BRB Nos. 03-0800
and 0800A

JACKIE TRUEX	)	
	)	
Claimant-Respondent	)	
Cross-Petitioner	)	
	)	
v.	)	
	)	
UNITED STATES NAVY EXCHANGE	)	DATE ISSUED: Aug. 25, 2004
	)	
and	)	
	)	
CRAWFORD & COMPANY	)	
	)	
Employer/Administrator-	)	
Petitioners	)	
Cross-Respondents	)	DECISION and ORDER

Appeals of the Decision and Order Denying Modification and Decision and Order Denying Motion for Reconsideration of Donald B. Jarvis, Administrative Law Judge, United States Department of Labor.

Michael F. Pozzi, Renton, Washington, for claimant.

Russell A. Metz (Metz & Associates, P.S.), Seattle, Washington, for employer/administrator.

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

PER CURIAM:

Employer appeals the Decision and Order Denying Modification and claimant appeals the Decision and Order Denying Motion for Reconsideration (2002-LHC-0278) of Administrative Law Judge Donald B. Jarvis 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.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *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).

This case is before the Board for the second time. In his Decision and Order of April 14, 1999, Administrative Law Judge Lindeman found claimant to be temporarily totally disabled as a result of his work-related musculoskeletal conditions. He also awarded claimant medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907. Employer appealed the Decision and Order, and the Board affirmed the decision in its entirety. *Truex v. U.S. Navy Exchange*, BRB No. 99-0885 (May 18, 2000) (unpub.). Thereafter, on December 14, 2001, employer filed a petition for modification under Section 22 of the Act, 33 U.C.S. §922, alleging a change in claimant's condition, and, on March 21, 2001, claimant filed a claim primarily seeking reimbursement from employer for medical expenses.

In his Decision and Order, Administrative Law Judge Jarvis (the administrative law judge) denied employer's petition for Section 22 modification, finding employer's evidence insufficient to establish a change in claimant's condition. As to claimant's allegation that employer is liable for additional medical expenses in excess of $9,800, the administrative law found that claimant submitted sufficient proof to establish his entitlement to reimbursement from employer for expenses "as specifically itemized in CX 3." Decision and Order at 9. In so finding, the administrative law judge noted the absence of any evidence that employer had paid these bills. *Id.* The administrative law judge subsequently denied claimant's motion for reconsideration seeking to amend the administrative law judge's award from one for temporary total disability to permanent total disability. The administrative law judge stated that the permanency of claimant's condition was not actually litigated at the hearing.

Employer appeals the administrative law judge's order that it reimburse claimant for the medical expenses itemized in "CX 3." Claimant responds, urging affirmance. In his appeal, claimant alleges that the administrative law judge erred in not finding that claimant's total disability is permanent inasmuch as he raised the issue in his pre-trial statement, and as the record contains various medical opinions that claimant has reached maximum medical improvement. Employer has not responded to this issue.

Employer contends that the administrative law judge erred in ordering it to reimburse claimant for medical expenses based solely on the evidence supplied by claimant, as it does not indicate to what medical conditions the services are in reference or whether claimant has in fact paid the bills and requires reimbursement. Employer contends it cannot ascertain which bills have, in fact, been paid, and that the administrative law judge erred in relying on the testimony of claimant's wife that none of the bills was paid by employer. Lastly, employer contends that the order for it to pay

these medical expenses is not enforceable, because the bills are contained in Claimant's Exhibit 2, not Exhibit 3, as stated by the administrative law judge.

We reject employer's contention that the administrative law judge's order is not enforceable. It is readily apparent that the administrative law judge's reference to Claimant's Exhibit 3, rather than to Exhibit 2, is a clerical error, and that such does not affect the enforceability of the order. *Bunol v. George Engine Co.*, 996 F.2d 67, 27 BRBS 77(CRT) (5th Cir. 1993).

We also reject employer's contention that the administrative law judge erred in holding it liable for the itemized medical expenses contained in Claimant's Exhibit 2.[1] Judge Lindeman awarded medical benefits to claimant. Employer thus is liable for reasonable and necessary medical expenses. *See* 33 U.S.C. §907(a); *see generally Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988). In this case, employer does not contend that the expenses are not reasonable and necessary for the treatment of claimant's work injuries. Rather, employer contends that it cannot determine from the documentation which bills require reimbursement. Emp. Br. at 8. To the extent employer contends it is unable to ascertain which bills it has already paid, the administrative law judge observed that employer failed to produce any evidence in this regard. The administrative law judge noted the testimony of claimant's wife that none of the bills has been paid by employer. Tr. at 54-59; Decision and Order at 8-9. Employer contends that the administrative law judge erred in relying on this testimony as to expenses incurred prior to Ms. Truex's marriage to claimant in 1999.[2] In the absence of any evidence from employer that the bills have been paid, the administrative law judge was not required to find unreliable Ms. Truex's testimony in this regard. *See generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).

[1] Claimant's Exhibit 2 contains an itemized lists of prescriptions filled by K-Mart pharmacy for claimant from February 9, 1996, through March 30, 2002. The list also includes the name of the medication, the prescribing doctor, the dosage, and the cost of each prescription, with a total amount of $9,862.86. Claimant's Exhibit 2 also contains medical bills from Minor and James Medical Clinic; Dynacare Northwest, Inc.; Whidbey General Hospital; Island Radiology and Nuclear Medicine; and a document entitled "Patient Quick Ledger" which lists charges and payments from June 19 and 26, July 17, August 14, September 11, 1996, and January 15, 1997.

[2] Ms. Truex testified she has lived with claimant since the end of 1996. Tr. at 38.

Employer further contends that it cannot determine which bills claimant has paid. Employer's liability for the bills is unaffected by whether claimant paid the bills. If claimant has paid the bills, employer must reimburse claimant. 33 U.S.C. §907(d)(1); *see generally Nooner v. Nat'l Steel & Shipbuilding Co.*, 19 BRBS 43 (1986). If claimant has not paid the bills, employer is liable to the provider. 33 U.S.C. §907(d)(3); *see Hunt v. Director, OWCP*, 999 F.2d 419, 27 BRBS 84(CRT) (9th Cir. 1993); *Pozos v. Army & Air Force Exchange Serv.*, 31 BRBS 173 (1997). When claimant contacted the district director's office for assistance in getting his bills paid, he indicated which bills he had paid and which remained unpaid. Cl. Ex. 8 at 123-126. In addition, claimant's wife testified on direct and cross-examination that she or claimant paid for the medications when they were picked up. Tr. at 41-42, 47, 49-52. She testified that the medical bills for claimant's treatment were unpaid, except for the $348 charge of Dr. LaFore, a psychiatrist who treated claimant for depression from June 19, 1996 to January 15, 1997, and the $200 charge of Dr. Brodie at Minor and James Medical Clinic. Tr. at 57; *see* Cl. Ex. 2 at 30-31. As claimant provided adequate evidence, subject to cross-examination, regarding his unpaid medical bills, which employer did not refute, we affirm the administrative law judge's finding that employer is liable for the expenses identified in Claimant's Exhibit 2, to be paid either to claimant or to the provider as appropriate.

Claimant contends that the administrative law judge erred in denying his motion for reconsideration in which claimant contended the administrative law judge had failed to address his claim for permanent disability benefits. Claimant raised the issue of permanency in his pre-hearing statement and employer, in its pre-hearing statement, averred that claimant had reached maximum medical improvement on October 1, 2001. The administrative law judge did not address the issue of permanency in his initial decision, and he denied claimant's motion for reconsideration on the ground that the permanency issue was not litigated at the hearing.

We agree with claimant that the administrative law judge erred in not addressing the issue of permanency. Claimant raised this issue for adjudication in his pre-hearing statement by averring he is permanently totally disabled, and employer's pre-hearing statement states claimant reached maximum medical improvement on October 1, 2001. The parties additionally submitted medical evidence addressing the nature of claimant's disability. *See, e.g.*, Cl. Ex. 1 at 16-18; Emp. Ex. 3 at 24; Cl. Ex. 4 at 40. A disability is considered permanent as of the date claimant reaches maximum medical improvement or if the condition has continued for a lengthy period and appears to be of indefinite duration, as distinguished from one in which recovery merely awaits a normal healing period. *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649 (5th Cir. 1968), *cert. denied*, 394 U.S. 976 (1969); *see also Delay v. Jones Washington Stevedore Co.*, 31 BRBS 197 (1998). The date claimant's condition became permanent requires findings of fact by the administrative law judge. *Ballesteros*, 20 BRBS 184. Because the parties raised this issue in their respective pre-hearing statements and the record contains relevant evidence,

we hold that the administrative law judge erred in denying claimant's motion for reconsideration. *Kirkpatrick v. B.B.I., Inc.*, 38 BRBS 27 (2004). We therefore remand this case for the administrative law judge to address whether claimant's disability is temporary or permanent, in accordance with applicable law.[3] *Id.*

Accordingly, the administrative law judge's Decision and Order Denying Modification is affirmed. The administrative law judge's Decision and Order Denying Motion for Reconsideration is vacated, and we remand this case to the administrative law judge to address the permanency of claimant's disability.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

[3] If the administrative law judge determines that claimant's total disability is permanent then claimant is entitled to adjustments pursuant to Section 10(f) of the Act, 33 U.S.C §910(f). *Bowen v. Director, OWCP*, 912 F.2d 348, 24 BRBS 9(CRT) (9th Cir. 1990).