U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 19-0390

ROBERT RIVERA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: 12/03/2019
CERES MARINE TERMINALS, INCORPORATED	)	
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Paul C. Johnson, Jr., Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Montagna Klein Camden, LLP), Norfolk, Virginia, for claimant.

Lawrence P. Postol (Postol Law Firm, P.C.), McLean, Virginia, for self-insured employer.

Before: BOGGS, Chief Administrative Appeals Judge, GRESH and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2017-LHC-01407) of Administrative Law Judge Paul C. Johnson, Jr., rendered on a claim filed pursuant to 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 rational, supported by substantial evidence, and 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 sustained a work-related injury on February 23, 2017, while working as a deckman. He stepped on a rusted grate, which broke and caused him to fall, with his legs going through the grate. Tr. at 12.

Claimant reported the incident to his supervisor, who sent him to Bon Secours OccuMed for treatment. CX 2. He began receiving treatment from Dr. Wardell on February 27, 2017. Claimant reported pain in his back radiating to both buttocks, and soreness and bruising over his knees, legs, and ankles. Dr. Wardell diagnosed claimant as suffering from a dorsal spine sprain, lumbar spine sprain, right and left sacroiliac joint sprains, and contusions on both his right and left knees, legs, and ankles. CX 10 at 1. Dr. Wardell took claimant off work for two weeks; this leave was periodically extended through January 11, 2018. CXs 11, 18.

Employer paid claimant temporary total disability benefits from February 24 to April 20, 2017, at which time it ceased paying benefits based on a report from Dr. Cavazos that claimant was able to return to full-duty work and did not require any additional treatment. EXs 15, 18. Dr. Wardell continued to certify that claimant was unable to work until January 11, 2018, at which time he approved sedentary work for claimant. CXs 11, 18. Dr. Wardell cleared claimant to return to work as a longshoreman on February 26, 2018, which claimant did. EXs 33, 34. Claimant filed a claim for additional temporary total disability benefits from April 21, 2017 through February 25, 2018 and medical benefits.

The administrative law judge denied the claim for additional disability and medical benefits, relying on Dr. Cavazos' opinion that all of claimant's work-related injuries had resolved by April 17, 2017[1] and that claimant was capable of returning to his usual work as of that date and did not require additional medical treatment for his work-related injuries. EX 18; Decision and Order 34-39. The administrative law judge noted claimant's testimony that his periodic back spasms "sometimes make it hard" to walk, but concluded this limitation does not establish claimant was unable to return to his usual work. Decision and Order at 38. Claimant appeals the denial of benefits. Employer filed a response brief, urging affirmance.

A claimant establishes a prima facie case of total disability by demonstrating he is unable to return to his usual employment due to his work injury. *See, e.g., Norfolk Shipbuilding & Dry Dock Co. v. Hord*, 193 F.3d 797, 33 BRBS 170(CRT) (4th Cir. 1999).

[1] Dr. Cavazos stated claimant suffered a left knee sprain, left ankle sprain, right rib contusion, bilateral proximal tibial contusions, and a thoracolumbar spine sprain in the work accident. EX 15.

The administrative law judge discussed the medical evidence at length and declined to credit Dr. Wardell's opinion that claimant remained disabled until February 26, 2018 because he found Dr. Wardell's opinion is conclusory and not supported by the objective test results. Decision and Order at 36-37. In contrast, the administrative law judge found Dr. Cavazos provided two detailed reports fully explaining his opinion that claimant had healed without restrictions or limitations on April 17, 2017, and did not require additional medical treatment. *Id.* The administrative law judge found Dr. Cavazos's opinion supported by his clinical examination, MRI results showing a normal lumbar spine and no cartilage or meniscus damage to claimant's knees, and the normal EMG results Dr. Gharbo obtained regarding claimant's alleged lumbar radiculopathy. *Id.*

We reject claimant's challenges to the conclusion that he was able to return to his usual work on April 20, 2017. The administrative law judge is entitled to determine the weight to be given to conflicting medical evidence. *Pittman Mechanical Contractors, Inc. v. Director, OWCP*, 35 F.3d 122, 28 BRBS 89(CRT) (4th Cir. 1994). The Board may not reweigh the evidence, but must affirm a decision supported by substantial evidence and in accordance with law. *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP [Brickhouse]*, 315 F.3d 286, 36 BRBS 85(CRT) (4th Cir. 2002). The administrative law judge thoroughly discussed the medical evidence and gave rational reasons for crediting the opinion of Dr. Cavazos over that of Dr. Wardell. Decision and Order at 36-38; *see, e.g., Ceres Marine Terminals, Inc. v. Director, OWCP [Jackson]*, 848 F.3d 115, 50 BRBS 91(CRT) (4th Cir. 2016). Contrary to claimant's assertion, an administrative law judge is not required to give dispositive weight to a treating physician's opinion, but has the prerogative to independently determine the weight to be given any expert's opinion. *See, e.g., Pisaturo v. Logistec, Inc.*, 49 BRBS 77 (2015) (affirming the crediting of the employer's medical expert over that of claimant's treating physician as the latter's opinion was not well reasoned).

In addition, the administrative law judge noted the results of claimant's EMGs were inconsistent with each other, but permissibly gave greater weight to the normal results Dr. Gharbo obtained over those of Dr. Wingard, who found positive results. EX 25; CX 13. The administrative law judge found Dr. Gharbo has superior credentials, refuted an argument that the normal EMG results he found were the product of sampling error, and retested claimant and obtained the same normal results. Decision and Order at 37. Finally, the administrative law judge discussed claimant's testimony about his subjective complaints, which he found credible but permissibly concluded claimant failed to establish his symptoms render him incapable of performing his usual work in the absence of credible objective evidence indicating restrictions. *See Peterson v. Washington Metro. Area Transit Auth.*, 13 BRBS 891(1981). Therefore, as it is supported by substantial evidence, we affirm the administrative law judge's finding that claimant did not establish his inability to return to his usual work as of April 20, 2017. We also affirm the denial of medical benefits as

the issue is inadequately briefed. 20 C.F.R. §802.211(b); *see Plappert v. Marine Corps Exchange*, 31 BRBS 109 (1997), *aff'g on recon en banc*, 31 BRBS 13 (1997). Nonetheless, the denial of medical benefits is supported by Dr. Cavazos's opinion that no further treatment is required for claimant's work injuries.[2]

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[2] Dr. Cavazos stated in his April 17, 2017, report that claimant did not require further physical therapy or diagnostic testing and that his symptoms could be managed with over-the-counter medication. EX 15 at 8. Claimant's assertion regarding the denial of medical benefits is merely summary, without reference to the record, the administrative law judge's findings or case precedent. Cl. Pet. at 1; Cl. Br. at 3, 24; *see* 20 C.F.R. §802.211(b); *see also Shoemaker v. Schiavone & Sons, Inc.*, 20 BRBS 166 (1988) (declining to address issues that are inadequately briefed).