U.S. Department of Labor

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

BRB No. 18-0102

CHRISTOPHER PARIS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: Aug. 14, 2018
ELECTRIC BOAT CORPORATION	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Claim for Medical Benefits of Timothy J. McGrath, Administrative Law Judge, United States Department of Labor.

Scott N. Roberts (Law Office of Scott Roberts, LLC), Groton, Connecticut, for claimant.

Mark P. McKenney (McKenney, Quigley & Clarkin, LLP), Providence, Rhode Island, for self-insured employer.

Before: BOGGS, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Claim for Medical Benefits (2017-LHC-00861) of Administrative Law Judge Timothy J. McGrath 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 rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant worked for employer for approximately ten years, first as a structural welder and then as a pipe welder. Tr. at 16. As a structural welder, he fabricated hull cylinders and other parts that attach to the hull and frame. *Id.* at 16-17. The job required frequent use of stairs and ladders and occasional balancing and awkward positions. CX 7.

Claimant underwent a pre-employment physical examination in 2007 where he disclosed his left ankle arthritis. Tr. at 19-20; CX 3. Claimant testified that, at first, he did not have any problems or limitations at work due to his ankle, but eventually it became difficult to walk up and down stairs. He testified that his ankle pain increased from his repetitive work, because he often needed to stand on "pipes and wire ways . . . that are maybe an inch or two around and keep my balance on them for hours on end . . . ." Tr. at 21-22.

Claimant first saw Dr. Bliss, an orthopedist, on April 1, 2015, for left ankle pain. Dr. Bliss noted that claimant's left ankle "has been bothering him for 15 years or so," and diagnosed him with "severe anterior osteoarthritis with fragmentation of the talus." CX 4. Dr. Bliss referred claimant to Dr. Blankenhorn, an orthopedic surgeon, who first saw claimant on April 17, 2015. Imaging revealed "severe global arthritis of the ankle joint with anterior ankle joint spurring." CX 5. Dr. Blankenhorn noted that claimant "denied any trauma to the ankle, but has had a slow insidious onset of pain in the ankle joint itself." *Id.* Dr. Blankenhorn gave claimant a corticosteroid injection but advised claimant to delay any surgical intervention. *Id.*

On or about February 18, 2016, claimant had a particularly difficult day "working on a cement floor where there was no heat . . . because staying on the cold floor really hurts my ankle . . . ." Tr. at 26. Claimant returned to see Dr. Blankenhorn on February 25, 2016, who diagnosed "severe arthritis of his ankle joint" along with anterior bone spurs. CX 5 at 3. Dr. Blankenhorn gave claimant a boot to wear for six weeks and directed him to stay off his feet as much as possible. Tr. at 24, 27.

Claimant returned to work on April 4, 2016, with restrictions not to walk up and down stairs and to sit for fifteen minutes every two hours. Tr. at 28; CX 6. Employer accommodated these restrictions. Tr. at 28. Claimant testified that his restrictions only permit him to work in the pipe shop because "everywhere else you go you have to climb up stairs to get there." *Id.* Claimant returned to Dr. Blankenhorn for a follow-up examination on June 25, 2016; Dr. Blankenhorn noted that claimant is "doing somewhat better and is back to his baseline." EX 1. Claimant testified that he is required to wear the boot at all times, including while working. Tr. at 29. Dr. Blankenhorn noted that surgical intervention for an ankle fusion may be a possibility but recommended that claimant delay surgery due to his [young] age and that claimant would return on an as-needed basis. EX 1.

Claimant filed a claim for medical benefits.[1] The administrative law judge found that claimant established a prima facie case based on his left ankle arthritis and his testimony that his working conditions could have caused his ankle pain. Decision and Order at 9. The administrative law judge further found that employer rebutted the Section 20(a) presumption, 33 U.S.C. §920(a), because Dr. Blankenhorn reported on June 15, 2016 that claimant was "back to baseline" and opined on October 6, 2016, that claimant's pain was "not related to any specific traumatic event associated to work-related injury" and that claimant's ankle arthritis is not casually related to his work. *Id.* at 11 (citing EX 1 and CX 5).

On weighing the evidence as a whole, the administrative law judge concluded that claimant failed to establish a causal connection between his ankle arthritis and his work. Decision and Order at 12. The administrative law judge found that claimant did not introduce medical evidence supportive of a causal relationship between his ankle pain and his work. Although he found claimant to be a credible witness, the administrative law judge noted that claimant testified he had no idea what actually caused his left ankle problems. *Id.* (citing Tr. at 20). The administrative law judge concluded that "Claimant's evidence addressing causality is only speculative." *Id.* Accordingly, the administrative law judge denied the claim for medical benefits.

On appeal, claimant contends that the administrative law judge erred in failing to apply the aggravation rule to his claim for medical benefits. Employer filed a response brief, urging affirmance.

Where, as here, claimant has made a prima facie case, he is entitled to the Section 20(a) presumption that his injury was caused or aggravated by his working conditions.[2] *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004). The burden then shifts to employer to rebut the presumption with substantial evidence that the injury was not caused or aggravated by claimant's working conditions. *Id.*, 380 F.3d at 605, 38 BRBS at 65(CRT). If an employer rebuts the presumption, it falls out of the case and claimant bears the burden of proving on the record as a whole that his injury was caused or aggravated by his working conditions. *Id.* Employer is liable pursuant to the

[1] Claimant's claim form states his injury is due to "repetitive stair climbing and walking [which] aggravated a pre-existent arthritic condition in the left ankle." CX 2 at 2.

[2] The administrative law judge found that claimant invoked the Section 20(a) presumption through his credible testimony that his work as a structural welder made his ankle "start[] acting up from the repetitive work that [he] was doing, climbing up and down stairs and under them . . . ." Decision and Order at 9-10 (citing Tr. at 19).

aggravation rule if claimant's working conditions aggravate his pre-existing condition resulting in pain, even if his underlying condition is not worsened. *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 44 BRBS 13(CRT) (1st Cir. 2010); *Gardner v. Director, OWCP*, 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981).

We agree with claimant that the administrative law judge's decision cannot be affirmed. The administrative law judge erroneously concluded that employer rebutted the Section 20(a) presumption based on Dr. Blankenhorn's opinion that claimant's ankle arthritis is not causally related to his work. Dr. Blankenhorn's opinion is legally insufficient to rebut the presumption because it does not address claimant's claim that his work for employer aggravated his pre-existing arthritis. *See Fields*, 599 F.3d at 56, 44 BRBS at 18(CRT) (affirming the Board's decision that employer's evidence was legally insufficient to rebut the presumption because the doctors did not address whether claimant's working conditions caused his underlying osteoarthritis to become symptomatic); *see also Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009) (affirming the Board's reversal of the administrative law judge's finding that employer rebutted the Section 20(a) presumption because the evidence did not address aggravation).

Dr. Blankenhorn's opinion that claimant's arthritis is not causally related to his work is based entirely on the fact that claimant had not suffered a traumatic injury. Dr. Blankenhorn stated that claimant did not tell him about any work-related accident that caused the onset of pain. CX 5. He also stated claimant "had significant exacerbations of his pain over the last several years, but none of these are related to any specific traumatic event associated to work-related injury." *Id.* However, the absence of a specific event is irrelevant to the question of whether claimant's everyday working conditions aggravated his underlying arthritis. Dr. Blankenhorn's opinion is simply silent on this issue, and therefore does not constitute substantial evidence of the absence of a relationship between claimant's working conditions and his increased ankle pain.[3] *Fields*, 599 F.3d at 56, 44 BRBS at 18(CRT); *Holiday*, 591 F.3d 219, 43 BRBS 67(CRT). Because Dr. Blankenhorn's opinion is legally insufficient to rebut the Section 20(a) presumption, we reverse the administrative law judge's finding in this regard.

Moreover, there is no other evidence of record legally sufficient to rebut the Section 20(a) presumption. Dr. Bliss's medical notes do not address whether claimant's work

[3] On June 15, 2016, Dr. Blankenhorn wrote that claimant has modified his work "and is tolerating this relatively well and is helping him, but he still is having some issues." EX 1.

aggravated his arthritic ankle.[4] In the absence of any evidence that could support a finding that claimant's work did not aggravate his pre-existing ankle arthritis, the Section 20(a) presumption is not rebutted. Accordingly, we reverse the administrative law judge's finding that there is not a causal relationship between claimant's ankle arthritis and his employment. *See Bath Iron Works Corp. v. Director, OWCP [Shorette]*, 109 F.3d 53, 31 BRBS 19(CRT) (1st Cir. 1997). Therefore, employer is liable for reasonable and necessary medical treatment for the work-related aggravation of his ankle arthritis. 33 U.S.C. §907; *Weikert v. Universal Maritime Service Corp.*, 36 BRBS 38 (2002). We remand the case for the administrative law judge to address the parties' contentions concerning the duration of the aggravation and employer's liability for claimant's medical care. *See generally Preston*, 380 F.3d 597, 38 BRBS 60(CRT).

[4] The administrative law judge noted that, on his intake form at Dr. Bliss's office, claimant marked that "work" and "walking" made his symptoms worse. Decision and Order at 5 (citing CX 4).

Accordingly, the administrative law judge's Decision and Order Denying Claim for Medical Benefits is reversed, and the case remanded for further proceedings consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge