BRB No. 92-1154

ANTONIO PALAZZOLO	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TODD PACIFIC SHIPYARDS CORPORATION	)	DATE ISSUED:_____)
	)	
and	)	
	)	
AETNA CASUALTY AND SURETY COMPANY	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Daniel L. Stewart, Administrative Law Judge, United States Department of Labor.

Antonio Palazzolo, San Pedro, California, *pro se*.

Before: BROWN, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, representing himself,[1] appeals the Decision and Order Denying Benefits (90-LHC-2751) of Administrative Law Judge Daniel L. Stewart 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). In reviewing this *pro se* appeal, the Board will review the administrative law judge's findings of fact and conclusions of law to determine if they 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); 20 C.F.R. §§802.211(e), 802.220.

Claimant injured his back while working for employer as a drydockman on July 25, 1986. Employer paid claimant temporary total disability benefits from July 26, 1986 to December 1, 1986, from December 8, 1986 to January 8, 1987, and from August 11, 1987 to September 7, 1987. 33

[1]Claimant was represented by an attorney at the hearing before the administrative law judge.

U.S.C. §908(b). Claimant returned to work for employer in February 1987, and continued working until March 24, 1989, with periods of layoffs, industrial disputes, sickness and disability. After leaving employer, claimant worked at a variety of other jobs.

The administrative law judge found that claimant's back condition resolved as of February 11, 1987, based on the opinion of Dr. London, and that the evidence as a whole does not establish that any other condition claimant may have is work-related. The administrative law judge therefore denied claimant additional disability benefits. The administrative law judge also denied claimant medical expenses for his emergency room treatment at the San Pedro Peninsula Hospital and with Drs. Geiger and Wright.

In his letter to the Board dated February 23, 1994, claimant asserts that many doctors concluded that he is permanently disabled, that he continues to suffer back and neck pain, and that he is unable to perform his usual work.[2] Employer has not responded to this appeal.

The Section 20(a) presumption, 33 U.S.C. §920(a), applies to the issue of whether a claimant has a work-related disability. *See generally Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981). Claimant, however, bears the burden of establishing that he cannot return to his usual work in order to make out a *prima facie* case of total disability. *See generally Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989). In this case, the administrative law judge discussed the medical evidence at length, and concluded that claimant may have a neuropathy, but that it is not industrially-related. The administrative law judge credited the opinions of Drs. Curry and Farran in this regard, and, as the administrative law judge found, these opinions are sufficient to rebut the Section 20(a) presumption and to establish that the neuropathy is not work-related based on the record as a whole. *See Lennon v. Waterfront Transport*, 20 F.3d 653, 28 BRBS 22 (CRT) (5th Cir. 1994).

We also affirm the administrative law judge's finding that claimant's back condition reached maximum medical improvement on February 11, 1987, and that he could return to his usual work after that date. *See Sinclair v. United Food & Commercial Workers*, 23 BRBS 148, 156 (1989); *Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd mem. sub nom. Chong v. Director, OWCP*, 909 F.2d 1488 (9th Cir. 1990). The administrative law judge found that claimant completely recovered from any work-related disability on February 11, 1987, based on Dr. London's opinion to that effect, and additionally on Dr. Farran's opinion that claimant has no work-related disability, which he credited over the opinions of Drs. Geiger, Negri, Wright and Curry that claimant was either disabled or required work restrictions. The administrative law judge rationally found that Dr. London's qualifications were superior to the other doctors' and that his opinion was particularly

[2]Claimant also attempted to submit several doctors' reports with his letter, but in an Order dated April 28, 1994, the Board noted that with the exception of two letters from Drs. Giaconi and London, the medical reports were already made a part of the formal record at the hearing. The Board stated that the administrative law judge did not accept Drs. Giaconi's and London's letters at the hearing, and therefore the Board could not consider them because they are new evidence.

credible. *See Cordero v. Triple A Machine Corp.*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). The administrative law judge found that Dr. Geiger's statement that as a neurologist he would disqualify himself from evaluating claimant's orthopedic problem rendered his testimony unconvincing. The administrative law judge further found that Dr. Curry's restrictions related to claimant's non work-related neuropathy. Finally, the administrative law judge rationally discredited claimant's subjective complaints, finding that claimant was not a credible witness. *See Anderson*, 22 BRBS at 21. Inasmuch as the administrative law judge's finding that claimant could perform his usual work after February 11, 1987, is rational and supported by substantial evidence, we affirm the denial of further disability compensation.

We next address the issue of claimant's entitlement to medical benefits. The administrative law judge found that employer is not liable for the expense of claimant's treatment from Drs. Geiger and Wright because he found that claimant did not request authorization for their treatment. The administrative law judge denied claimant coverage for his treatment at the San Pedro Peninsula Hospital emergency room because claimant did not show this treatment was work-related and for an emergency.

Section 7 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." Section 7 does not require that an injury be economically disabling in order for a claimant to be entitled to medical expenses, but only that the injury be work-related. *See Brooks v. Newport News Shipbuilding & Dry Dock Co.*, 26 BRBS 1 (1992), *aff'd sub nom. Brooks v. Director, OWCP*, 2 F.3d 64, 27 BRBS 100 (CRT)(4th Cir. 1993). Section 7(d), 33 U.S.C. §907(d), requires that a claimant request employer's authorization for the medical services performed by any physician. Claimant's failure to request authorization for medical treatment bars the claim for reimbursement. *See Ranks v. Bath Iron Works Corp.*, 22 BRBS 301 (1989).

We hold that substantial evidence of record supports the administrative law judge's finding that claimant did not request authorization for treatment from Drs. Geiger and Wright. Claimant's counsel's letter dated December 3, 1986, informing employer that claimant had chosen Dr. Geiger as his examining neurologist, and employer's notice of controversion dated December 15, 1986, asserting claimant did not request authorization, supports the administrative law judge's finding that claimant did not request prior authorization for Dr. Geiger's treatment.[3] Further, the administrative law judge noted that Dr. Wright, a chiropractor, wrote to employer that claimant "wishes to exercise his right to select a treating doctor of his choice. We have accepted this request on the basis that the patient has no history of previously selecting a treating doctor." Cl. Ex. 47 at 169. Employer replied that claimant had chosen Dr. London as his treating physician. The administrative law judge rationally found that Dr. London was a specialist appropriate for claimant's injury, and that claimant did not obtain employer's authorization to treat with Dr. Wright. *See* 33 U.S.C. §907(c)(2), (d). We affirm the administrative law judge's finding that employer is not liable for the treatment provided by Drs. Geiger and Wright, as it is supported by the evidence of record. *Ranks*, 22 BRBS at 308.

[3]The administrative law judge found that Dr. London, claimant's treating orthopedist, sent him to see Dr. Curry, a neurologist, but that claimant elected to see Dr. Geiger instead.

The record indicates claimant received emergency treatment at San Pedro Hospital in November 1986, on February 11, 1987, and several times thereafter. Inasmuch as we affirm the administrative law judge's finding that claimant recovered from his work-related disability on February 11, 1987, claimant's medical treatment on that date and thereafter is not compensable. *Brooks*, 26 BRBS at 7. Contrary to the administrative law judge's finding, however, claimant's treatment at the hospital for his back pain on November 11, 1986, is compensable inasmuch as claimant had not yet recovered from his work-related disability. We therefore modify the administrative law judge's decision to reflect employer's liability for the expense of claimant's treatment at the San Pedro Peninsula Hospital emergency room in November 1986.

Accordingly, the administrative law judge's decision is modified to reflect employer's liability for claimant's emergency room treatment in November 1986. In all other respects, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge