employer maintains that the administrative law judge erred in finding that the date of injury in this case was August 27, 1998, as the record establishes September 22, 1997, as the appropriate date of injury. Employer therefore contends that claimant's notice of his injury to employer and the filing of his claim, coinciding on October 22, 1998, are untimely.

The record establishes, and the administrative law judge found, that claimant did not file a formal written notice of the injury with employer or the district director pursuant to Section 12(a) prior to the 1998 filing. Nonetheless, Section 12(d) of the Act, 33 U.S.C. §912(d), provides in pertinent part:

> Failure to give such notice required by Section 12(a) shall not bar any claim under this chapter (1) if the employer . . . or the carrier had knowledge of the injury or death, (2) the deputy commissioner determines that the employer or carrier has not been prejudiced by failure to give such notice, or (3) if the deputy commissioner excuses such failure [for one of the enumerated reasons]. . . .

Because Section 12(d) is written in the disjunctive, claimant's failure to file a notice of injury will not bar a claim if any of three reasons is met: employer had actual knowledge of the injury, employer was not prejudiced by the failure to give formal notice, or the district

---

work-related. *Preston*, slip op. at 6, n.3. Dr. Bourne acknowledged he lacked the expertise to determine whether claimant's physical disorder was aggravated by his employment.

director excused the failure to file. *See Boyd v. Ceres Terminals*, 30 BRBS 218 (1997); *Sheek v. General Dynamics Corp.*, 18 BRBS 151 (1986), *modifying on recon.* 18 BRBS 1 (1985). The implementing regulation states that "actual knowledge" of the injury is deemed to exist if claimant's immediate supervisor is aware of the injury. 20 C.F.R. §702.216. This imputed knowledge under Section 12(d)(1) requires knowledge of the fact of injury, as well as knowledge of its work-relatedness. *Addison v. Ryan-Walsh Stevedoring Co.*, 22 BRBS 32 (1989).

Following a review of the medical evidence, the administrative law judge initially determined that employer had sufficient knowledge as of September 22, 1997, to suspect that claimant's neurological disorder was affecting his ability to work and that there could be a causal relationship between the on-the-job co-worker pressure in the form of taunts, teasing and ridicule, and his employment. Decision and Order at 37. In the alternative, he found that as of September 22, 1997, claimant had received no definitive opinion on the causal relationship between claimant's myclonus multiplex and the stressful working conditions at the shipyard and that such an opinion was not expressed until the August 28, 1998, letter from Dr. Carinci to Dr. Farrago wherein she opined that claimant "is having a lot of movement disorder problems that prohibit safe operation of a crane at work." EX 24. Dr. Carinci therein also opined that claimant should be taken out of work immediately. *Id.* The administrative law judge therefore determined that claimant's neurological disorder did not have an adverse effect on his ability to work until August 28, 1998. Accordingly, as claimant stopped working on August 27, 1998, due to the cumulative effect of his neurological disorder and the stressful working conditions, the administrative law judge concluded that this date is the date of injury. He therefore concluded that claimant satisfied the requirements of Section 12 of the Act for his work injury because notice was given on October 23, 1998, within one year of this date.[2]

The administrative law judge's finding that August 27, 1998, is the applicable date for commencing the Section 12 notice period is affirmed, as the record supports the determination that this date was when claimant first became aware that his condition,

[2]Claimant must give notice within one year of his awareness of the relationship between his illness, employment and disability in the case of an occupational disease, or within 30 days of "awareness" in the case of a traumatic injury. 33 U.S.C. §912(a). The administrative law judge applied the one year period for an occupational disease. Employer asserts that this ruling is in error, but argues it is immaterial which period applies as the period should have commenced in September 1997. We need not address whether the occupational disease provision applies for the reasons discussed, *infra.*

exacerbated by his stressful working conditions, impaired his capacity to earn wages. *See Bath Iron Works v. Galen,* 605 F.2d 583, 10 BRBS 863 (1st Cir. 1979). *See also Bechtel Associates, P.C. v. Sweeney*, 834 F.2d 1029, 20 BRBS 49(CRT) (D.C. Cir. 1987)(Section 13 period does not commence until claimant aware of a work-related injury impairing his earning capacity); *Newport News Shipbuilding & Dry Dock Co. v. Parker,* 935 F.2d 20, 24 BRBS 98(CRT) (4th Cir. 1991)(same). Consequently, as employer had knowledge of the relationship between the injury and claimant's employment as of that date by virtue of its receipt of Dr. Carinci's letter, in conjunction with the prior September 22, 1997, first aid note memorializing a meeting between claimant, his union representatives and employer,[3] employer's contention that the lack of timely formal notice bars the claim is rejected. 33 U.S.C. §912(d)(1). Accordingly, we affirm the administrative law judge's conclusion that Section 12 does not bar claimant's entitlement to benefits.

