BRB No. 00-0804

MARGARET JOHNSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	DATE ISSUED: April 10, 2001
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order on Remand Awarding Benefits and the Order Denying Claimant's Motion for Reconsideration of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

Margaret Johnson, Lucedale, Mississippi, *pro se*.

Paul B. Howell (Franke, Rainey & Salloum, PLLC), Gulfport, Mississippi, for self-insured employer.

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

PER CURIAM:

Claimant, without representation, appeals the Decision and Order on Remand Awarding Benefits and the Order Denying Claimant's Motion for Reconsideration (97-LHC-1100, 1101, 1102, 1103) of Administrative Law Judge James W. Kerr, Jr., 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). In an appeal by a claimant without representation, the Board will review the administrative law judge's findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and in accordance with law. If they are, they must be affirmed. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3); 20 C.F.R. §§802.211(e), 802.220.

This case is on appeal to the Board for the second time. Claimant worked for employer as a welder, and she injured her left arm, left shoulder and neck in a work-related incident on June 24, 1988. The administrative law judge awarded claimant temporary total, temporary partial, and permanent total disability benefits for periods

through January 6, 1996. 33 U.S.C. §908(a), (b), (e). With regard to medical benefits, the administrative law judge determined that claimant was entitled to reimbursement only for those expenses incurred for treatment by the authorized physicians, Drs. Rutledge and Bridges. *See* 33 U.S.C. §907.

Claimant, who was then represented by counsel, appealed the denial of reimbursement for medical treatment received from physicians other than Drs. Rutledge and Bridges. Specifically, she argued that treatment and/or evaluations provided by the Ochsner Clinic and by Drs. Giles, Wilkerson, Wicker, LaCour, McCloskey, Bass, Cunningham, Cannella, and Voorhies were reasonable and necessary. The Board affirmed the administrative law judge's finding that employer is not liable for treatment rendered by Drs. Giles and the physicians to whom he referred claimant between 1989 and her second request for treatment in 1992. The Board held, however, that employer is liable for treatment claimant procured from Drs. Wilkerson and Voorhies, and the Ochsner Clinic, after employer refused her May 29, 1992, request for treatment, if that treatment was reasonable and necessary for the care of her work-related condition. The Board therefore vacated the administrative law judge's denial of medical benefits after May 29, 1992, and remanded the case for the administrative law judge to determine if the treatment procured after May 29, 1992, was reasonable and necessary for the treatment of claimant's work-related condition. *Johnson v. Ingalls Shipbuilding, Inc.*, BRB No. 98-1571 (Aug. 18, 1999).

On remand, the administrative law judge found that the treatment rendered by Drs. Wilkerson and Voorhies, as well as the Ochsner Clinic, after May 29, 1992, was reasonable and necessary for the treatment of claimant's work injury. The administrative law judge noted that the surgery claimant underwent in June 1996 at these physicians' recommendation was very successful. Employer thus was held liable for this treatment, as well as for continuing treatment for the compensable injuries.

Subsequently, claimant's attorney filed with the administrative law judge a motion for an extension of time in which to file a motion for reconsideration, stating that medical bills since May 29, 1992, were being located. The administrative law judge granted this motion on March 28, 2000, prior to receiving employer's objection to the extension request, on the ground that the motion was filed out of time. *See* 20 C.F.R. §802.206(b)(1). Upon receipt of the administrative law judge's grant of the requested extension, employer filed a motion for reconsideration on the grounds of untimeliness and based on claimant's full success before the administrative law judge on remand. Claimant's counsel thereafter filed a Motion for Information and Instructions regarding the order granting the extension. By Order filed on April 14, 2000, the administrative law judge

summarily denied claimant's motion for an extension to file a motion for reconsideration, and for information and instructions.

Claimant appeals the administrative law judge's decisions, without the benefit of counsel. Employer responds that the claimant was fully successful before the administrative law judge on remand, that substantial evidence of record supports the administrative law judge's decision awarding medical benefits, and that, therefore, there is no substantial issue for the Board to review.

As an initial matter, we affirm the administrative law judge's award of medical benefits for services provided by Drs. Wilkerson and Voorhies, as well as the Ochsner Clinic, subsequent to May 29, 1992. As employer suggests, the administrative law judge's finding that these medical services were reasonable and necessary for the treatment of claimant's work-related injuries is supported by substantial evidence of record. *See* Emp. Exs. 31, 31a, 39a, 42; *see generally Turner v. Chesapeake & Potomac Telephone Co.*, 16 BRBS 255 (1984). Moreover, the administrative law judge did not abuse his discretion in denying claimant's post-hearing motions. *See Duran v. Interport Maintenance Corp.*, 27 BRBS 8 (1993); 20 C.F.R. §802.206(b)(1).

Claimant has submitted to the Board two lists of medications purportedly prescribed by Drs. Bridges and Rutledge in 1989-1991. Claimant alleges that employer has not reimbursed her for these charges. The Board is not authorized to accept this type of document which was not admitted into the record by the administrative law judge. 33 U.S.C. §921(b)(3); 20 C.F.R. §802.301(a), (b); *Williams v. Hunt Shipyards, Geosource, Inc.*, 17 BRBS 32 (1985). Drs. Bridges and Rutledge were claimant's authorized physicians at the time these prescription charges were allegedly incurred, and employer was held liable in the administrative law judge's first decision for medical services provided for claimant's work-related injuries by these physicians. Claimant is advised to pursue this matter with the district director, whose duty it is to supervise the medical care of injured employees. *See generally* 33 U.S.C. §907(b); 20 C.F.R. §702.407.

Claimant also has submitted copies of medical and vocational reports admitted into evidence at the initial hearing, which, she alleges, supports her claim that she diligently tried to obtain the jobs employer identified as suitable in 1990, and that she is unable to perform the modified welding job employer identified at its facility in 1996. Thus, she requests reinstatement of total disability benefits. This issue is not properly before the Board. In his first decision, the administrative law judge found that employer established the availability of suitable alternate employment in 1990. Employer identified positions as a telephone solicitor, desk clerk, and self-service station attendant, which the administrative law judge found were approved by Dr. Rutledge. The administrative law judge further found that claimant did not diligently seek these positions, and thus that claimant was not totally

disabled from September 7, 1990 until June 2, 1992. *See* Decision and Order at 24-25.

The administrative law judge found that claimant was totally disabled following surgery on June 2, 1992, until employer established the availability of suitable alternate employment on June 10, 1996, by way of a modified welder position at its facility. *Id.* at 26. The administrative law judge found that this position was within the restrictions issued by Dr. Wilkerson following claimant's recovery from the surgery, and that claimant did not sustain a loss in wage-earning capacity after June 10, 1996. *Id.* at 30.

In her first appeal, claimant did not allege error in the administrative law judge's finding that she did not diligently pursue alternate employment in 1990, and that she was capable of performing the modified welding job identified in 1996.[1] Her appeal of the administrative law judge's first decision was limited to the issue of employer's liability for certain medical expenses, as discussed above. The administrative law judge's decision on remand similarly was limited to the issues concerning medical benefits. As claimant did not initially appeal any of the administrative law judge's findings relating to suitable alternate employment, the Board may not review these findings at this juncture. *See generally Ingalls Shipbuilding, Inc. v. Director, OWCP [Benn]*, 976 F.2d 934, 26 BRBS 107(CRT) (5th Cir. 1992); *Alabama Dry Dock & Shipbuilding Co. v. Director, OWCP*, 804 F.2d 1558, 19 BRBS 61(CRT) (11th Cir. 1986).

[1]The administrative law judge found that if claimant were unable to perform this job, it was because of a 1995 automobile accident, which the administrative law judge found was an intervening cause of claimant's disability. Claimant did not appeal this finding.

Accordingly, the Decision and Order on Remand Awarding Benefits and the Order Denying Claimant's Motion for Reconsideration are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge