



BRB No. 16-0255

MARLIN D. HAYNES	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
COOPER T. SMITH, INCORPORATED	)	DATE ISSUED: <u>Dec. 6, 2016</u>
	)	
and	)	
	)	
AMERICAN LONGSHORE MUTUAL	)	
ASSOCIATION, LIMITED, c/o AMERICAN	)	
EQUITY UNDERWRITERS	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

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

Dennis L. Brown (Law Offices of Dennis L. Brown, PC), Bellaire, Texas, for claimant.

Collin D. Seipel and Brittany S. Brettschneider (Brown Sims), Houston, Texas, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (2015-LHC-507) 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 findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant injured his left wrist and left hip on August 25, 2012, when he fell while working for employer as a longshoreman at the Port of Houston. As a result of this incident, claimant received medical treatment for left wrist pain and swelling. Claimant underwent surgery on his left hip on July 1, 2013, to remove a heterotopic ossification on the ilium bone. Employer voluntarily paid claimant temporary total disability benefits from September 7, 2012 through March 24, 2013, and temporary partial disability benefits from March 25 through October 6, 2013. 33 U.S.C. §908(b), (e). Claimant sought additional disability and medical benefits under the Act.

In his Decision and Order, the administrative law judge found that claimant sustained only transient strains/sprains from the August 2012 fall and that his work-related injuries reached maximum medical improvement on December 20, 2012. The administrative law judge rejected claimant's contention that he developed carpal tunnel syndrome as a result of the work injury to his wrist. The administrative law judge discredited claimant's subjective complaints of pain and found that claimant failed to establish that he has any residual physical impairments resulting from his work injury after the date employer ceased its voluntary payments. Accordingly, the administrative law judge denied claimant's claim for additional disability and medical benefits, finding that claimant's work-related injuries had fully resolved.

On appeal, claimant challenges the administrative law judge's denial of his claim for compensation benefits after October 6, 2013, as well as the denial of medical benefits. Employer responds, urging affirmance of the administrative law judge's decision in its entirety.

It is a well-established principle that "disability" within the meaning of the Act is an economic concept based on a medical foundation. 33 U.S.C. §902(10); *see Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 84(CRT) (2<sup>d</sup> Cir. 1997); *Director, OWCP v. Berkstressor*, 921 F.2d 306, 24 BRBS 69(CRT) (D.C. Cir. 1990). Thus, it is axiomatic that a claimant must have a work-related medical impairment as a predicate to entitlement to any benefits. *See generally Nardella v. Campbell Machine*, 525 F.2d 46, 3 BRBS 78 (9<sup>th</sup> Cir. 1975).

In addressing claimant's claim for additional disability benefits subsequent to October 6, 2013, the administrative law judge found that claimant's testimony regarding his pain and work limitations are not credible due to claimant's prior history of untruthful statements, his use of unprescribed drugs which resulted in his dismissal from a pain management program, and his reduced effort in performing his January 8, 2013, functional capacity test. Decision and Order at 14. With regard to claimant's left wrist

condition, the administrative law judge credited the opinions of Drs. Larrey,<sup>1</sup> Gabel,<sup>2</sup> Fulford<sup>3</sup> and Budoff,<sup>4</sup> that claimant's left wrist did not develop carpal tunnel syndrome as a result of his August 25, 2012, work injury, and that claimant sustained no impairment or work restrictions as a result of his left wrist injury after it reached maximum medical improvement no later than December 20, 2012. *Id.* at 19. In declining to credit the contrary opinion of Dr. Masson, the administrative law judge found that the objective tests of the other physicians undermine Dr. Masson's diagnosis of carpal tunnel syndrome.<sup>5</sup> In addition, the administrative law judge credited the opinions of Drs. Gabel, Fulford and Bufford, that, although claimant has distal radio ulnar joint (DRUJ) synovitis, this condition was not caused by the work accident. The administrative law judge also rejected the opinion of Dr. Syed that claimant has a 20 percent left wrist impairment because, in view of the opinions of the other doctors, Dr. Syed's opinion has no objective basis and is premised only on claimant's discredited complaints of pain.<sup>6</sup>

---

<sup>1</sup> Dr. Larrey, a Board-certified orthopedist, examined claimant on October 2, 2013, and August 6, 2014, did not diagnose carpal tunnel syndrome, opined that claimant's left wrist presented no limitations on his work activities, and stated that he would not assign an impairment rating to claimant's wrist. Tr. at 64-65, 72-74.

<sup>2</sup> Dr. Gabel, a Board-certified orthopedic surgeon specializing in hand and upper extremity surgery, examined claimant on April 9, 2013, opined that claimant did not exhibit carpal tunnel syndrome, and assigned no work restrictions or impairment rating as a result of claimant's left wrist condition. CX 33 at 10-11, 27-29, 32-34.

<sup>3</sup> Dr. Fulford, a Board-certified orthopedic surgeon, examined claimant on November 6, 2012, at which time he diagnosed a left wrist contusion and sprain, EX 25 at 6, and on January 8, 2013, at which time he opined that claimant was "now fit to return to full duties without restrictions." *Id.* at 14.

<sup>4</sup> Dr. Budoff, a Board-certified orthopedic surgeon, examined claimant on August 2, 2013, and, while diagnosing carpal tunnel syndrome, opined that this condition was not related to claimant's work injury. CX 12 at 1, 4.

<sup>5</sup> Dr. Masson, a Board-certified orthopedic surgeon specializing in extremity and microsurgery, examined claimant on January 3, 31 and April 19, 2013, and diagnosed carpal tunnel syndrome. CX 32 at 20. He recommended surgery for this condition. *Id.*

<sup>6</sup> Dr. Syed, a physical medicine specialist, examined claimant on multiple occasions and diagnosed claimant with a sprain/strain and triangular fibrocartilage tear of the left wrist. CX 22 at 6.

With regard to claimant's left hip injury, the administrative law judge credited Dr. Larrey's opinion that claimant had no physical limitations or impairment as a result of that condition as of October 2, 2013. *See* Tr. at 65-66, 70-73. The administrative law judge rejected the contrary opinion of Dr. Syed, who diagnosed impingement neuropathy and stated claimant has a seven percent lower extremity impairment, because Dr. Larrey, by training, is better qualified to diagnose claimant's condition and because Dr. Syed relied on claimant's discredited complaints of pain. *See* Decision and Order at 19.

We affirm the administrative law judge's denial of claimant's claim for additional disability compensation. The administrative law judge rationally rejected claimant's subjective complaints of pain and weighed the medical evidence of record. Decision and Order at 14. It is well established that an administrative law judge's credibility determinations must be affirmed unless they are inherently incredible or patently unreasonable. *Lennon v. Waterfront Transport*, 20 F.3d 658, 28 BRBS 22(CRT) (5<sup>th</sup> Cir. 1994); *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9<sup>th</sup> Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). The administrative law judge is entitled to weigh the medical evidence and draw his own inferences from it, and is not bound to accept the opinion or theory of any particular witness, *Avondale Industries, Inc. v. Director, OWCP [Cuevas]*, 977 F.2d 186, 26 BRBS 111(CRT) (5<sup>th</sup> Cir. 1992); thus, the Board is not empowered to reweigh the evidence. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5<sup>th</sup> Cir. 1962). Similarly, the administrative law judge did not abuse his discretion in assigning little weight to the opinion of Dr. Syed, who relied on the accuracy of claimant's complaints of pain.<sup>7</sup> *See generally Bis Salamis, Inc. v. Director, OWCP [Meeks]*, 819 F.3d 116, 50 BRBS 29(CRT) (5<sup>th</sup> Cir. 2016); *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5<sup>th</sup> Cir. 2000). The administrative law judge reviewed the medical evidence of record, *see* Decision and Order at 6-12, and rationally exercised his discretion in crediting the medical opinions stating claimant does not have any residual physical impairment to his left wrist and left hip from the work injury. *Id.* at 19. Accordingly, as the administrative law judge's conclusions are supported by substantial evidence of record, we affirm the administrative law judge's finding that claimant did not establish his entitlement to additional disability benefits subsequent to October 6, 2013. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5<sup>th</sup> Cir. 1961).

Claimant also challenges the administrative law judge's finding that he is not entitled to ongoing medical benefits for his wrist and hip injuries. Specifically, claimant sought authorization for carpal tunnel surgery and a second pain management program

---

<sup>7</sup> Thus, contrary to claimant's argument on appeal, the administrative law judge did review and evaluate Dr. Syed's testimony before declining to rely on it. *See generally John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2<sup>d</sup> Cir. 1961).

for his hip injury. Section 7(a) of the Act, 33 U.S.C. §907(a), states that “[t]he employer shall furnish such medical, surgical, and other attendance or treatment . . . for such period as the nature of the injury or the process of recovery may require.” See *M. Cutter Co., Inc. v. Carroll*, 458 F.3d 991, 40 BRBS 53(CRT) (9<sup>th</sup> Cir. 2006); *Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988). Medical care must be appropriate for the injury, see 20 C.F.R. §702.402, and claimant must establish that the requested services are reasonable and necessary for the treatment of the work injury. See *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5<sup>th</sup> Cir. 1993);<sup>8</sup> *Buckland v. Dep’t of the Army/NAF/CPO*, 32 BRBS 99 (1997).

We affirm the administrative law judge’s finding that claimant is not entitled to additional medical benefits for his left wrist condition. As discussed, the administrative law judge rationally found that claimant does not have work-related carpal tunnel syndrome and that his work-related wrist condition fully resolved without any impairment or the need for further treatment. Thus, the administrative law judge rationally rejected Dr. Masson’s opinion that claimant requires surgery for work-related carpal tunnel syndrome. See *Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9 (2001), *aff’d*, 32 F. App’x 126 (5<sup>th</sup> Cir. 2002); *Brooks v. Newport News Shipbuilding & Dry Dock Co.*, 26 BRBS 1 (1992), *aff’d sub nom. Brooks v. Director, OWCP*, 2 F.3d 64, 27 BRBS 100(CRT) (4<sup>th</sup> Cir. 1993).

With respect to his hip condition, on July 1, 2013, claimant underwent the excision of the left ilium heterotopic bone. See EX 24 at 3-4. During this procedure, claimant’s lateral femoral cutaneous nerve was damaged. See Tr. at 46-48. Dr. Parameswaran stated that this surgery was related to the claimant’s work injury. See CX 10 at 46. In contrast, Dr. Larrey, who reviewed claimant’s medical records and examined claimant on October 2, 2013, and August 6, 2014, stated that the surgery was not related to the work accident because the ossification present pre-existed claimant’s work injury. See Tr. at 104-110. As a consequence of this surgery, claimant alleged he experienced numbness and tingling in his left thigh for which he was subsequently enrolled in a pain management program. See EX 34. Claimant was dismissed from this program for cause on June 5, 2014. *Id.* at 10. He subsequently claimed entitlement to additional pain management care for the nerve damage.

We affirm the denial of a second pain management program. Claimant’s claim for additional pain management is based on his subjective complaints of pain, which the

---

<sup>8</sup> Contrary to the administrative law judge’s implication, a claimant may be entitled to medical benefits in the absence of disability so long as he establishes that it is necessary treatment for the work injury. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5<sup>th</sup> Cir. 1993).

administrative law judge rationally discredited. *Lennon*, 20 F.3d 658, 28 BRBS 22(CRT); *see* Decision and Order at 14. Moreover, on appeal, claimant has not cited any medical evidence of record stating that he requires additional medical treatment for his work-related hip condition after the date the pain management program was terminated on June 5, 2014. As claimant has not established error in the administrative law judge's denial of additional medical benefits for the work-related hip injury, we affirm the finding that employer is not liable for further medical benefits. *See Baker*, 991 F.3d 163, 27 BRBS 14(CRT).

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

SO ORDERED.

---

JUDITH S. BOGGS  
Administrative Appeals Judge

---

GREG J. BUZZARD  
Administrative Appeals Judge

---

RYAN GILLIGAN  
Administrative Appeals Judge