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| TERRY L. BONNER |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| INGALLS SHIPBUILDING, |) | DATE ISSUED: _____ |
| INCORPORATED |) | |
| |) | |
| Self-Insured |) | |
| Employer-Respondent |) | DECISION and ORDER |

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

A. M. Murphy, Lucedale, Mississippi, for claimant.

Ronald T. Russell (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order and Order Denying Petition for Reconsideration (94-LHC-1739) of Administrative Law Judge Richard D. Mills 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 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 Associates, Inc.*, 380 U.S. 359 (1965).

On March 18, 1992, claimant sustained a work-related injury when she slipped and fell backward during the course of her employment as a pipefitter with employer. Dr. Fontana initially treated claimant for her back complaints and then referred her to Dr. White, a neurosurgeon. Dr. White diagnosed a lumbar strain and did not believe that claimant's condition warranted surgery; he referred claimant to Dr. Manolakas, a physiatrist, for rehabilitation and to expedite her return to work. Subsequent to treatment, Dr. Manolakas released claimant for work with restrictions on November 2, 1992. Dr. Rutledge also examined claimant and opined that she did not need surgery; he released claimant for work on August 24, 1992, with restrictions. Claimant also sought treatment

from Dr. Billings, a neurosurgeon. Dr. Billings performed a number of invasive procedures, culminating in lumbar spine surgery on May 12, 1993. Dr. Billings' treatment and surgery were not authorized by employer. Claimant has not returned to work since the March 18, 1992 incident. Employer voluntarily paid temporary total disability compensation to claimant from March 19, 1992 and continuing. EXS 2, 3. 33 U.S.C. §908(b).

In his Decision and Order, the administrative law judge found that claimant was entitled to temporary total disability benefits until November 2, 1992, when she could have returned to her former work with employer. The administrative law judge also found that Dr. Billings' unauthorized treatment and surgery were unreasonable and unnecessary and, thus, that employer was not liable for the payment thereof under Section 7(a) of the Act, 33 U.S.C. §907(a). Consequently, the administrative law judge denied claimant's claim for benefits subsequent to November 2, 1992. The administrative law judge subsequently denied claimant's petition for reconsideration.

On appeal, claimant contends that she is totally disabled due to the March 18, 1992, work accident. Claimant further contends that the administrative law judge erred in failing to find employer liable for the medical treatment that she received from Dr. Billings. Employer responds, urging affirmance the administrative law judge's Decision and Order.

Claimant has the burden of establishing the nature and extent of any disability sustained as a result of a work-related injury. *See Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56 (1985). In order to establish a *prima facie* case of total disability, claimant bears the burden of establishing that she is unable to return to her usual work. *See Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988). In the instant case, the administrative law judge credited the medical opinion of Dr. Manolakas, as supported by the opinion of Dr. Rutledge, in determining that claimant was physically capable of returning to her former work with employer on November 2, 1992. *See* EXS 17-19. As the administrative law judge's credibility determination is rational and within his purview as factfinder, and the credited opinions constitute substantial evidence supporting his finding that claimant is capable of performing her usual work with employer, we affirm the administrative law judge's determination that claimant was capable of resuming her usual work with employer as of November 2, 1992. *See generally Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Carroll v. Hanover Bridge Marina*, 17 BRBS 176 (1985).

We next address claimant's contentions regarding her treatment with Dr. Billings. 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 ... medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require." *See Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988). In order for a medical expense to be assessed against employer, however, the expense must be both reasonable and necessary and must be related to the injury at hand. *See Pardee v. Army & Air Force Exchange Service*, 13 BRBS 1130 (1981); 20 C.F.R. §702.402. Whether a particular medical expense is necessary is a factual issue within the administrative law judge's authority to resolve. *See Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988).

In his Decision and Order, the administrative law judge found that there is overwhelming evidence that the treatment and surgery performed by Dr. Billings was both unnecessary and unreasonable. Specifically, the administrative law judge found a pre-surgical lack of neurological findings on objective testing, acknowledged the opinion of several physicians that the surgery

performed by Dr. Billings was unnecessary and, lastly, noted Dr. Rutledge's testimony that claimant's condition was worse after the surgery. *See* Decision and Order at 12; EX 19 at 24. It is well-established that the administrative law judge is entitled to evaluate the credibility of the medical evidence and to draw his own inferences from the evidence. *See John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). It was, therefore, within the administrative law judge's discretionary authority as factfinder not to credit Dr. Billings' testimony regarding the necessity of his treatment of claimant and to rely instead on the contrary opinions of Drs. Rutledge, Fontana, White and Manolakas. *See McGrath*, 289 F.2d at 403; *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). We therefore affirm the administrative law judge's determination that employer is not liable for the medical treatment rendered to claimant by Dr. Billings, as that finding is rational and in accordance with law. *See generally Wheeler*, 21 BRBS at 35.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge