BRB No. 93-1307

CHARLES NEWMAN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
STRACHAN SHIPPING COMPANY OF TEXAS	)	DATE ISSUED:
	)	
and	)	
	)	
LOUISIANA INSURANCE GUARANTY ASSOCIATION	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Marcus J. Pouilliard (Seelig, Cosse, Frischhertz & Poulliard), New Orleans, Louisiana, for claimant.

Collins C. Rossi (Bailey, Rossi & Kincade), Metairie, Louisiana, for employer/carrier.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (92-LHC-3023) of Administrative Law Judge Richard D. Mills denying benefits 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 administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls, Inc.*, 380 U.S. 359 (1965).

Claimant injured his left leg and lower back on August 23, 1979, when he slipped and fell while working as a cargo checker for employer. Pursuant to Section 8(i) of the Act, 33 U.S.C.

§908(i), the parties reached a settlement agreement in the amount of $20,000, reserving claimant's right to claim future medical benefits. Claimant injured his neck and lower back on February 27, 1985, when he was struck from behind by a loaded forklift while working for employer. In two separate agreements, the parties settled claimant's compensation claim for the 1985 injury for $160,000, and his claim for medical benefits for $25,000. Thereafter, claimant sought medical benefits for treatment related to his first accident of 1979.

In his Decision and Order, the administrative law judge found that the second injury on February 27, 1985, aggravated the first injury of August 23, 1979, and that pursuant to *Abbott v. Dillingham Marine & Manufacturing Co.*, 14 BRBS 453 (1981), *aff'd mem. sub nom. Willamette Iron & Steel Co. v. Director, OWCP*, 698 F.2d 1235 (9th Cir. 1982), any entitlement to medical benefits is completely subsumed by the 1985 settlement of the claim for medical benefits resulting from the 1985 accident. Accordingly, the administrative law judge granted employer's motion for summary judgment and denied claimant's claim for medical benefits.

On appeal, claimant contends that he is entitled to medical benefits for treatment related to the first accident of August 23, 1979. Employer responds, urging affirmance of the denial of benefits. In *Abbott*, 14 BRBS at 457, the Board held that where a second injury aggravates a claimant's prior injury, the reinjury or aggravation absolves the employer from responsibility for future medical care resulting from the first injury. This holding flows from the aggravation rule which imposes liability for claimant's entire disability on the employer for whom claimant was working when the aggravating injury occurred. *See Mijangos v. Avondale Shipyards, Inc.*, 19 BRBS 15 (1986), *rev'd on other grounds*, 948 F.2d 941, 25 BRBS 78 (CRT) (5th Cir. 1991); *see also Uglesich v. Stevedoring Services of America*, 24 BRBS 180 (1991).

Claimant contends that since Dr. Llewellyn stated that two-thirds of claimant's need for future medical expenses is due to the aggravation of the first injury caused by the 1985 accident, then the one-third of future medical treatment is due to the natural progression of the first injury, and thus his claim for benefits arising from the first injury cannot be completely subsumed by the settlement of the claim for medical benefits for the second injury.[1] As the administrative law judge noted, however, in the May 11, 1988 application for Section 8(i) settlement, the parties stipulated that claimant had "reinjured his neck and lower back" in 1985. Further, Dr. Llewellyn concluded that claimant's second injury aggravated the first injury. Emp. Exs. A, B, D. Thus, as the only medical evidence of record establishes that the second accident aggravated the first injury, any entitlement to medical benefits due to the 1979 injury is subsumed by the settlement of the claims arising from the 1985 accident. *See Abbott*, 14 BRBS at 457. In addition, although Dr. Llewellyn did apportion the need for ongoing treatment between claimant's two injuries, the aggravation rule does not allow apportionment even though the evidence of record permits such a finding. *See generally Port of Portland v. Director, OWCP*, 932 F.2d 836, 24 BRBS 137 (CRT) (9th Cir. 1991);

[1]Dr. Llewellyn found that claimant's current condition is a combination of the two accidents and apportioned claimant's need for future medical treatment between the original injury of 1979 and the aggravation of the injury in 1985. Emp. Exs. A, B, D.

Newport News Shipbuilding & Dry Dock Co. v. Fishel, 694 F.2d 327, 329, 15 BRBS 52 (CRT) (4th Cir. 1982). Thus, as the administrative law judge rationally relied on the medical evidence of record to find that claimant's condition was aggravated by the 1985 injury, the denial of medical benefits for treatment related to the 1979 accident is affirmed.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge