

JANICE MEEKINS)	
)	
Claimant-Petitioner)	
)	
v.)	
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DEPARTMENT OF THE ARMY (NAF))	DATE ISSUED:
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Christine M. Moore, Administrative Law Judge, United States Department of Labor.

Robert E. Walsh (Rutter & Montagna), Norfolk, Virginia, for claimant.

Patrick A. Roberson (Smith, Somerville & Case), Baltimore, Maryland, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (94-LHC-49) of Administrative Law Judge Christine M. Moore denying benefits 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.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *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 applicable law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant worked as a tool and parts attendant for employer. On September 11, 1992, claimant fell on her back and hit her head on the concrete floor when she slipped on fluid and motor oil. Claimant complained of pain in her neck, right shoulder and arm, both hips, lower back and legs. Claimant contends that the stabbing pain settled in her neck, right shoulder and arm, and progressed into her hands and some fingers. Employer paid temporary total disability benefits through March 8, 1993.

In her Decision and Order denying benefits, the administrative law judge found that the

evidence is insufficient to establish that claimant suffered from an impairment after March 8, 1993. Thus, she denied claimant's claim for further disability compensation. She also found that employer is not liable for claimant's past medical treatment or recommended treatment by Dr. Stiles.

On appeal, claimant contends that she is entitled to temporary total disability benefits from March 9, 1993 to the present and continuing and that employer is liable for her present and any future injury-related medical expenses. Employer responds, urging affirmance of the denial of benefits.

Claimant contends that the administrative law judge erred in finding that claimant failed to establish a *prima facie* case of disability. To establish a *prima facie* case of total disability, claimant must show an inability to perform her usual employment because of her injury. See *Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988). Claimant specifically contends that the administrative law judge erred in finding that her complaints of pain are not credible. Although claimant's credible complaints of pain alone may be enough to establish a *prima facie* case of disability, *Richardson v. Safeway Stores, Inc.*, 14 BRBS 855 (1982), in the instant case, the administrative law judge rationally found claimant's complaints are not credible as claimant did not seek treatment until two months after the injury, claimant sought no medical care between May 1993 and December 1993, and all the physicians of record found that claimant's complaints are not supported by the objective evidence of record.¹ *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Moreover, although Drs. Schwartz and Stiles found claimant disabled from working as a mechanic, the administrative law judge noted that these findings are based on claimant's subjective complaints, which she discredited, as they, along with Drs. Collier and Williamson, found no objective support for claimant's complaints of pain. Clt. Exs. 1, 3. Emp. Exs. 7, 10. Dr. Collier, in contrast, found claimant able to return to work. Emp. Ex. 10. Finally, although all the physicians of record suggest a functional overlay to claimant's complaints and recommend a psychological evaluation, the administrative law judge rationally found these recommendations to be an insufficient basis to establish a *prima facie* case of disability. As the administrative law judge's finding is rational and supported by substantial evidence, we affirm the administrative law judge finding that claimant has failed to establish a *prima facie* case of total disability, and his consequent denial of further compensation. See generally *Chong v. Todd Pacific*

¹On November 26, 1992, Dr. Murray found that claimant's pain rating was out of proportion with her medical impairment and suggested a psychological consultation to determine the underlying motive for the complaints of pain. Emp. Ex. 8. On February 26, 1993, Dr. Williamson found claimant's symptoms outweighed her objective complaints and that there was no evidence to support a permanent disability rating. Emp. Ex. 7. Between November 1992 and May 1993, Dr. Schwartz found no objective basis for claimant's complaints. Clt. Ex. 1. On July 22, 1993, Dr. Collier found claimant's symptoms out of proportion with the physical findings and objective tests and recommended a psychological evaluation. Emp. Ex. 10. On March 15, 1994, Dr. Griffith found no evidence to support a disability rating and recommended a psychological evaluation. Clt. Ex. 4. On July 27, 1994, Dr. Stiles found claimant's symptoms seemed to exceed objective findings and to evidence an underlying psychic overlay. Clt. Ex. 3.

Shipyards Corp., 22 BRBS 242 (1989), *aff'd mem.*, 909 F.2d 1488 (9th Cir. 1990).

Claimant next contends that the administrative law judge erred in finding that employer was not liable for claimant's unpaid medical expenses and future medical treatment by Dr. Stiles. Dr. Stiles recommended a work hardening program, a psychological evaluation and possible referral to a pain clinic. Employer may not be liable for medical expenses if an administrative law judge finds that an injury is fully resolved and further medical care is not needed. *See, e.g., 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. 1995). The Board has held, however, that a work-related injury need not be economically disabling in order for claimant to be entitled to payment of medical expenses. *Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988); *see also Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14 (CRT)(5th Cir. 1993). In the instant case, the administrative law judge found that the treatment of Dr. Stiles was not reasonable or necessary as Dr. Stiles concluded that there was no objective basis for claimant's complaints of pain. The administrative law judge also noted that the treatment did not improve claimant's condition. However, denying medical expenses because treatment is palliative, rather than curative, is an insufficient basis for such a denial. Moreover, even though there is no objective basis for claimant's continuing complaints of pain, all the physicians of record recommended that claimant undergo a psychological evaluation, at a minimum, to determine the cause of her complaints.² No physician stated outright that claimant was malingering based on the present evidence. Thus, as all the physicians of record recommended at least some type of psychological evaluation, we vacate the administrative law judge's finding that employer is not liable for any further medical expenses, and we remand the case to the administrative law judge for reconsideration of claimant's entitlement to medical benefits.

²There is disagreement as to claimant's need for further physical therapy.

Accordingly, the administrative law judge's denial of medical expenses is vacated, and the case is remanded for reconsideration consistent with this opinion. In all other respects, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge