BRB No. 07-0733

L.V. Claimant-Petitioner v. OILFIELD INSTRUMENTATION, USA, INCORPORATED and LOUISIANA WORKERS' COMPENSATION CORPORATION Employer/Carrier-Respondents	)	DATE ISSUED: 01/22/2008 DECISION and ORDER

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

L.V., Youngsville, Louisiana, *pro se*.

David K. Johnson (Johnson, Stiltner & Rahman), Baton Rouge, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant, who is without legal representation, appeals the Decision and Order (2006-LHC-237) of Administrative Law Judge Patrick M. Rosenow 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 an appeal by a claimant without representation, the Board will review the administrative law judge's findings of fact and conclusions of law to determine whether they are supported by substantial evidence, are rational, and are 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. If they are, they must be affirmed.

Claimant was injured on November 10, 2001, while he was installing a computer system on a "gerry rig" offshore. Claimant contended he felt something pull in his back and was unable to complete all of his duties while on the rig. After returning to shore, claimant sought medical treatment for back pain and missed four days of work. Claimant returned to light-duty work with employer on November 22, 2001, where he worked until May 2002. Claimant testified he quit working for employer because of verbal abuse by another employee. Tr. at 51-52. Claimant worked intermittently for several companies from July 2002 to May 2004. Cl. Ex. 1; Emp. Ex. 7. He has worked at his current employment as an instrument technician since May 2004. Claimant sought temporary partial disability benefits under the Act for the period from May 2002 to May 2004.

The administrative law judge found that claimant suffered a work-related injury on November 10, 2001, but that he was able to continue working at his regular salary except for an initial period of disability. Therefore, the administrative law judge awarded claimant temporary total disability benefits from November 17-21, 2001. The administrative law judge found that the light-duty work performed by claimant following his injury constituted suitable alternate employment at claimant's regular salary. As claimant did not establish a loss in wage-earning capacity, the administrative law judge found that claimant is not entitled to additional compensation. Moreover, the administrative law judge found that any physical impairment claimant suffered from the work-related injury had resolved by March 13, 2002, therefore the administrative law judge denied additional benefits. In reviewing claimant's request for medical treatment, the administrative law judge found that employer is responsible for the reasonable, appropriate and necessary medical expenses arising from the work-related accident. However, the administrative law judge found that claimant did not establish that the discogram or VAX-D therapy is reasonable, appropriate or necessary for the treatment of his back injury. The administrative law judge thus found that employer is not liable for these procedures. Claimant is not represented by counsel in his appeal. Employer responds, urging affirmance of the administrative law judge's Decision and Order.

We affirm the administrative law judge's finding that the light-duty job at employer's facility constituted suitable alternate employment and that claimant did not sustain a loss of wage-earning capacity in this employment. *See* 33 U.S.C. §908(h). Claimant was released by Dr. Foster for light-duty work. Emp. Ex. 1. Claimant testified he was given an office job assembling and repairing equipment, Tr. at 40-41, and that this job paid the same wage as his pre-injury job. *Id.* There is no evidence that this job was physically unsuitable for claimant or that claimant sustained a loss in wage-earning capacity while employed by employer. *See generally Darby v. Ingalls Shipbuilding, Inc.*, 99 F.3d 685, 30 BRBS 93(CRT) (5th Cir. 1996). Therefore, we affirm the denial of benefits from November 22, 2001 through March 12, 2002. *See generally Penrod Drilling Co. v. Johnson*, 905 F.2d 84, 23 BRBS 108(CRT) (5th Cir. 1990).

The administrative law judge also found that claimant did not establish that he was unable to perform his usual employment as of March 13, 2002. To establish a *prima facie* case of total disability, claimant must show that he cannot return to his regular or usual employment due to his work-related injury. *See generally New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981). The administrative law judge relied on the reports of Drs. Foster, Cobb, Gaar and the Fontana Center.[1] Dr. Foster began treating claimant in December 2001. He diagnosed an acute lumbosacral sprain or strain and prescribed medication. Emp. Ex. 1. Although Dr. Foster initially recommended claimant be restricted to light duty, he released claimant for full-duty work on March 13, 2002. On April 17, 2002, claimant began treatment with Dr. Cobb, who diagnosed chronic post-traumatic lumbar pain syndrome. Emp. Ex. 8. Dr. Cobb ordered a MRI and an EMG, which were interpreted as normal. In a report dated May 19, 2004, Dr. Cobb opined that claimant was stable, that his pain was manageable, and that he could return to the work he was seeking with no restrictions. *Id.* On August 18, 2004, Dr. Gaar examined claimant and reviewed his medical records. He agreed with the diagnosis of lumbar strain and stated that claimant's treatment to date had been appropriate. Dr. Gaar opined that there was no need for further treatment and no reason claimant could not return to his previous work duties without restrictions. Emp. Ex. 5. The record also contains the reports of the Fontana Center, where claimant underwent physical therapy, work hardening, and a work capacity evaluation. After the functional capacity report on March 5, 2002, claimant was discharged from the work hardening program and it was recommended that he return to his original job. Emp. Ex. 2 at 32-38. There is no medical evidence restricting claimant from performing his usual work after March 13, 2002, and the administrative law judge therefore acted within his discretion in giving less weight to claimant's testimony concerning the effects of his back pain on his ability to work. Decision and Order at 22-23; *see generally Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). As substantial evidence supports the administrative law judge's finding that claimant was not physically disabled after March 13, 2002, we affirm the denial of benefits.

The administrative law judge also addressed claimant's request for a discogram and VAX-D therapy. Section 7(a) of the Act, 33 U.S.C. §907(a), states that "[t]he employer shall furnish medical, surgical and other attendance or treatment for such period as the nature of the injury or the process of recovery may require." Thus, even where a claimant is not entitled to disability benefits, employer remains liable for medical benefits for a work-related injury if treatment is indicated. *See Ingalls Shipbuilding, Inc.*

[1] The record also contains the report of Dr. deAlvare who diagnosed SI joint pain syndrome and noted that claimant had a tender SI joint. However, Dr. deAlvare did not place any restrictions on claimant's activity due to this clinical finding. Emp. Ex. 4.

v. Director, OWCP [Baker], 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993). As medical care must be appropriate for the injury, 20 C.F.R. §702.402, an administrative law judge may reject payment for unnecessary treatment. *Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9 (2001), *aff'd mem.*, 32 Fed. Appx. 126 (5th Cir. 2002).

The administrative law judge found that employer is liable for all reasonable, appropriate, and necessary medical expenses arising from claimant's work-related injury. However, the administrative law judge found that while Dr. Cobb initially recommended a discogram to determine the source of claimant's back pain, his last report indicates that claimant was stable and he cleared claimant to return to work. Dr. Cobb did not recommend any additional testing, including a discogram, at that time. Emp. Ex. 8. Moreover, on June 12, 2002, Dr. Forster stated that discography would not be a useful diagnostic tool. Emp. Ex. 1 at 10. In addition, the administrative law judge found that claimant submitted no evidence regarding the VAX-D therapy, and thus, he was unable to determine that such treatment was reasonable, appropriate or necessary. As the administrative law judge's findings in this regard are rational and supported by substantial evidence, they are affirmed. *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).

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

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
REGINA C. McGRANERY
Administrative Appeals Judge

_____
JUDITH S. BOGGS
Administrative Appeals Judge