U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB Nos. 14-0137
and 15-0001

ADELINE COTTON RICKS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
HUNTINGTON INGALLS INDUSTRIES, INCORPORATED	)	DATE ISSUED: Sept. 23, 2015
	)	
	)	
Self-Insured Employer-Respondent	)	ORDER on MOTION for RECONSIDERATION

By letter dated August 30, 2015, claimant's niece, Francine Scott, informs the Board that claimant died on July 16, 2015. Ms. Scott states that she is the "executive representative" of claimant and, without the benefit of legal representation, she seeks reconsideration of the Board's decision in the captioned case, *Ricks v. Huntington Ingalls Industries, Inc.*, BRB Nos. 14-0137, 15-0001 (Jul. 31, 2015) (unpub.). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Employer responds that the Board should deny the motion for reconsideration.[1]

In its decision, the Board affirmed the administrative law judges' denials of claimant's 2012 and 2014 motions for modification of the prior denial of benefits. 33 U.S.C. §922. The administrative law judges' denials of modification were based on the absence of creditable evidence that claimant's physical complaints after December 1977 were related to the work accident. In the motion for reconsideration, Ms. Scott questions the reliability of Dr. Ross's opinion and the basis for the change in Dr. McKenney's opinion.

Dr. Ross examined claimant several times on behalf of employer. Ms. Scott contends that another family member, who accompanied claimant to the 2013

[1] We reject employer's contention that the motion for reconsideration was untimely filed. 20 C.F.R. §802.221.

examination, heard Dr. Ross state that "it's a possibility that some of [claimant's] pain complaints could be related to her 1977 work injury." Thus, Ms. Scott states that Dr. Ross's opinion that claimant's conditions were not work-related is "questionable." She contends that an "independent physician" should review all the medical reports and render a conclusion on the work-relatedness of claimant's conditions. We note that Dr. Ross's opinion did not play any role in the administrative law judges' denials of claimant's motions for modification. The denials were based on claimant's failure to produce sufficient evidence to show there had been a mistake in fact in the prior denials of benefits. *See Manente v. Sea-Land Serv., Inc.*, 39 BRBS 1 (2004). Therefore, we reject the contention that Dr. Ross's opinion is "suspect."

With respect to Dr. McKenney, we reject the contention that he "changed his opinion without any explanation." The administrative law judge properly found that Dr. McKenney changed his opinion after he had the opportunity to review claimant's pre-2011 medical records, which he had not previously seen. *See* EX 106. As Dr. McKenney gave a reasonable explanation for the change in his opinion, the administrative law judge acted within his discretion in crediting Dr. McKenney's opinion that claimant's conditions were not work-related.

The motion for reconsideration has not identified any error in the Board's decision affirming the administrative law judges' denials of modification. Accordingly, the motion for reconsideration is denied.[2] 20 C.F.R. §802.409.

SO ORDERED.

_____
BETTY JEAN HALL, Chief
Administrative Appeals Judge

_____
JUDITH S. BOGGS
Administrative Appeals Judge

_____
RYAN GILLIGAN

[2] In view of this disposition, the Board does not require additional information concerning Ms. Scott's standing to pursue benefits on behalf of claimant's estate. *See M.M.* [*McKenzie*] *v. Universal Maritime APM Terminals*, 42 BRBS 54 (2008).

Administrative Appeals Judge