

VICTORIA SINEGAL	)	
(widow of CLARENCE SINEGAL)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ISLAND OPERATING COMPANY,	)	DATE ISSUED: 10/25/2011
INCORPORATED	)	
	)	
and	)	
	)	
LOUISIANA WORKERS'	)	
COMPENSATION CORPORATION	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Clement J. Kennington,  
Administrative Law Judge, United States Department of Labor.

Aaron J. Allen (Matt & Allen), Lafayette, Louisiana, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order (2009-LHC-1880) of Administrative Law Judge Clement J. Kennington 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).

Decedent injured his back and legs in a fall on November 20, 2006, while working for employer. Employer voluntarily paid temporary total disability benefits from December 6, 2006, through March 20, 2009, as well as medical benefits related to the injuries. Decedent had been treated conservatively with medications for pain; just prior to his death, he was awaiting approval of recommended back surgery.<sup>1</sup>

On March 5, 2009, decedent underwent a tonsillectomy and an adenoidectomy which were unrelated to the work injury and were completed without complications. Following surgery, Dr. Alldredge, decedent's otolaryngologist, prescribed amoxicillin antibiotic and Lortab elixir pain reliever. According to the record, decedent allegedly began experiencing greater back and leg pain during the recuperation period after his throat surgery and began taking the pain medication prescribed by Dr. Mitchell for his back in addition to the medicine prescribed by Dr. Alldredge for the throat pain. On March 12, 2009, decedent died from a multi-drug overdose.<sup>2</sup> Dr. Laga performed the autopsy. Claimant, decedent's widow, filed a claim for death benefits under Section 9 of the Act, 33 U.S.C. §909.

The administrative law judge found that although decedent's back and leg injuries are compensable, employer established an intervening cause of decedent's death, severing any nexus between the death and the work accident/injury. The administrative law judge concluded that, as decedent's back condition had been stable for two years, his death was due to his intentional or negligent conduct regarding his medications following the throat surgery. Thus, the administrative law judge found that employer is not liable for death benefits. Decision and Order at 15-16. Claimant appeals, and employer responds, urging affirmance.

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<sup>1</sup>Dr. Cobb, decedent's orthopedic surgeon, referred decedent to Dr. Mitchell, a pain management specialist, who prescribed alprazolam (Xanax), hydrocodone (Lortab) and fentanyl (Duragesic) for decedent's back pain. Decedent also took Lunesta (sleep aid) and Lyrica (anti-depressant) among other medications. Decision and Order at 4 n.5; Cl. Exs. 30, 32.

<sup>2</sup>Decedent had no contraband drugs in his system. Significantly, however, he had alprazolam, which is in the valium family, as well as hydrocodone and fentanyl, which are opiate-related pain relievers, in his system. At the time of his death, decedent had in his body more than the maximum daily dose of alprazolam, he had a near-lethal amount of fentanyl, and he had a lethal count of hydrocodone. The drugs interacted to cause him to have trouble breathing, and Dr. Laga, who performed the autopsy, stated that the alprazolam can magnify the effects of the other drugs such that the lethal levels of those drugs could decrease. Cl. Ex. 34.

Claimant asserts that the administrative law judge erred in concluding the death was due to decedent's own intentional or negligent conduct. She argues that there was no intervening cause severing the relationship between decedent's work injury and his death, as the overdose was caused by the prescriptions for his work-related back injury, as decedent acted like a "reasonable man," and as his actions were not deliberate but were the result of miscommunication. We reject claimant's arguments and affirm the administrative law judge's finding that decedent's death was not the natural or unavoidable result of his work injury.

When an employee sustains an injury at work which is followed by the occurrence of a subsequent injury or aggravation outside work, the employer is liable for the entire disability and for medical expenses due to both injuries if the subsequent injury is the natural or unavoidable result of the original work injury and would have occurred notwithstanding the subsequent incident. If, however, the subsequent progression of the condition is not a natural or unavoidable result of the work injury, but is the result of an intervening cause, the employer is relieved of liability for disability attributable to the intervening cause. *Bludworth Shipyard, Inc. v. Lira*, 700 F.2d 1046, 15 BRBS 120(CRT) (5<sup>th</sup> Cir. 1983). The United States Court of Appeals for the Fifth Circuit, within whose jurisdiction this case arises, has applied two standards in determining whether an event constitutes a supervening cause. In *Voris v. Texas Employers Ins. Ass'n*, 190 F.2d 929 (5<sup>th</sup> Cir. 1951), the court held that a supervening cause is an influence originating entirely outside of employment that overpowered and nullified the initial injury. In *Mississippi Coast Marine v. Bosarge*, 637 F.2d 994, 12 BRBS 969 (5<sup>th</sup> Cir. 1981), the court stated that a supervening cause is one that causes the condition to worsen. See also *Amerada Hess Corp. v. Director, OWCP*, 543 F.3d 755, 42 BRBS 41(CRT) (5<sup>th</sup> Cir. 2008); *Shell Offshore v. Director, OWCP*, 122 F.3d 312, 31 BRBS 129(CRT) (5<sup>th</sup> Cir. 1997), cert. denied, 523 U.S. 1095 (1998); *Jackson v. Strachan Shipping Co.*, 32 BRBS 71 (1998) (Smith, J., concurring & dissenting).

The administrative law judge credited the opinions of all the doctors. Decision and Order at 9-10. He found that decedent did not inform Dr. Alldredge of his prescription for fentanyl, that Dr. Alldredge told decedent not to take both the Lortab elixir that he would prescribe post-surgery and the hydrocodone pills prescribed by Dr. Mitchell and that decedent acknowledged understanding this order, and that decedent signed a contract with Dr. Mitchell acknowledging that he was being prescribed opiates for pain and agreeing to inform Dr. Mitchell of any changes in his condition and treatments that could affect his treatment with Dr. Mitchell. *Id.* at 15. These findings are supported by substantial evidence of record. Cl. Exs. 30, 32, 34; Ex. 32. Dr. Alldredge's notes lack any reference to decedent's use of fentanyl and Dr. Alldredge testified he did not know of decedent's usage until he learned decedent died wearing three fentanyl patches. Further, claimant confirmed that decedent often exceeded the prescribed dosage

by wearing up to three fentanyl patches at a time, Tr. at 40-45, and the autopsy report revealed near-fatal amounts of this drug in decedent's system, Cl. Ex. 34. Claimant also confirmed that decedent was taking both hydrocodone prescriptions within five days after surgery, Tr. at 40, and, as is evident from the testimony and report of Dr. Laga, decedent's body contained a lethal dose of hydrocodone, Cl. Ex. 34. Finally, Dr. Mitchell stated that decedent did not inform him of the throat surgery or post-operation medications, and both Drs. Alldredge and Mitchell stated that their treatments would have differed had they been fully informed of the medications decedent was taking. Cl. Exs. 30, 32.

Thus, substantial evidence supports the administrative law judge's findings that decedent failed to inform Dr. Alldredge of his use of fentanyl and the extent of his use of hydrocodone and failed to comply with the orders of both Drs. Alldredge and Mitchell, and that those actions led to his death. Decision and Order at 15-16. Additionally, substantial evidence supports the administrative law judge's conclusion that the failure to inform the doctors and comply with their orders was either intentional or negligent, as it is evident decedent increased his dosages of his own volition, kept pertinent information from his doctors, and, as a result, died of a multiple-drug overdose.<sup>3</sup>

In *Bludworth Shipyard*, the Fifth Circuit held that where a prior drug addict who injured his back at work intentionally failed to inform treating physicians of his prior addiction, and the resulting drug treatment led to re-addiction, the employer was not liable for medical expenses incurred as a result of the re-addiction. The employee's intentional failure to inform his doctors constituted a supervening independent cause which nullified the connection between the back injury and the subsequent re-addiction. *Bludworth Shipyard*, 700 F.2d at 1051-52; 15 BRBS at 123-125(CRT). Similarly, decedent's death in this case would not have occurred, notwithstanding the throat surgery, had decedent complied with the doctors' orders regarding his medication regimen following the throat surgery. The administrative law judge's finding that decedent's death was not due to the natural progression or unavoidable result of the work injury, but was due to a supervening cause is supported by substantial evidence, is rational, and is in accordance with law. *Id.* Therefore, we affirm the administrative law judge's finding that decedent's death is not compensable. *Id.*; *Wright v. Connelly-Pacific Co.*, 25 BRBS 161 (1991), *aff'd mem. sub nom. Wright v. Director, OWCP*, 8 F.3d 34 (9<sup>th</sup> Cir. 1993); *Grumbley v. Eastern Associated Terminals Co.*, 9 BRBS 650 (1979) (Miller, dissenting).

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<sup>3</sup>Contrary to claimant's assertion, the administrative law judge did not find that decedent's death was intentional. Rather, he found that decedent's actions in disregarding doctors' orders concerning his treatment and medications were intentional and/or negligent and that they resulted in his accidental death.

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge