BRB No. 96-0516

OTHA L. JARRETT, JR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
VIRGINIA INTERNATIONAL	)	
TERMINALS, INCORPORATED	)	DATE ISSUED:
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Rutter & Montagna, L.L.P.), Norfolk, Virginia, for claimant.

R. John Barrett and Kelly O. Stokes (Vandeventer, Black, Meredith & Martin, L.L.P.), Norfolk, Virginia, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (95-LHC-0514) of Administrative Law Judge Fletcher E. Campbell, Jr., 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, a driver and general longshoreman, was injured during the course of his employment on May 25, 1994, when the hustler he was driving collided with a chassis, resulting in post-traumatic headaches, as well as neck and lower back pain. Claimant returned to light duty work in February 1995 and to his usual job in March 1995. Employer voluntarily paid temporary total disability compensation to claimant for the period of May 26, 1994 to September 22, 1994. 33 U.S.C. §908(b). Claimant thereafter filed a claim seeking temporary total disability compensation for the period of September 23, 1994 to February 16, 1995, and temporary partial disability compensation for the period of February 17, 1995 to March 24, 1995, as well as reimbursement for chiropractic services.

In his Decision and Order, the administrative law judge found that claimant suffered no work-related disability subsequent to September 21, 1994. Additionally, the administrative law judge determined that employer was not liable for the medical charges incurred by claimant as a result of the chiropractic treatment rendered by Dr. Spiro, pursuant to Section 7 of the Act, 33 U.S.C. §907.

On appeal, claimant challenges the administrative law judge's finding that he is not entitled to disability compensation subsequent to September 21, 1994, and his denial of claimant's request for reimbursement for the medical charges of Dr. Spiro. Employer responds, urging affirmance.

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 and Construction Co.*, 17 BRBS 56 (1985). In the instant case, the administrative law judge, in concluding that claimant did not sustain a compensable impairment subsequent to September 21, 1994, credited and relied upon the opinions of Drs. Mounaimne and Mein,[1] both of whom opined that claimant was capable of performing his usual job as of that date, over the contrary opinion of Dr. Morales, who released claimant to return to light duty work in February 1995 and to his usual job in March 1995.

We hold that the administrative law judge committed no error in crediting the opinions of Drs. Mounaimne and Mein, rather than that of Dr. Morales, in concluding that claimant sustained no compensable impairment subsequent to September 21, 1994. In declining to rely upon the testimony of Dr. Morales, the administrative law judge specifically found that physician's opinion to be unsupported by the objective evidence of record, including MRI results, x-rays, and CT scans, all of which were normal and revealed only minimal pre-existing degenerative changes associated with the aging process. *See* EXS D-2, D-16. Moreover, the administrative law judge noted Dr. Morales' admission that claimant could have been overemphasizing his pain. CX 12 at 25. In contrast, the administrative law judge specifically relied on Dr. Mounaimne's conclusion that claimant was capable of returning to his job as of September 21, 1994, from a neurological standpoint, and the opinion of Dr. Mein, who examined claimant for his neck/back condition and stated that claimant could perform his usual work. *See* EX H at 15-16. In adjudicating a claim, it is well-established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences from it, *see Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988), and he is not bound to accept the opinion or theory of any particular witness. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). Thus, as the administrative law judge's credibility determinations are rational and within his authority as a factfinder, and as these credited opinions constitute substantial evidence to support the administrative law judge's ultimate findings, we affirm the administrative law judge's determination that claimant sustained no impairment subsequent to September 21, 1994. *See generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert.*

[1]We note that, contrary to claimant's contention, Dr. Mein is not an osteopath but a medical doctor. *See* EX H at 4-6.

denied, 440 U.S. 911 (1979).

Claimant next argues that the administrative law judge erred in determining that employer is not liable for the medical charges incurred by claimant as a result of his treatment with Dr. Spiro. Section 7 of the Act, 33 U.S.C. §907, describes an employer's duty to provide medical services necessitated by its employee's work-related injuries. 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, claimant is released from the obligation of continuing to seek approval for his subsequent treatment and thereafter need only establish that the treatment he subsequently procured on his own initiative was necessary for his injury in order to be entitled to such treatment at employer's expense. *See Anderson*, 22 BRBS at 20. Claimant, however, is not required to seek the consent of employer for a change of physician where claimant has been referred by his treating physician to a specialist skilled in treating claimant's injury. *See generally Armfield v. Shell Offshore, Inc.*, 25 BRBS 303 (1992)(Smith, J., dissenting on other grounds); *Senegal v. Strachan Shipping Co.*, 21 BRBS 8 (1988). Section 702.404 of the Act's regulations provides that chiropractors are included in the definition of the term "physician" within the meaning of Section 7, subject to the limitation that their services are reimbursable only for "treatment consisting of manual manipulation of the spine to correct a subluxation shown by x-ray or clinical findings." 20 C.F.R. §702.404.

In denying claimant's request that he hold employer liable for the medical charges of Dr. Spiro, the administrative law judge found that (1) no authorization had ever been sought for these treatments; (2) such treatment is compensable only for the correction of a subluxation as shown by x-rays or clinical findings, *see* 20 C.F.R. §702.404, and none had been diagnosed; and (3) claimant failed to demonstrate that such treatment was necessary within the meaning of Section 7(d) and 20 C.F.R. §702.406(a).

Initially, we reject claimant's contention that, since employer had knowledge that he was receiving chiropractic treatment, it was not necessary to seek employer's authorization. However, as the record reflects that claimant was referred to Dr. Spiro by his treating physician, Dr. Morales, for the treatment of his back condition, we hold that such consent need not have been sought by claimant, as claimant had been referred by his treating physician to a specialist. *See generally Armfield*, 25 BRBS at 303. Thus, we reverse the administrative law judge's determination that claimant's failure to seek employer's consent for the treatment rendered by Dr. Spiro absolves employer from liability for that treatment.

Claimant next contends that the administrative law judge erred in concluding that he has not sustained a subluxation and that the chiropractic treatment which he received was unnecessary. In

declining to find that claimant suffers from a subluxation, the administrative law judge stated that only Dr. Morales used the term "subluxation," which word could be found nowhere else in the record, and that Dr. Morales' use of that term was "redolent of the influence of this litigation." *See* Decision and Order at 9. Next, the administrative law judge concluded that, since Dr. Morales did not adequately explain or justify his referral of claimant for chiropractic treatment, the necessity of that treatment had not been demonstrated. We agree with claimant that the administrative law judge's findings in this regard cannot stand since he failed to consider the reports of Dr. Spiro which, if credited, would establish that the treatment rendered by Dr. Spiro was within the provisions of the Act. Specifically, Dr. Spiro, after examining claimant on July 26, 1994, diagnosed claimant's condition as consisting of, *inter alia*, a cervical subluxation. *See* CX 4. Thus, contrary to the administrative law judge's finding, the record contains, in addition to the opinion of Dr. Morales, evidence which if credited would support a finding that claimant sustained a subluxation. Moreover, the records of Dr. Spiro document claimant's treatment for his back condition and are probative of whether that treatment was reasonable and necessary. As the administrative law judge did not address this evidence, we vacate his finding that employer is not liable for the medical charges incurred by claimant as a result of his treatment with Dr. Spiro, and we remand the case for the administrative law judge to consider and discuss all of the medical evidence of record relevant to this issue. *See generally Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988).

Accordingly, the administrative law judge's finding that employer is not liable for the medical charges incurred by claimant as a result of his treatment with Dr. Spiro is vacated, and the case remanded for further proceedings consistent with this opinion. In all other respects, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge