U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 21-0397

KEVIN BRADY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TEXAS TERMINAL, LP	)	
	)	DATE ISSUED: 6/28/2022
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LTD.	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Tracy A. Daly, Administrative Law Judge, United States Department of Labor.

Kevin Brady, Houston, Texas.

C. Douglas Wheat and Amanda N. Farley (Wheat, Opperman P.L.L.C.), Houston, Texas, for Employer/Carrier.

Before: ROLFE, GRESH and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant, without representation, appeals Administrative Law Judge (ALJ) Tracy A. Daly's Decision and Order (2019-LHC-00624) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (Act). On appeal, Claimant generally challenges the ALJ's denial of benefits; therefore, the Benefits Review Board addresses whether substantial evidence supports the Decision

and Order below. *See Pierce v. Elec. Boat Corp.*, 54 BRBS 27 (2020). In an appeal by a self-represented Claimant, we must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, with a history of pre-existing multilevel degenerative disc disease,[1] sustained a work-related back injury with Employer on May 15, 2017. He reported the injury to his supervisor that day but did not obtain treatment until Employer sent him for an evaluation at U.S. Healthworks Medical Group the next day. At that time, Dr. Jasmine Sardana diagnosed Claimant with a "contusion of back wall of thorax." EX 7. She ordered a CT scan, advised Claimant to take over-the-counter medications, and released him to return to work, without restrictions, on May 16, 2017. *Id.* On that same day, Claimant was treated by Dr. David Hall at Cypress Fairbanks Medical Center Emergency Department (Cypress ER), who, after review of a thoracic spine CT scan, diagnosed Claimant with "mild subcutaneous stranding/bruising" of his upper back. EX 8.

On May 18, 2017, Claimant visited Dr. Scott Sims, a chiropractor, who diagnosed a sprain of the thorax and radiculopathy of the thoracic region. CX 2 at 31-33. Dr. Sims released Claimant from work activities "until further notice" and proposed a treatment plan, which was thereafter executed in fourteen additional visits through June 23, 2017. *Id.* at 32-47. Meanwhile, on June 6, 2017, Claimant visited Meridian Family Medical Associates, where he was seen by a nurse practitioner, Angel Smith, whose diagnoses included thoracic pain and muscle spasms, as well as a contusion and abrasion of the mid-back. CX 2 at 48-51. She prescribed Claimant pain medication and recommended six to eight weeks of physical therapy.[2] *Id.* at 51. Claimant next visited Dr. Shahid Syed on July 3, 2017, who, in terms of Claimant's thoracic spine, diagnosed pain, segmental and somatic dysfunction, and disorder of the intervertebral disc. *Id.* at 58-59. Dr. Syed prescribed medication and ordered a CT scan. *Id.* at 59. He also stated Claimant could return to work with restrictions. *Id.* at 60.

On August 15, 2017, Dr. David G. Vanderweide, who examined Claimant at Employer's request, stated Claimant sustained an injury to the chest wall and posterior

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[1] Claimant began working for Employer on March 6, 2017. A pre-employment x-ray of his lumbar spine revealed multilevel degenerative disc disease at the thoracolumbar junction and multilevel facet arthropathy, which was most severe in his lower spine. EX 6.

[2] Dr. Yaw F. Badu, a physician with the practice, "concurred" with Ms. Smith's assessment. CX 2 at 52.

thoracic region consistent with his work incident. EX 10. Dr. Vanderweide opined Claimant "is fit to engage in modified activities, as he is doing now"[3] and recommended restrictions of limited pushing/pulling, overhead reaching, and lifting/carrying more than 20 pounds. *Id.*; EX 17, Dep. at 17. He recommended physical therapy with someone knowledgeable in rehabilitating soft tissue injuries of the spine, after which he believed Claimant's condition would reach maximum medical improvement (MMI), and he would be fit to engage in unrestricted activities with no permanent impairment. *Id.* On May 1, 2018, after re-examining Claimant and reviewing his medical records, Dr. Vanderweide reiterated his prior diagnosis of a thoracic contusion attributable to Claimant's 2017 work incident. *Id.* at 3; EX 17, Dep. at 20. He further stated that given the passage of time since that incident, it is reasonable to expect Claimant's work injury should have completely resolved. *Id.* He therefore concluded within reasonable medical probability that Claimant reached MMI for his work injury and is fit to return to his previous activities without restriction. *Id.*

Claimant returned to the Cypress ER on February 27, May 22, and July 27, 2018, on January 9, March 21, and June 13, 2019, and again on February 4, 2020, with back and/or neck pain. At each visit, he was examined, consistently diagnosed with chronic back pain, and discharged, typically with a prescription(s) for medication and general "Patient Education Instructions" addressing his condition. CX 2 at 78-102.

Claimant was also treated by Dr. Khoa Pham on several occasions in 2019, who, in a form entitled Texas Health and Human Services Commission Medical Releases, indicated Claimant is unable to work due to permanent disability. CX 2 at 107-109, 122-123. Dr. Pham listed Claimant's primary disability diagnosis as "thoracic disc herniation" and his secondary disability diagnosis as "chronic back pain." *Id.* He also referred Claimant to Emily Padgett for physical therapy, who assessed Claimant with chronic upper back pain and developed a treatment plan, which included providing Claimant with a walking cane. CX 2 at 113-115.

In terms of post-injury employment, Claimant returned to a modified full-time job as an escort with Employer on July 18, 2017, though he only sporadically reported for work. He explained he began vocational school on a full-time basis on August 28, 2017, which significantly limited his availability for work with Employer. Claimant last worked for Employer on September 28, 2017. EX 31, Dep. at 30-31. On November 15, 2017, Employer terminated Claimant for failure to work his assigned shifts. *Id.* Claimant subsequently worked part-time as a cook for a fast-food restaurant, James Coney Island

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[3] At his deposition, Dr. Vanderweide opined Claimant was capable of performing the job duties of an escort for Employer. EX 17, Dep. at 5, 11-12.

(JCI), from May 3 until July 3, 2018, when JCI placed him on a medical leave of absence. JCI terminated his employment on October 4, 2018, for failing to return from the leave of absence. Claimant has not since applied for or held any job. EX 16, 56, 62; HT II at 120.

Claimant filed a claim seeking benefits for his work-related thoracic spine injury. Employer controverted the claim, and the case was forwarded to the Office of Administrative Law Judges for a formal hearing, which was conducted, in two separate parts, in Houston, Texas.

The ALJ found Claimant sustained a work-related thoracic back injury which precluded him from performing his usual employment from May 15, 2017, until May 1, 2018. He next found Employer met its burden of establishing the availability of suitable alternate employment through evidence that it had full-time modified escort work available to Claimant, within his post-accident restrictions[4] and at his pre-injury hourly wage, from the date of his injury. Therefore, he concluded Claimant suffered no loss of wage-earning capacity from his work-related accident and is not entitled to any disability benefits. The ALJ then found Claimant entitled to medical benefits from May 15, 2017, until May 1, 2018, the date that his work injury reached MMI with no impairment or restrictions. This included a reimbursement totaling $383.27 for services rendered by Dr. Badu, who the ALJ found was Claimant's "free choice of treating physician." Decision and Order at 32. However, he denied Claimant's request for reimbursement of $52,176.33 in medical expenses, as the information provided was "insufficient" to establish those expenses were reasonable and necessary or represented charges by an authorized medical provider during the period of Claimant's disability. He also found Employer not liable for Claimant's chiropractic treatment with Dr. Sims, for medical expenses incurred at Cypress ER, or for any medical treatment he received after visiting Dr. Badu. In addition, the ALJ denied Claimant's reimbursement request of $14,300 in gasoline for travel purportedly associated with his medical treatment because Claimant "failed to provide evidentiary support" for those expenses. Accordingly, the ALJ awarded Claimant authorized medical benefits for the limited period of May 15, 2017, to May 1, 2018, but denied his claim for permanent total disability benefits.

Nature and Extent of Disability

Following an extensive review of the evidence of record, Decision and Order at 5-15, the ALJ set out the appropriate legal framework, *id.* at 15-18, accurately articulated the parties' positions, *id.* at 18-19, and then weighed the relevant evidence as it related to the

[4] The ALJ found this work did not require Claimant to perform activities exceeding his physical restrictions. Decision and Order at 30.

nature and extent of Claimant's disability, *id.* at 18-22. A claimant's condition has reached MMI when he is no longer undergoing treatment with a view toward improving his work-related condition or that condition is of a lasting and indefinite duration and beyond a normal healing period. *See Gulf Best Electric, Inc. v. Methe*, 396 F.3d 601, 38 BRBS 99(CRT) (5th Cir. 2004); *Louisiana Ins. Guaranty Ass'n v. Abbott*, 40 F.3d 122, 29 BRBS 22(CRT) (5th Cir. 1994); *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649 (5th Cir. 1968), *cert. denied*, 394 U.S. 976 (1969); *see also McCaskie v. Aalborg Ciserv Norfolk, Inc.*, 34 BRBS 9 (2000). The Board must affirm a finding of fact establishing the date of MMI if it is supported by substantial evidence. *Ezell v. Direct Labor, Inc.,* 33 BRBS 19 (1999); *Mason v. Bender Welding & Machine Co.,* 16 BRBS 307 (1984). Thus, regarding the nature of Claimant's disability, the ALJ rationally credited, as well-reasoned and well-documented, the May 1, 2018 report of Dr. Vanderweide stating that "[w]ithin reasonable medical probability," Claimant's work-related condition reached MMI and he "is fit to return to his previous activities without restriction." EX 10. We therefore affirm the ALJ's findings that Claimant's work-related injury reached MMI as of May 1, 2018, and that Claimant, from that point forward, was no longer capable of establishing a prima facie case of total disability, as they are supported by substantial evidence. *Ezell,* 33 BRBS 19; *Mason,* 16 BRBS 307.

Regarding the period prior to May 1, 2018, to establish a prima facie case of total disability, a claimant must show he cannot return to his usual work due to his work injury.[5] *Ledet v. Phillips Petroleum Co.*, 163 F.3d 901, 32 BRBS 212(CRT) (5th Cir. 1998). Where, as here, the claimant has established a prima facie case of total disability, the burden shifts to the employer to show suitable alternate employment. The employer must show the realistic availability of job opportunities within the geographic area where the claimant resides, which he, by virtue of his age, education, work experience, and physical restrictions can perform. *See New Orleans (Gulfwide) Stevedores v. Turner,* 661 F.2d 1031, 14 BRBS 156(CRT) (5th Cir. 1981). The employer can meet its burden by offering the claimant a light-duty job in its facility. *Darby v. Ingalls Shipbuilding, Inc.*, 99 F.3d 685, 30 BRBS 93(CRT) (5th Cir. 1996); *Buckland v. Dep't of the Army/NAF/CPO*, 32 BRBS 99 (1998). Sheltered employment, however, is insufficient to constitute suitable alternate employment. *Ezell v. Direct Labor, Inc.*, 33 BRBS 19, 25 (1999). Sheltered employment is defined as a job that is unnecessary to an employer's operations and was created merely to place the claimant on the payroll. *Buckland*, 32 BRBS at 100. The mere fact that light-duty work is tailored to a claimant's physical limitations is insufficient to consider it a sheltered position. *See Darby*, 99 F.3d at 689, 30 BRBS at 95(CRT).

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[5] We affirm the ALJ's finding that Claimant sustained a work-related injury consisting of a thoracic contusion as it is unchallenged on appeal. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007).

In assessing the extent of Claimant's disability, the ALJ found Claimant, though incapable of returning to his usual work for Employer from the date of his injury until May 1, 2018, could perform light-duty work with restrictions, and Employer produced evidence of suitable alternate employment by virtue of the light-duty escort position, which it established was available from the date of Claimant's injury. In reaching this determination, the ALJ permissibly found Claimant's overall testimony "was only partially credible" and that, more specifically, his testimony regarding his inability to perform the escort job for Employer is "inconsistent with the documentary evidence."[6] Decision and Order at 4-5. In contrast, after the ALJ considered the testimony of Employer's human resources manager, Lizabeth Diver, regarding the requirements and job duties of the escort position,[7] in conjunction with the physical restrictions Dr. Syed imposed,[8] he found

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[6] The ALJ stated Claimant was "repeatedly evasive, defensive, and argumentative," displayed "a clear inability or unwillingness to provide specific, detailed, relevant information either because of poor recollection or personal feelings," and his "answers to a number of questions were inconsistent or contradictory with other evidence of record and called into question the reliability of the details of the testimony." Decision and Order at 4-5. Further, the ALJ stated that "[o]n multiple occasions, Claimant mischaracterized and inconsistently described his physical condition, including when seeking medical care, subsequent employment, and unemployment benefits." *Id.*

[7] Ms. Divers stated Employer had both regular duty and modified duty work as an escort available to Claimant, for eight hours a day, from the date of his injury. EX 31, Dep. at 14-15, 18-19, 28, 29. She explained the escort job was a regular, necessary position with Employer, described the escort job duties, reviewed Dr. Syed's physical restrictions of July 3, 2017, and confirmed Employer had modified full-time work available to Claimant within those restrictions. *Id.*, Dep. at 18-19, 21, 23-25, 28, 29. Further, she stated that when Claimant returned to work on July 17, 2017, she spoke with him about his restrictions and thereafter he "was offered" and accepted "a position as an escort." *Id.*, Dep. at 20, 23. She reiterated the escort job was a full-time position, and it was solely Claimant's decision not to work full-time. *Id.*, Dep. at 29.

[8] Dr. Syed, upon whom the ALJ placed significant probative value, restricted Claimant's activities as follows: no bending/stooping, light pushing/pulling (2 hours per day); twisting as tolerated (2 hours per day); no climbing stairs/ladders; lifting no more than 15 pounds (4 hours per day); no driving/operating heavy equipment; and no work at heights. CX 2 at 60. Dr. Syed noted no changes in his assessment and diagnoses in follow-up reports dated July 20 and August 3, 2017, though he did add a restriction of no kneeling/squatting. *Id.* at 61-66. On August 15, 2017, Claimant, on referral from Dr. Syed, underwent an MRI of his thoracic spine, which Dr. Alfred Delumpa interpreted as showing

Claimant could perform light-duty work immediately after his work injury and that the escort job was suitable for Claimant.[9]

It is well established that, in arriving at a decision, the ALJ is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence. *See Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 29 BRBS 79(CRT) (5th Cir. 1995); *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991); *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). The Board is not empowered to reweigh the evidence but must accept the ALJ's rational inferences and findings of fact if they are supported by the record. *See generally Ceres Gulf, Inc. v. Director, OWCP [Plaisance]*, 683 F.3d 225, 228, 46 BRBS 25, 27(CRT) (5th Cir. 2012). The ALJ's credibility determinations are rational, and Ms. Diver's testimony in comparison with Dr. Syed's restrictions constitutes substantial evidence in support of his conclusions. *Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9 (2001), *aff'd mem.,* 32 F. App'x 126 (5th Cir. 2002). Consequently, we affirm the ALJ's conclusion that Claimant is not entitled to total disability benefits.

<u>Average Weekly Wage (AWW)</u>

Section 10(c) of the Act is a catch-all provision used to calculate a claimant's AWW when neither Section 10(a) nor Section 10(b) can be reasonably and fairly applied.[10] 33 U.S.C. §910; *see Story v. Navy Exch. Serv. Ctr.*, 33 BRBS 111 (1999). The object of Section 10(c) is to calculate a sum which reasonably represents the claimant's annual earning capacity at the time of his injury. *See Empire United Stevedores v. Gatlin*, 936 F.2d 819, 25 BRBS 26(CRT) (5th Cir. 1991); *Richardson v. Safeway Stores, Inc.*, 14 BRBS 855 (1982). An ALJ has broad discretion when applying Section 10(c) to calculate an employee's AWW. *James J. Flanagan Stevedores, Inc. v. Gallagher*, 219 F.3d 426, 34 BRBS 35(CRT) (5th Cir. 2000); *Hall v. Consolidated Employment Systems, Inc.,* 139 F.3d 1025, 32 BRBS 91(CRT) (5th Cir. 1998); *Gilliam v. Addison Crane Co.*, 21 BRBS 91 (1987). In computing a claimant's AWW under Section 10(c), overtime should be included

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mild multi-level disc degeneration, most prominent from T-3/4 to T-7/8 and mild canal stenosis from T-4/5 to T-6/7 due to disc bulges. EX 9.

[9] We affirm as rational and supported by the evidence the ALJ's finding that Employer's light-duty position did not constitute sheltered employment. *Peele v. Newport News Shipbuilding & Dry Dock Co.*, 20 BRBS 133 (1987).

[10] The record lacks the evidence necessary to apply Sections 10(a) and 10(b).

if it is a regular and normal part of the claimant's employment. *Brown v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 110 (1989); *Bury v. Joseph Smith & Sons*, 13 BRBS 694, 698 (1981).

The ALJ found Claimant did not sustain any loss of wage-earning capacity and therefore "average weekly wage is not at issue in this case." Decision and Order at 31. He reached this conclusion because he found Employer made the escort job available to Claimant on a full-time basis at his pre-injury hourly rate of $12. Consequently, although he seemingly found Section 10(c) applicable, the ALJ did not make any AWW determination in this case. Absent from the ALJ's assessment, however, is any consideration of whether Claimant's loss of overtime in the suitable alternate employment constituted a compensable loss in his wage-earning capacity.

There is evidence pertaining to Claimant's pre-injury overtime work which the ALJ did not adequately address in his decision. In this regard, Employer's submission of Claimant's pre-injury pay stubs reflects he received overtime pay in six of the ten weeks he worked for Employer prior to the date of his injury. EX 4. Claimant's overtime for those six weeks, when he was paid $18 per hour, totaled 98.25 hours. This arguably establishes overtime was a regular and normal part of Claimant's pre-injury employment. Moreover, Ms. Divers's testimony that "usually an employee is not offered overtime when working as an escort," EX 31, Dep. at 24-25, strongly indicates overtime was not available to Claimant for his post-injury escort work.

Because the ALJ summarily found AWW is not an issue in this case without considering the impact, if any, of Claimant's pre-injury overtime work, we vacate his finding that AWW is not an issue. On remand, the ALJ must address in the first instance the evidence concerning Claimant's overtime wages prior to his injury; if appropriate, the ALJ should then calculate his AWW accounting for these wages and determine whether Claimant sustained a compensable loss in his wage-earning capacity from May 16, 2017, until his November 15, 2017, termination.[11]

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[11] Claimant's participation in vocational training in this case does not entitle him to disability benefits as there is no evidence this was a Department of Labor sponsored vocational program. *Louisiana Ins. Guar. Ass'n v. Abbott*, 40 F.3d 122, 29 BRBS 22(CRT) (5th Cir. 1994). As Claimant himself stated, his vocational training consisted of welding classes at a local community college – a skill he already had – which he was only taking to secure student loans to support him financially until he won his disability case. HT at 121-122.

ALJ's Rulings Regarding Section 7 Medical Benefits

An employer's liability for a claimant's medical treatment is governed by Section 7 of the Act, 33 U.S.C. §907.[12] The Act provides an injured employee is permitted his initial free choice of a physician to treat his work injury, 33 U.S.C. §907(b), but he:

> may not change physicians after his initial choice unless the employer, carrier, or [district director] has given prior consent for such change. Such consent shall be given in cases where an employee's initial choice was not of a specialist whose services are necessary for and appropriate to the proper care and treatment of the compensable injury or disease. In all other cases, consent may be given upon a showing of good cause for change.

33 U.S.C. §907(c)(2); 20 C.F.R. §702.406. Thus, if a claimant wishes to change physicians after his initial choice, he must obtain prior written approval from his employer, carrier, or the district director. 33 U.S.C. §907(b), (c); *Jackson v. Universal Maritime Services Corp.*, 31 BRBS 103 (1997) (Brown, J., concurring); *Hunt v. Newport News Shipbuilding & Dry Dock Co.*, 28 BRBS 364, *aff'd mem.*, 61 F.3d 900 (4th Cir. 1995); 20 C.F.R. §702.406.

Section 7(d) identifies the prerequisites for an employer's liability for payment or reimbursement of a claimant's medical expenses. Specifically, to be entitled to payment for medical treatment, the claimant must first request his employer's authorization for the medical services that any physician performs, including the claimant's initial choice. *See Maguire v. Todd Shipyards Corp.,* 25 BRBS 299 (1992); *Ranks v. Bath Iron Works Corp.*, 22 BRBS 301 (1989). Under Section 7(d), an employee is entitled to recover his medical expenses if he requests employer's authorization for treatment, the employer refuses the request, and treatment thereafter procured on the employee's own initiative is reasonable

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[12] Medical care is defined broadly:

> Medical care shall include medical, surgical, and other attendance or treatment, nursing and hospital services, laboratory, X-ray and other technical services, medicines, crutches, or other apparatus and prosthetic devices, and any other medical service or supply, including the reasonable and necessary cost of travel incident thereto, which is recognized as appropriate by the medical profession for the care and treatment of the injury or disease.

20 C.F.R. §702.401(a).

and necessary. *See Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112 (1996); *Anderson v. Todd Shipyards Corp.,* 22 BRBS 20 (1989); *see also Roger's Terminal & Shipping Corp. v. Director, OWCP*, 784 F.2d 687, 18 BRBS 79 (CRT) (5th Cir.), *cert. denied*, 479 U.S. 826 (1986). The compensability of care that a "chiropractor" provides is limited "to treatment consisting of manual manipulation of the spine to correct a subluxation shown by X-ray or clinical findings." 20 C.F.R. §702.404 (1984); *see N.T.* [*Thompson*] *v. Newport News Shipbuilding & Dry Dock Co.*, 43 BRBS 71 (2009) (hot packs, electrical muscle stimulation, and intersegmental traction necessary for manual manipulation of subluxation are compensable); *R.C.* [*Carter*] *v. Caleb Brett, L.L.C*., 43 BRBS 75 (2009) (massage therapy by a non-physician that a chiropractor ordered is compensable, as claimant had subluxation); *Bang v. Ingalls Shipbuilding, Inc.*, 32 BRBS 183 (1998) (where a claimant had no subluxation, the employer was not liable for chiropractic services).

The ALJ found Claimant entitled to all reasonable and necessary medical expenses related to his May 2017 work-related injury until May 1, 2018, when he reached MMI with no residual impairment or restriction. The ALJ stated Claimant requested a total of $52,176.33 assertedly in reimbursement of medical and travel expenses relating to his treatment from multiple medical providers. However, he rationally found Claimant's evidence insufficient to establish whether those expenses were reasonable and necessary because it "does not provide dates of treatment or any further factual or legal arguments" and it cannot be determined whether Claimant incurred these charges "by an authorized medical provider during the period of his disability."[13] Decision and Order at 33.

The ALJ found Dr. Badu is Claimant's "free choice of treating physician." Decision and Order at 34. He therefore awarded Claimant $383.27 in requested medical expenses associated with his visit to Dr. Badu and three medications that Dr. Badu's nurse practitioner, Ms. Smith, prescribed at that visit. The ALJ then found Employer not liable for Claimant's subsequent treatment with any other doctor, including Dr. Syed, because he presented no evidence of Employer's or the district director's prior written approval regarding a change in his treating physician. In addition, the ALJ found Employer not liable for any treatment that Dr. Sims rendered because "there has been no subluxation shown by x-ray or clinical findings" as required for a chiropractor's services to be compensable. *Id.* at 33. He found that although Dr. Sims's initial evaluation reflected a treatment recommendation of spinal manipulations to correct spinal subluxations, that recommendation is not supported by Dr. Sims's diagnosis and the objective medical testing. Moreover, he found much of Claimant's treatment with Dr. Sims involved electrical stimulation and moist heat, treatments which are not reimbursable under Section

[13] Claimant's request consists of a general list of medical expenses identified by provider and amounts either paid or past due. Cl's PH Br. at 21.

702.404. 20 C.F.R. §702.404. Finally, the ALJ found Employer not responsible for any medical expenses associated with Cypress ER on the day following Claimant's work accident because there is no evidence in the record concerning this expense, and Claimant has not explained why this visit was reasonable and necessary.

The ALJ also denied Claimant's request for $14,300 in gasoline expenses allegedly related to travel for medical treatment. While costs for transportation for medical purposes are recoverable under Section 7(a), and Employer would be liable for transportation/mileage costs to and from Dr. Badu's office, Employer is not liable for those expenses because Claimant did not provide any evidence in support of that compensable expense or in general for his reimbursement claim.

Initial Free Choice of Physician/Authorization

We affirm the ALJ's conclusion that "Claimant's free choice of treating physician was Dr. Badu," because the record establishes Claimant first sought treatment with a chiropractor, Dr. Sims, and with a general practitioner, Dr. Badu. HT II at 150. Claimant was sent to Dr. Badu's office by his then-attorney and attended that appointment of his own free will. *Id.* Despite Ms. Smith's treatment recommendations in her role as Dr. Badu's nurse, Claimant, again of his own volition, chose not to continue being treated by Dr. Badu, opting instead, on advice of a second attorney, to see Dr. Syed, without seeking any prior written approval for the change in physician. As such, the ALJ's finding that Dr. Badu was Claimant's initial choice of physician for the treatment of his work-related injury is supported by substantial evidence. 33 U.S.C. §907(b); 20 C.F.R. §702.406(a).

Reimbursement of Medical Expenses in General

We also affirm the ALJ's findings that Claimant did not seek authorization for treatment with any other physician after seeing Dr. Badu and that Claimant's work-related condition had fully resolved as of May 1, 2018. These findings are rational, supported by substantial evidence, and in accordance with law.[14] Therefore, we affirm the ALJ's award

[14] Employer, therefore, cannot be held liable for the payment of any past medical expenses related to Claimant's treatment with any other medical providers, as none were authorized, and this case does not involve a situation where a doctor refused to treat Claimant or referred Claimant to another provider or Employer refused to authorize treatment. *See, e.g., Shell v. Teledyne Movible Offshore, Inc.*, 14 BRBS 585, 590 n.2 (1981) (no need to seek authorization where it would be futile); *Armfield v. Shell Offshore, Inc.*, 25 BRBS 303 (1992) (R. Smith, J., dissenting on other grounds) (no authorization needed when doctor refers injured worker to another doctor). Moreover, because the ALJ

of medical benefits related to Dr. Badu's treatment and the denial of all other medical treatment as unauthorized.[15] Additionally, the ALJ adequately explained his rationale for denying the medical expenses relating to the chiropractic treatment that Dr. Sims rendered. *Carter*, 43 BRBS 75. Consequently, we affirm the ALJ's denial of all requested medical expenses beyond those incurred during Claimant's treatment with Dr. Badu.

Accordingly, we affirm the ALJ's findings as to the nature and extent of Claimant's work-related injury and the denial of total disability benefits, as well as his finding of Dr. Badu as Claimant's first choice of attending physician and consequent award to Claimant of $383.27 in medical expenses, payable by Employer. We also affirm the ALJ's denial of Claimant's request for all other medical expenses. However, we vacate the ALJ's denial of partial disability benefits as he did not adequately address Claimant's pre-injury AWW and did not sufficiently determine whether Claimant sustained a compensable loss in his wage-earning capacity as a result of lost overtime wages (prior to his termination) in the suitable alternate employment that Employer provided. We affirm the ALJ's decision in all other regards.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

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rationally found Claimant's work-related injury fully resolved as of May 1, 2018, Employer cannot be liable for any treatment rendered after that date.

[15] Dr. Badu did not refer Claimant to any other doctor.