

GREGORY RUMINER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SERVICE EMPLOYEES INTERNATIONAL,	)	DATE ISSUED: 02/04/2013
INCORPORATED	)	
	)	
and	)	
	)	
INSURANCE COMPANY OF THE STATE	)	
OF PENNSYLVANIA	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Stephen M. Reilly, Administrative Law Judge, United States Department of Labor.

David C. Barnett (Barnett and Lerner, P.A.), Fort Lauderdale, Florida, for claimant.

James L. Azzarello, Jr. (Kelley Kronenberg, P.A.), Chicago, Illinois, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2011-LDA-00405) of Administrative Law Judge Stephen M. Reilly 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.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

In January 2008, claimant commenced employment for employer as a truck driver in Iraq. On August 11, 2008, claimant was driving a truck when his vehicle ran over an anti-tank mine. Although claimant was rendered unconscious and sustained burns as a result of this incident, he did not miss any work. On March 16, 2009, claimant was driving a truck when it ran into a bomb crater. Following this incident, claimant returned to Camp Anaconda where he received medical care. Claimant was unable to continue to work for employer, and he returned to the United States to obtain medical treatment for lower back, neck and right leg pain.

Claimant filed a claim for benefits under the Act. Pursuant to the parties' stipulations, employer commenced payment of temporary total disability benefits as well as medical benefits for claimant's work-related spinal injuries. *See* CX 4. Claimant continued to receive medical care, including physical therapy, joint injections and prescribed medications, for his ongoing back symptoms. After claimant was found to be an unsuitable candidate for surgery, CX 8 at 56-59, claimant's treating physician recommended that claimant consider a spinal cord stimulator [SCS] trial in an attempt to alleviate his back pain.<sup>1</sup> CX 8 at 49-51. Claimant's pre-trial psychological evaluation indicated he was not an appropriate candidate for an SCS trial, CX 8 at 91-93; claimant's treating physician thus opined that claimant had reached maximum medical improvement and she released claimant from her care. CX 8 at 45-48. A dispute then arose between the parties when claimant sought, and employer declined, authorization for psychiatric treatment necessary to pass the psychological evaluation as a prerequisite to an SCS trial.

In his Decision and Order, the administrative law judge stated that the issue before him was limited to that of whether employer should be required to pay for claimant's psychiatric treatment so that he can pass the psychological evaluation necessary for the SCS trial. Decision and Order at 11. The administrative law judge found that although Dr. Lee-Sigler recommended claimant undergo an SCS trial, that course of treatment was precluded once Dr. Kelley opined that, pursuant to the results the psychological evaluation, claimant was not a candidate for the procedure. *Id.* at 12-15. As no physician subsequently opined that claimant required psychological or psychiatric treatment in order to pass the psychological evaluation necessary for the SCS trial, the administrative law judge denied claimant's request that employer be held liable for the cost of such treatment.

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<sup>1</sup>At her deposition, Dr. Lee-Sigler described this trial as an epidural procedure undertaken in order to determine if the installation of a spinal cord stimulator would be beneficial to claimant. *See* CX 8 at 29-30.

On appeal, claimant challenges the administrative law judge's finding that employer is not liable for psychiatric treatment so that he can undergo the SCS trial.<sup>2</sup> Employer responds, urging affirmance of the administrative law judge's decision. Claimant filed a reply brief.

Section 7 of the Act, 33 U.S.C. §907, generally describes an employer's duty to provide medical and related services and costs necessitated by its employee's work-related injury. *See Anderson v. Todd Shipyards, Inc.*, 22 BRBS 20 (1989). In this regard, Section 7(a) of the Act 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." *See* 33 U.S.C. §907(a); *Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988). In order for a medical expense to be awarded, it must be reasonable and necessary for the treatment of the work injury. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5<sup>th</sup> Cir. 1993); 20 C.F.R. §702.402.

In this case, the facts underlying claimant's claim are not in dispute. As part of her ongoing efforts to treat claimant's back complaints, Dr. Lee-Sigler considered multiple methods of treatment including physical therapy, medications, lumbar facet injections, cervical medial branch blocks, exercise, and surgery. *See* CX 8 at 45-82. While treating with Dr. Lee-Sigler, claimant consulted with Dr. Pratt, a surgeon, in February 2011. Dr. Pratt, who reported findings that he concluded did not explain claimant's reported degree of pain or dysfunction, opined that claimant was not a surgical candidate. *Id.* at 56-59. In March 2011, Dr. Lee-Sigler recommended that claimant consider an SCS trial. *Id.* at 52-55. In April 2011, claimant informed Dr. Lee-Sigler that he had decided to proceed with an SCS trial. On April 20, 2011, claimant underwent a psychological evaluation, performed by Dr. Kelley,<sup>3</sup> in order to assess his suitability for participation in an SCS trial. *Id.* at 91-93. Based upon the results of this psychological evaluation, Dr. Kelley opined that claimant was not an appropriate candidate for the SCS trial.<sup>4</sup> *Id.* at 93. In June 2011, based upon claimant's non-candidacy for either surgery or an SCS trial, as well as the results of a functional capacity evaluation, Dr. Lee-Sigler released claimant from her care, opining that claimant had reached maximum medical improvement, that she was unable to place any specific permanent work restrictions on

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<sup>2</sup>In his brief, claimant specifically states that it is his position that he has not sustained a psychiatric injury secondary to his two work-related incidents and that, therefore, he seeks psychiatric treatment for the sole purpose of treating his orthopedic injuries. *See* Cl. Br. at 5.

<sup>3</sup>Dr. Kelley is a clinical psychologist. CX 8 at 91-93.

<sup>4</sup>Dr. Kelley's opinion is based on the results of claimant's personality test, which revealed claimant may be inclined to exaggerate his pain and to "shop" for doctors. CX 8 at 93.

claimant, and that claimant should attempt to return to work in a light-duty position. *Id.* at 45-48.

In his decision, the administrative law judge found that, following claimant's failure to pass the psychological evaluation required for the SCS trial, none of the physicians of record suggested, ordered, or prescribed additional psychiatric treatment for this purpose. Decision and Order at 15. The administrative law judge therefore found that, absent such evidence, the psychiatric treatment sought by claimant was not reasonable or necessary, and he consequently denied claimant's claim. *Id.*

We reject claimant's challenge to the administrative law judge's decision. The administrative law judge addressed at length the evidence presented, and his finding that no physician recommended that claimant undergo psychological or psychiatric treatment in relation to an SCS trial is supported by substantial evidence. It is claimant's burden to establish the reasonableness and necessity of medical treatment. *Baker*, 991 F.2d 163, 27 BRBS 14(CRT). As the administrative law judge properly found, claimant presented no evidence that he requires psychiatric treatment as a predicate to an SCS trial. Accordingly, as the administrative law judge's findings on this issue are supported by substantial evidence and in accordance with law, we affirm the conclusion that employer is not liable for the psychiatric treatment sought by claimant. *Id.*; *Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988).

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge