

BRB Nos. 10-0650, 10-0650A
and 10-0650B

SUSAN PALMER)

Claimant-Respondent)

Cross-Petitioner)

v.)

MARINE TERMINALS)

CORPORATION)

and)

MAJESTIC INSURANCE COMPANY)

DATE ISSUED: 09/30/2011

Employer/Carrier-)

Petitioners)

INTERNATIONAL)

TRANSPORTATION SERVICE,)

INCORPORATED)

and)

AMERICAN LONGSHORE)

MUTUAL ASSOCIATION)

Employer/Carrier-)

Respondents)

Cross-Petitioners)

LONG BEACH CONTAINER)

TERMINAL, INCORPORATED)

and)

SIGNAL MUTUAL INDEMNITY)

ASSOCIATION)

Employer/Carrier-)
 Respondents)
)
 STEVEDORING SERVICES OF)
 AMERICA TERMINALS)
)
 and)
)
 HOMEPORT INSURANCE)
 COMPANY)
)
 Employer/Carrier-)
 Respondents)
 Cross-Respondents)
)
 MAERSK PACIFIC, LIMITED)
)
 and)
)
 SIGNAL MUTUAL INDEMNITY)
 ASSOCIATION)
)
 Employer/Carrier-)
 Cross-Respondents)
)
 EAGLE MARINE SERVICES,)
 INCORPORATED)
)
 Self-Insured Employer-)
 Respondent)
 Cross-Respondent)
)
) DECISION and ORDER

Appeals of the Decision and Order of Steven B. Berlin, Administrative Law Judge, United States Department of Labor.

Rodney C. Prandin, San Pedro, California, for claimant.

Brian E. Gillette (Galichon & MacInnes, APLC), San Diego, California, for Marine Terminals Corporation and Majestic Insurance Company.

William N. Brooks, II, Long Beach, California, for International Transportation Service, Incorporated and American Longshore Mutual Association.

Alexa A. Socha (Aleccia, Socha & Mitani), Long Beach, California, for Stevedoring Services of America Terminals and Homeport Insurance Company.

James P. Aleccia (Aleccia, Socha & Mitani), Long Beach, California, for Maersk Pacific, Limited and Signal Mutual Indemnity Association.

Daniel F. Valenzuela (Samuelsen, Gonzalez, Valenzuela & Brown, LLP), San Pedro, California, for Eagle Marine Services.

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

PER CURIAM:

Marine Terminals Corporation (Marine Terminals) appeals, and claimant and International Transportation Service (ITS) cross-appeal, the Decision and Order (2008-LHC-00617, 00618, 00619, 00620, 00621, 00622) of Administrative Law Judge Steven B. Berlin 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 findings of fact and conclusions of law of the administrative law judge which 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).

On October 20, 1999, claimant sustained a work-related injury while working for Marine Terminals when she was struck on the head and left forearm by a falling lashing bar. Following this incident, Marine Terminals paid claimant disability benefits and provided conservative medical care. Upon returning to employment on November 16, 1999, claimant worked for several longshore employers. Claimant continued to experience numbness and tingling over her forearm and, as claimant's symptoms increased, she sought medical care. Claimant last worked in longshore employment on December 18, 2000. Following claimant's last day of longshore work, Marine Terminals voluntarily commenced paying disability and medical benefits to claimant, accepting claimant's left arm injury but denying responsibility for claimant's left shoulder complaints.

On May 22, 2002, claimant filed a claim for benefits against Marine Terminals; in this claim, claimant sought benefits as a result of the specific October 20, 1999, work injury. Thereafter, in December 2002, claimant filed an additional claim against each of the employers for whom she worked immediately prior to her last day of longshore employment, December 18, 2000, asserting she had sustained cumulative trauma injuries to her spine, left arm, and left shoulder during this period of employment. In this regard, claimant last worked for ITS as a lasher on September 20, 2000 and as a UTR driver on December 5, 2000; for Long Beach Container Terminal (Long Beach) as an inbound gate guard on December 6, 2000; for Eagle Marine Services (Eagle Marine) as a vessel clerk on December 11, 2000; for Stevedoring Services of America Terminals (SSAT) as a van driver on December 11 and 14, 2000; and for Maersk Pacific (Maersk) as a radio room worker and inbound gate watchman on December 15 and 18, 2000.

On March 26, 2003, Administrative Law Judge Torkington approved a Section 8(i), 33 U.S.C. §908(i), settlement between claimant and Marine Terminals addressing the specific traumatic injury claimant sustained while working for Marine Terminals on October 20, 1999. Maersk Ex. 17. The claim was thereafter transferred to Administrative Law Judge Berlin (the administrative law judge). On October 7, 2008, the administrative law judge approved a Section 8(i) settlement between claimant and Long Beach addressing claimant's claim against Long Beach for compensation arising as a result of the alleged cumulative trauma injury claimant sustained on December 6, 2000, but leaving open the question of claimant's entitlement to future medical care. Marine Terminals joined the settlement between claimant and Long Beach, resolving its claim for reimbursement against Long Beach.

In his Decision and Order on the remaining claims, the administrative law judge determined, *inter alia*, that the longshore work claimant performed between November 16, 1999 and December 18, 2000, is covered under the Act, and that Long Beach is the responsible employer. The administrative law judge found that claimant established the existence of a work-related left arm condition. The administrative law judge further found, however, that the Section 20(a) presumption was rebutted with respect to claimant's left shoulder condition and that, upon weighing the evidence of record as a whole, claimant failed to establish she has a shoulder condition related to her longshore employment. Because claimant had settled her claim with Long Beach, the administrative law judge found that claimant is not entitled to additional disability compensation. The administrative law judge awarded claimant medical benefits payable by Long Beach, but found claimant precluded from obtaining medical benefits during the period of December 1, 2004 through December 15, 2008, due to her failure to undergo a medical examination by a physician of employer's choosing. As Marine Terminals had settled its reimbursement claim against Long Beach, the administrative law judge found that it was not entitled to recoup any disability benefits it paid to claimant after December 18, 2000.

On appeal, Marine Terminals challenges the administrative law judge's finding that Long Beach is the responsible employer.¹ Marine Terminals contends that one of claimant's employer's other than Long Beach should be held liable. BRB No. 10-0650. Claimant, in her cross-appeal, also contends that the administrative law judge erred in analyzing claimant's work activities when she was employed by Maersk, SSAT and ITS and that, consequently, the administrative law judge's finding that Long Beach is the responsible employer is in error. Claimant contends that ITS should be held liable. Additionally, claimant challenges the administrative law judge's finding that her left shoulder condition is not causally related to her employment; she also asserts that the administrative law judge erred in his analysis of her claim for medical benefits. BRB No. 10-0650A. SSAT, ITS and Eagle Marine each respond to the appeals by Marine Terminals and claimant, and Maersk Pacific responds to claimant's appeal, urging affirmance of the administrative law judge's decision in its entirety. Marine Terminals has filed a reply to the responses filed by SSAT, ITS and Eagle Marine. In a protective cross-appeal, ITS asserts that if Marine Terminals is successful in its appeal, the case must be remanded to the administrative law judge for a new hearing. BRB No. 10-0650B.

RESPONSIBLE EMPLOYER

The United States Court of Appeals for the Ninth Circuit, within whose jurisdiction this case arises, has stated that, in allocating liability between successive employers in cases involving traumatic injury, the employer at the time of the original injury remains liable for the full disability resulting from the natural progression of that injury. If, however, the claimant sustains a subsequent injury that aggravates, accelerates, or combines with the claimant's prior injury, thus resulting in claimant's disability, then the subsequent injury is the compensable injury and the subsequent

¹Claimant did not file a claim against Marine Terminals for a cumulative traumatic injury; rather, claimant sought benefits against Marine Terminals based only upon the October 20, 1999, work injury she sustained while working for that employer. Claimant and Marine Terminals entered into a Section 8(i) settlement resolving this claim. Nonetheless, as Marine Terminals may be entitled to reimbursement for the benefits it paid to claimant subsequent to December 18, 2000, the administrative law judge allowed Marine Terminals to remain a party with regard to claimant's remaining claims. *See* Decision and Order at 50 – 51. Consequently, as the administrative law judge's decision affects its reimbursement claim, Marine Terminals has standing to appeal the administrative law judge's responsible employer determination. 33 U.S.C. §921(b); 20 C.F.R. §802.201(a).

employer is fully liable.² *Metropolitan Stevedore Co. v. Crescent Wharf & Warehouse Co. [Price]*, 339 F.3d 1102, 37 BRBS 89(CRT) (9th Cir. 2003), *cert. denied*, 543 U.S. 940 (2004); *Foundation Constructors, Inc. v. Director, OWCP*, 950 F.2d 621, 25 BRBS 71(CRT) (9th Cir. 1991). Where claimant's work results in an exacerbation of her symptoms, the employer at the time of the work events resulting in the exacerbation is responsible for any resulting disability. *See Kelaita v. Director, OWCP*, 799 F.2d 1308 (9th Cir. 1986); *see also Marinette Marine Corp. v. Director, OWCP*, 431 F.3d 1032, 39 BRBS 82(CRT) (7th Cir. 2005); *Delaware River Stevedores, Inc. v. Director, OWCP*, 279 F.3d 233, 241, 35 BRBS 154, 160(CRT) (3^d Cir. 2002). In this regard, the Ninth Circuit has emphasized that a subsequent employer may be found responsible for an employee's benefits even when the aggravating injury incurred with that employer is not the primary factor in the claimant's resultant disability. *See Foundation Constructors*, 950 F.2d at 624, 25 BRBS at 75(CRT); *Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966); *see also Abbott v. Dillingham Marine & Manufacturing Co.*, 14 BRBS 453, 456 (1981), *aff'd mem. sub nom. Willamette Iron & Steel Co. v. Director, OWCP*, 698 F.2d 1235 (9th Cir. 1982).

In his decision, the administrative law judge relied on the Ninth Circuit's decisions in *Price*, 339 F.3d 1102, 37 BRBS 89(CRT), and *Foundation Constructors*, 950 F.2d 621, 25 BRBS 71(CRT), to engage in a simultaneous analysis of which of the named employers is liable for claimant's benefits; ultimately, the administrative law judge determined that Long Beach is the responsible employer. *See* Decision and Order at 75 – 84. In challenging the administrative law judge's finding that Long Beach is the responsible employer, Marine Terminals initially contends that, in light of the recent decision of the United States Court of Appeals for the Ninth Circuit in *Albina Engine & Machine v. Director, OWCP [McAllister]*, 627 F.3d 1293, 44 BRBS 89(CRT) (9th Cir. 2010), the administrative law judge erred in not analyzing the responsible employer issue sequentially from the most recent employer backwards. SSAT, ITS, and Eagle Marine respond, averring that Marine Terminals' reliance on the decision of the Ninth Circuit in *McAllister* is erroneous since that decision applies only to occupational disease claims arising under the Act, while the present case arises as a result of cumulative trauma claims filed by claimant. Marine Terminals filed a reply brief, asserting that the Ninth Circuit's decision in *McAllister* does not preclude the administrative law judge from utilizing a sequential analysis in the present case.

²Under the aggravation rule, where the employment aggravates, exacerbates or combines with a prior condition, the entire resulting disability is compensable. *Strachan Shipping v. Nash*, 782 F.2d 513, 18 BRBS 45(CRT) (5th Cir. 1986). It follows that the employer at the time of the aggravation is liable for the resulting disability. *Id.*

Marine Terminals' reliance on the Ninth Circuit's decision in *McAllister* is misplaced; consequently, we reject the argument that the administrative law judge erred by utilizing a simultaneous, rather than a sequential, analysis in this case. In *McAllister*, involving an occupational disease claim, the Ninth Circuit stated that different tests for responsible employer are to be utilized depending on whether a claim involves a traumatic injury or an occupational disease. Specifically, the court stated that,

What this court in *Int'l Transp. Servs. [v. Kaiser Permanente Hosp., Inc., 7 F.App'x 547 (9th Cir. 2001)]* calls "the 'last employer' rule or 'aggravation' rule" [cite omitted] is actually a different test from the last employer rule applied in occupational disease cases.

627 F.3d at 1302, 44 BRBS at 93(CRT). The court proceeded to delineate the use of both tests, stating,

The rule applied in injury or cumulative trauma cases involves an analysis of whether the claimant's disability is the result of a natural progression of an injury that occurred at an earlier employer, or was aggravated or accelerated by conditions at a later employer. [cites omitted]. It would be irrational to attempt such an analysis without consideration of the evidence regarding working conditions at *both* employers, and thus a simultaneous analysis is called for in injury cases. That rationale does not extend to occupational disease cases, however.

Id. (emphasis in original). In contrast, the court held that, in multiple-employer occupational disease cases, the administrative law judge should conduct a sequential analysis.³ As claimant's claims arise as a result of cumulative traumatic injuries, the administrative law judge properly utilized a simultaneous analysis in addressing the responsible employer issue pursuant to the decisions of the Ninth Circuit in *Price* and

³Specifically, the court stated that,

the ALJ should consider *sequentially*, starting with the last employer, (1) whether the § 20(a) presumption has been invoked successfully against that employer, (2) whether that employer has presented substantial, specific and comprehensive evidence so as to rebut the § 20(a) presumption, [cite omitted], and (3) if the answer to the second question is yes, whether a preponderance of the evidence supports a finding that that employer is responsible for the claimant's injury [cite omitted].

McAllister, 627 F.3d at 1302, 44 BRBS 93-94(CRT)(emphasis original).

Foundation Constructors.⁴ See *Buchanan v. Int'l Transp. Services*, 33 BRBS 32 (1999), *aff'd mem. sub nom. Int'l Trans. Services v. Kaiser Permanente Hospital, Inc.*, 7 F.App'x 597 (9th Cir. 2001).

Marine Terminals additionally contends that the administrative law judge erred in analyzing the work claimant performed for Maersk, SSAT, Eagle Marine, and ITS, and in concluding that claimant's employment activities with these employers did not result in an aggravation of her left upper extremity. In her cross-appeal, claimant similarly asserts that the administrative law judge erred in analyzing claimant's work activities prior to her last day of longshore employment; consequently, claimant avers that ITS and not Long Beach should be found to be the employer responsible for the payment of any benefits due claimant.

The administrative law judge addressed at length the evidence regarding claimant's employment activities immediately preceding her last day of longshore work, and he found that claimant's work with Long Beach on December 6, 2000, was the last longshore employment that aggravated her left arm condition. See Decision and Order at 75 – 84. First, the administrative law judge found that Dr. Deliman opined that not all of claimant's work activities contributed to her present condition; specifically, while claimant's employment activities as a watchman,⁵ UTR driver, clerk and lasher would generally result in a cumulative trauma, relatively low exertion or momentary, infrequent, non-repetitive, heavy exertion would not. *Id.* at 77 – 81. Next, the administrative law judge addressed the testimony of claimant and that of Mr. Baccera, finding that claimant's driving duties for Eagle Marine on December 11, 2000, and for SSAT on December 11 and 14, 2000, involved the occasional, non-repetitive, infrequent light use of her left arm, and that claimant's inbound gate and radio room work for Maersk on

⁴We reject Marine Terminals' argument that the Ninth Circuit's reference in *McAllister* to "both" employers when discussing the use of the simultaneous analysis test in *Int'l Trans. Servs.* indicates that this test is inapplicable to cases involving more than two employers. The court's statement in *McAllister* accurately reflects that fact that only two employers were involved in that prior case, not that one test is to be applied if a claimant files against two employers and a different test applied if a third employer is joined to the claim. Acceptance of Marine Terminals' argument would result in the possibility of different tests being applied for a traumatic injury claim, dependent upon the number of employers claimed against.

⁵Claimant testified that a "watchman's" job could entail, *inter alia*, security work, employment in a radio room, or work as an inbound gate guard. See Tr. at 113 – 116, 139 – 150; Decision and Order at 17 – 19, 81.

December 15 and 18, 2000, involved infrequent and non-repetitive use of her left arm.⁶ The administrative law judge thus concluded that Eagle Marine, SSAT and Maersk each established that claimant's employment for them did not contribute to her present left arm condition. *Id.* at 82 - 84. The administrative law judge proceeded to address claimant's employment as a gate guard with Long Beach on December 6, 2000, and as a UTR driver with ITS on December 5, 2000, finding that these two employers did not dispute claimant's contention that she sustained a cumulative trauma while working for them and that, consequently, neither offered evidence that claimant's work for them did not contribute to her present left arm condition. *Id.* at 82, 84. Specifically, the administrative law judge found that Long Beach offered no exculpatory evidence or argument in defense of claimant's claim that she aggravated her left arm condition while working for it as a gate guard on December 6, 2000,⁷ and that ITS took the position that, even if claimant had aggravated her condition on December 5, 2000, her work for subsequent employers absolved it of liability for benefits pursuant to the aggravation rule. The administrative law judge found that ITS met its burden of establishing that claimant's work for a later employer, Long Beach, aggravated her left arm condition, and that Long Beach, in contrast, failed to meet its burden of establishing that either no aggravation occurred while claimant was employed by Long Beach on December 6, 2000, or that claimant sustained an aggravation of her condition while working for a subsequent employer. *Id.* The administrative law judge therefore found that Long Beach is the employer responsible for any benefits due claimant under the Act.

⁶Mr. Bacerra performed the same inbound gate guard job and radio room job as claimant at Maersk, and he stated that the job could be performed with one arm. While the administrative law judge found that claimant admitted to memory problems, including her specific work activities while employed by Maersk, he found that no party questioned the credibility of Mr. Bacerra's testimony. Consequently, the administrative law judge accepted Mr. Bacerra's description of the duties of an inbound gate guard and radio room work at Maersk over that of claimant. *See* Decision and Order at 83.

⁷Having previously determined that claimant's employment activities as a gate guard with Maersk did not aggravate her left upper extremity condition, the administrative law judge stated that it was "tempting" to conclude that claimant's gate guard activities with Long Beach similarly did not contribute to her condition. The administrative law judge concluded, however, that the record contained no evidence that the two positions required the same duties nor was there a witness like Mr. Bacerra, who testified regarding employment as a watchman with Maersk, who testified regarding the particulars of the work activities with Long Beach that claimant alleged aggravated her condition. Decision and Order at 84.

The Board is not empowered to reweigh the evidence, but must accept the rational inferences and findings of fact of the administrative law judge which are supported by the record. *See Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 30 (CRT) (9th Cir. 1988); *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963). In this case, the administrative law judge addressed all of the evidence presented by the parties on this issue. Dr. Deliman opined that a watchman/gate guard job, such as the one at Long Beach, would result in cumulative trauma to claimant's arm, and the administrative law judge found that Long Beach failed to establish that claimant's condition was not aggravated by claimant's employment with it or that claimant's employment with a subsequent employer aggravated her condition. The administrative law judge's allocation of the burden of proof is consistent with law, and his findings of fact are supported by substantial evidence. *See Buchanan*, 33 BRBS 32. Therefore, we affirm the administrative law judge's finding that Long Beach is the responsible employer.⁸ *Price*, 339 F.3d 1102, 37 BRBS 89(CRT); *Lopez v. Stevedoring Services of America*, 39 BRBS 85 (2005), *aff'd mem.*, 377 F.App'x 640 (9th Cir. 2010).

SHOULDER INJURY

In her cross-appeal, claimant contends the administrative law judge erred in finding her left shoulder condition is not work-related. Specifically, claimant avers that the administrative law judge erred in finding rebuttal of the Section 20(a) presumption established and in weighing the medical opinions on the record as a whole. BRB No. 10-0650A. Section 20(a) of the Act provides claimant with a presumption that her injury is causally related to her employment. 33 U.S.C. §920(a). Once, as here, the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by her employment. *See Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT) (9th Cir. 2010); *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999). If the administrative law judge finds that the Section 20(a) presumption is rebutted, then the administrative law judge must weigh all of the evidence and resolve the causation issue based on the record as a whole, with claimant bearing the burden of persuasion. *See Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 257, 28 BRBS 43(CRT) (1994); *Del Vecchio v. Bowers*, 296 U.S. 280 (1935).

The administrative law judge found the opinion of Dr. London sufficient to establish rebuttal of the Section 20(a) presumption with regard to claimant's left shoulder condition. In support of her contentions on appeal, claimant avers, *inter alia*, that Dr. London's opinion is equivocal and is therefore insufficient to establish rebuttal of the

⁸As we affirm the administrative law judge's responsible employer determination, we need not address ITS's protective cross-appeal. BRB No. 10-0650B.

presumption. We disagree. Although Dr. London initially opined, on February 11, 2003, that claimant's longshore employment activities between November 16, 1999 and December 18, 2000, may have aggravated her left shoulder condition, *Jt. Ex. 2* at 88, Dr. London subsequently reviewed claimant's additional medical records and, following an examination of claimant on April 10, 2006, opined that claimant's left shoulder symptoms were not related to her work activities between November 1999 and December 18, 2000. Consequently, he stated that claimant did not sustain a continuous trauma to her left shoulder. *Id.* at 104. Dr. London reiterated his opinion in a June 24, 2008, report wherein he stated that it was his opinion that claimant did not sustain a continuous trauma to her left shoulder after she returned to work. *Id.* at 123; *see also* *Tr.* at 702 – 703. Accordingly, as the opinion of Dr. London severs the causal link between claimant's left shoulder symptoms and her longshore employment between November 16, 1999 and December 18, 2000, we affirm the administrative law judge's finding that rebuttal of the Section 20(a) presumption has been established with regard to claimant's left shoulder condition. *See Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT); *Duhagon*, 169 F.3d 615, 33 BRBS 1(CRT).

Claimant also challenges the administrative law judge's finding that she did not establish a causal relationship between her shoulder condition and her employment based on the record as a whole. We reject claimant's assertions of error in this regard. It is well-established that, in arriving at his decision, the administrative law judge is entitled to evaluate the credibility of all witnesses, to weigh the evidence, and to draw his own inferences and conclusions from the evidence, and that the Board is not empowered to reweigh the evidence. *See Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT); *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). In this case, the administrative law judge discussed all of the relevant evidence of record, and his findings are supported by substantial evidence in the record. The administrative law judge rationally credited the opinion of Dr. London, that claimant did not sustain a work-related left shoulder injury, over the opinions of Drs. Delman, Nagelberg, Gripekoven and Kaye, noting the physicians' inability to render a diagnosis of claimant's condition and finding that while claimant set forth subjective complaints, the objective and laboratory testing was consistently negative.⁹ We therefore affirm the administrative law judge's determination that claimant failed to establish that her left shoulder condition is related to her longshore employment as it is supported by substantial evidence. *See Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000); *Rochester v. Geo. Washington Univ.*, 30 BRBS 233 (1997).

⁹In this regard, the administrative law judge found that Drs. Delman and Nagelberg were unable to establish a medical diagnosis of claimant's condition, while Dr. Gripekoven based his opinion on an invalid examination. Similarly, the administrative law judge determined that Dr. Kaye's opinion was entitled to less weight due to his misdiagnosis of claimant's condition as a torn rotator cuff and reflex sympathetic dystrophy. *See* *Decision and Order* at 65 – 68.

MEDICAL EXPENSES

Claimant asserts that, as it was not unreasonable for her to undergo surgery on her left shoulder pursuant to the advice of her treating physician, the administrative law judge erred in finding she is not entitled to reimbursement for the expenses associated with that surgery. We reject this contention. Section 7(a) of the Act, 33 U.S.C. §907(a), 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 *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); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989). Medical care must be appropriate for the injury, see 20 C.F.R. §702.402, and claimant must establish that the requested services are necessary for the treatment of the work injury. See generally *Maryland Shipbuilding & Dry Dock Co. v. Jenkins*, 594 F.2d 404, 10 BRBS 1 (4th Cir. 1979). As we have affirmed the administrative law judge’s finding that claimant’s left shoulder condition is not work-related, the administrative law judge properly found that Long Beach is not liable for the cost of claimant’s left shoulder surgery. Therefore, the denial of medical benefits for this procedure is affirmed.

We agree with claimant, however, that the administrative law judge’s denial of medical benefits for her left arm condition during the period of December 1, 2004 through December 15, 2008, cannot be affirmed. The administrative law judge found that claimant’s reason for declining to attend an employer-sponsored medical examination on December 1, 2004, was unreasonable and that, pursuant to Section 7(d)(4) of the Act, claimant is therefore precluded from receiving reimbursement for the medical expenses she incurred from that date until she agreed to be examined at employer’s request. See Decision and Order at 74 – 75. Section 7(d)(4) of the Act, 33 U.S.C. §907(d)(4), provides that the administrative law judge may, by order, suspend the payment of compensation to an employee who unreasonably refuses to submit to medical treatment, or to an examination by employer’s chosen physician, unless the circumstances justified the refusal.¹⁰ See *B.C. [Casbon] v. Int’l Marine Terminals*, 41

¹⁰Section 7(d)(4) states:

If at any time the employee unreasonably refuses to submit to medical or surgical treatment, or to an examination by a physician selected by the employer, the Secretary or administrative law judge may, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid during the period of such suspension, unless the circumstances justified the refusal.

33 U.S.C. §907(d)(4); see also 20 C.F.R. §702.410(c).

BRBS 101 (2007). As Section 7(d)(4) references only the suspension of compensation when a claimant unreasonably refuses to undergo an examination, the Board has stated that medical benefits cannot be denied to a claimant under that section. *See Dodd v. Crown Central Petroleum Corp.*, 36 BRBS 85 (2002); *Aurelio v. Louisiana Stevedores, Inc.*, 22 BRBS 418 (1989), *aff'd mem.*, No. 90-4135 (5th Cir. Mar. 5, 1991). Therefore, we need not address claimant's specific contentions regarding the administrative law judge's application of Section 7(d)(4) to the facts of this case since the administrative law judge erred as a matter of law in suspending medical benefits due to claimant's refusal to undergo an employer-sponsored medical examination. As Section 7(d)(4) may not be used to deny medical benefits to a claimant, we reverse the administrative law judge's decision precluding claimant from seeking reimbursement for medical expenses incurred between December 1, 2004 and December 15, 2008.¹¹

Accordingly, the administrative law judge's finding that claimant is precluded pursuant to Section 7(d)(4) from seeking reimbursement for work-related medical expenses during the period of December 1, 2004 through December 15, 2008, is reversed. In all other respects, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

¹¹We are unable to determine from the record whether claimant has any outstanding medical charges during this period of time. Since claims for medical benefits are not time-barred, *see Siler v. Dillingham Ship Repair*, 28 BRBS 38 (1994) (decision on recon. *en banc*), claimant may seek such reimbursement from Long Beach pursuant to Section 7 of the Act, 33 U.S.C. §907.