Section 13(a) of the Act provides a claimant with one year after he becomes aware or with the exercise of reasonable diligence should be aware, of the relationship between his traumatic injury and his employment, within which he may file a claim for compensation for the injury.[4] 33 U.S.C. §913(a). We have previously affirmed the administrative law judge's finding that claimant became aware that he had sustained a work-related injury impairing his earning capacity as of August 27, 1998 for purposes of Section 12, and the same analysis applies under Section 13. *See, e.g., Sweeney,* 834 F.2d 1029, 20 BRBS 49(CRT). Consequently, the filing of claimant's claim on October 22, 1998, is timely as it is within one-year of the date of claimant's awareness, *i.e.,* August 27, 1998.

Nature and Extent of Disability

[3]The first aid note dated September 22, 1997, memorialized the following: that claimant and his union representatives met with employees of the employer; that the purpose of the meeting was to "discuss his tremors" and that "he is feeling uncomfortable due to co-worker pressure and a worsening of his condition;" that these tremors are "made worse when under stress;" that his co-workers were concerned about their safety and often made fun of claimant; and that employer's physician was not familiar with the medical term for the tremors as reported by claimant. EX 12.

[4]Section 13(b), 33 U.S.C. §913(b), provides that a claimant must file his claim within two years of his awareness in an occupational disease case.

Employer argues that the administrative law judge erred in finding that claimant cannot perform his usual employment within its facility. Employer contends that the reports of Drs. Bourne and Kolkin specifically conclude that claimant has a continuing capacity to perform his duties with employer. Employer therefore maintains that claimant is not entitled to total disability benefits.

In order to establish a *prima facie* case of total disability, claimant must prove that he is unable to perform his usual work due to the injury. *See, e.g., Delay v. Jones Washington Stevedoring Co.*, 31 BRBS 197 (1998). On remand, the administrative law judge determined that "the totality of this closed record leads inescapably to the conclusion that claimant cannot return to work as a crane operator at the employer's shipyard." Decision and Order on Remand at 42. In so finding, he relied on the testimony of Dr. Kolkin that claimant could work only in a "calm, supportive environment" to find that claimant could not return to his usual work since "shipyards, even under the best of circumstances are not calm," and since the evidence of record indicates that claimant faced harassment virtually every day in his usual work environment. Decision and Order on Remand at 42. In this regard, the administrative law judge relied on the testimony of claimant's supervisor, Luke Thiboutot, who acknowledged that claimant was subjected to name-calling and practical jokes due to his neurological condition and stated that claimant's involuntary jerking had become so bad that co-workers were concerned about whether he was able to work in safety. Decision and Order on Remand at 42-43. The administrative law judge further relied on the reports of Dr. Standaert, a treating physician, who unequivocally opined that claimant could not safely operate heavy equipment because of his symptoms, and Dr. Carinci, who took claimant out of work because she believed that the stress had so exacerbated his shaking that he could no longer continue his job. *Id.* Lastly, the administrative law judge observed that all of the doctors who expressed an opinion on claimant's ability to operate a crane are in agreement that he cannot safely do so. *Id.* As the administrative law judge acted within his discretion in crediting the opinions of Drs. Kolkin, Standaert, and Carinci, as supported by the testimony elicited from claimant and his supervisor, Mr. Thiboutot, regarding the hostile work environment, his finding that claimant is incapacitated from his usual work is affirmed. *Marinelli v. American Stevedoring, Ltd.*, 34 BRBS 112 (2000), *aff'd*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001); *see also Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963). Accordingly, as employer presented no evidence of suitable alternate employment, the administrative law judge's award of temporary total disability compensation is likewise affirmed. *See generally Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 84(CRT) (2d Cir. 1997).

Average Weekly Wage

Employer avers that the administrative law judge's calculation of claimant's average weekly wage pursuant to Section 10(c) of the Act, 33 U.S.C. §910(c), is erroneous. Employer contends that Section 10(a) of the Act, 33 U.S.C. §910(a), is applicable since claimant worked for substantially all of the year immediately preceding his alleged injury. Specifically, employer argues that the record warrants application of Section 10(a) since claimant worked regularly for employer from 1978 and had worked 39 weeks in the one year immediately preceding his alleged injury.

Section 10(a), 33 U.S.C. '910(a), looks to the actual wages of the injured worker who is employed for substantially the whole year prior to the injury as the monetary base for the determination of the amount of compensation, and is premised on the injured employee's having worked substantially the entire year prior to the injury.[5] Section 10(c) of the Act, 33 U.S.C. '910(c), is a catch-all provision to be used in instances when neither Section 10(a) nor Section 10(b), 33 U.S.C. '910(b), can be reasonably and fairly applied.[6] *See National Steel & Shipbuilding Co. v. Bonner*, 600 F.2d 1288 (9th Cir. 1979).

In his decision, the administrative law judge initially determined that the record reflects wages only from week number 14, dated November 2, 1997, through week number 52, dated September 13, 1998, a period of 39 weeks. He therefore concluded that Section 10(a) is inapplicable. The administrative law judge thereafter calculated claimant's average weekly wage by dividing his earnings over that period of time, $20,456.35,[7] by 31 weeks (the administrative law judge "deleted 8 weeks during which [claimant] earned no wages," Decision and Order on Remand at 46) to arrive at an average weekly wage of $659.88. It is

---

[5]Section 10(a) states:

> If the injured employee shall have worked in the employment in which he was working at the time of the injury, whether for the same or another employer, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary for a six-day worker and two hundred and sixty times the average daily wage or salary for a five-day worker, which he shall have earned in such employment during the days when so employed.

33 U.S.C. '910(a).

[6]No party argues that Section 10(b) is applicable in this case.

[7]The administrative law judge's decision on remand contains a typographical error wherein he stated that he divided $30,456.35 by 31 weeks to arrive at claimant's average weekly wage of $659.88. Decision and Order on Remand at 46.

not entirely clear from the record as to whether claimant worked for employer during the first 13 weeks of the year immediately preceding his work injury and thus, as to what he may have earned during that time period. Most significantly, there is no evidence as to whether claimant was a five or six day a week worker, and this evidence is required in order for claimant's average daily wage to be calculated under Section 10(a). *See Duhagon v. Metropolitan Stevedore Co.,* 31 BRBS 98 (1997), *aff'd,* 169 F.2d 615, 33 BRBS 1(CRT)(9th Cir. 1999); *see also Universal Maritime Corp. v. Moore,* 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). As the record lacks the necessary evidence for application of its formula, Section 10(a) cannot be applied. Accordingly, as the administrative law judge's conclusion regarding claimant's average weekly wage reflects a reasonable method of calculation under Section 10(c), it is affirmed. *Patterson v. Omniplex World Services*, 36 BRBS 149 (2003).

Medical Benefits

Employer argues that the administrative law judge erred in considering the issue of medical benefits in this case since the parties agreed in this regard that only the question of whether claimant's condition is work-related would be litigated. Employer maintains that the issue of medical expenses and treatment was to be addressed by agreement after a final decision was issued on the causation issue.

Section 7(a) of the Act, 33 U.S.C. §907(a), states that "[t]he employer shall furnish medical, surgical, and other attendance or treatment for such period as the nature of the injury or the process of recovery may require." Section 7(d) of the Act, 33 U.S.C. §907(d), sets forth the prerequisites for an employer's liability for payment or reimbursement of medical expenses incurred by claimant. The Board has held that Section 7(d) requires that a claimant request his employer's authorization for medical services performed by any physician, including the claimant's initial choice. *See Maguire v. Todd Shipyards Corp.*, 25 BRBS 299 (1992); *Shahady v. Atlas Tile & Marble*, 13 BRBS 1007 (1981)(Miller, J., dissenting), *rev'd on other grounds*, 682 F.2d 968 (D.C. Cir. 1982), *cert. denied*, 459 U.S. 1146 (1983). Where a claimant's request for authorization is refused by the employer, however, claimant is released from the obligation of continuing to seek approval for subsequent treatment and thereafter need only establish that the treatment subsequently procured on his own initiative was necessary for his injury in order to be entitled to such treatment at employer's expense. *See Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112 (1996); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989).

Under Section 7(d)(2) of the Act, an employer is not liable for medical expenses unless, within 10 days following the first treatment, the physician rendering such treatment provides the employer with a report of that treatment. The Secretary may excuse the failure to comply with the provisions of this section in the interest of justice. 33 U.S.C. §907(d)(2) (1988); *see 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); *Force v. Kaiser Aluminum & Chemical Corp.*, 23 BRBS 1 (1989), *aff'd in pertinent part*, 938 F.2d 981, 25 BRBS 13(CRT) (9th Cir. 1991); 20 C.F.R. §702.422.[8] The Board has held that the authority to determine whether non-compliance with Section 7(d)(2) may be excused rests with the district director and not the administrative law judge. *See Krohn v. Ingalls Shipbuilding, Inc.,* 29 BRBS 72, 75 (1995)(McGranery, J., concurring in part and dissenting in part); *Toyer v. Bethlehem Steel Corp.*, 28 BRBS 347 (1994) (McGranery, J., dissenting). A decision of the district director will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with the law. *See, e.g., Sans v. Todd Shipyards Corp.*, 19 BRBS 24 (1986).

In his decision on remand, the administrative law judge determined, based on the totality of the record, that claimant showed good cause, pursuant to Section 7(d), 33 U.S.C. §907(d), for any failure to timely file the attending physician's report. In this regard, the administrative law judge's decision is flawed as he does not have the authority to determine whether non-compliance with Section 7(d)(2) may be excused. *Krohn*, 29 BRBS at 74. The administrative law judge additionally found that claimant advised employer of his work-related injury in a timely manner, he requested appropriate medical care and treatment, and employer did not accept the claim and did not authorize any such treatment. Consequently, he concluded that employer, as self-insurer, shall immediately authorize and pay for the reasonable and necessary medical care and treatment in the diagnosis and treatment of claimant's myclonus multiplex, commencing on September 22, 1997. In the instant case, the parties readily agreed that no specific medical expenses were put forth before the administrative law judge. The administrative law judge's conclusion that claimant is entitled to medical benefits associated with his work-related injury does not resolve claimant's entitlement to specific medical expenses. Accordingly, the administrative law judge's general finding that claimant is entitled to medical benefits is affirmed, but the parties may still reach agreement or litigate specific expenses for medical treatment as they arise,[9] and may raise issues regarding non-compliance with Section 7(d)(2) before the district director.

Interest

---

[8] The implementing regulation, Section 702.422(b), 20 C.F.R. §702.422(b), states in pertinent part:

> For good cause shown, the Director may excuse the failure to comply with the reporting requirements of the Act . . . .

[9]This disposition reflects the intent of the agreement the parties made at the hearing to address "the reasonable necessity of medical treatment" at a later date. HT at 40-42.

Employer lastly argues that the administrative law judge erred in finding claimant entitled to interest in this case. Employer contends that interest is not specifically authorized by the Act, and that the presumed reason for assessing interest, *i.e.*, to protect claimant in instances where the employer controverts a claim without basis, is not applicable to this case since employer's reasons for controversion were valid.

Employer's challenge to the administrative law judge's award of interest on unpaid benefits is without merit. While there are no provisions in the Act requiring payment of interest on unpaid installments of compensation past due, the courts have held that unless interest is awarded on delayed payments, the claimant does not receive the full amount of compensation due. *See generally Quave v. Progress Marine*, 918 F.2d 33, 24 BRBS 43(CRT), *on rehearing*, 921 F.2d 213, 24 BRBS 55(CRT) (5th Cir. 1990), *cert. denied*, 500 U.S. 916 (1991); *Quick v. Martin*, 397 F.2d 1225 (5th Cir.1971); *Strachan Shipping Co. v. Wedemeyer*, 452 F.2d 1225 (5th Cir. 1971). In the instant case, the administrative law judge determined that claimant was entitled to benefits from August 28, 1998, and that employer "shall pay to claimant interest on any unpaid compensation benefits." Decision and Order on Remand at 49-50. As employer in this case failed to make certain installments of benefits when they became due, claimant is entitled to interest on those overdue payments. Moreover, the administrative law judge properly observed that 28 U.S.C. §1961 (1982), is applicable to determine the proper rate of interest to be applied to installments of past due compensation rate.[10] *Grant v. Portland Stevedoring Co.*, 16 BRBS 267 (1984), *aff'd on recon.*, 17 BRBS 20 (1985). Accordingly, the administrative law judge's award of interest, to be calculated pursuant to the applicable rate set out by 28 U.S.C. §1961, is affirmed.

[10]28 U.S.C. §1961 provides that "interest shall be calculated from the date of the entry of the judgment, at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment."

Accordingly, the administrative law judge's Decision and Order on Remand – Awarding Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge