U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB Nos. 16-0417
and 16-0417A

GUILLERMO MALDONADO	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	DATE ISSUED: June 6, 2017
	)	
GULF COPPER DRY DOCK & RIG REPAIR	)	
	)	
and	)	
	)	
AMERICAN LONGSHORE MUTUAL ASSOCIATION, LIMITED	)	
	)	
Employer/Carrier-Respondents	)	
Cross-Petitioners	)	DECISION and ORDER

Appeals of the Order Admitting Proposed Exhibit 31 and Reopening the Record, the Decision and Order, and the Supplemental Order Amending Decision of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

William G. Pulkingham (Rendon & Associates), Houston, Texas, for claimant.

Kevin A. Marks and Scott R. Huete (Melchiode Marks King LLC), New Orleans, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant appeals and employer cross-appeals the Order Admitting Proposed Exhibit 31 and Reopening the Record, the Decision and Order, and the Supplemental

Order Amending Decision (2015-LHC-00510) 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 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 injured his low back and knees on September 15, 2011, during the course of his employment with employer as a sandblaster/painter. Employer voluntarily paid compensation and provided medical benefits. Claimant underwent right knee surgery by Dr. Siller, who released claimant to return to light-duty work on December 28, 2011. CX 6 at 16; EXs 6 at 18, 21 at 8. Employer terminated its compensation payments on January 5, 2012. EX 17 at 7. Claimant did not respond to employer's January 30, 2012 offer of light-duty work in its office. EX 3 at 1. Claimant received pain management treatment from Dr. Cardona at Bodies in Balance from May 25, 2012 to August 3, 2012, for which employer declined to pay. CX 18; EX 21 at 9-12, 47.

Claimant filed a claim under the Act that was date-stamped by the Office of Workers' Compensation Programs (OWCP) on October 27, 2014. EX 17 at 50. Claimant sought ongoing compensation for temporary total disability, 33 U.S.C. §908(b), from January 12, 2012, and medical expenses totaling $16,270 from Bodies in Balance and $1,944.63 from UTMB of Galveston. Employer challenged, inter alia, the timeliness of the claim and the compensability of Dr. Cardona's treatment.

In his decision, the administrative law judge found that claimant's claim was timely filed under Section 13 of the Act, 33 U.S.C. §913. Decision and Order at 11-12. The administrative law judge found that claimant's right knee condition reached maximum medical improvement 12 weeks after his surgery on November 9, 2011. *Id*. at 14. The administrative law judge rejected claimant's contention that he did not receive employer's January 2012 offer of a light-duty job at its Galveston facility, and found, based on this offer, that employer established the availability of suitable alternate employment. The administrative law judge ordered employer to pay claimant compensation for permanent total disability, 33 U.S.C. §908(a), from January 12 to January 30, 2012; the administrative law judge found that claimant did not have a loss in wage-earning capacity after this date. *Id*. The administrative law judge found that employer authorized necessary treatment at Bodies in Balance, which, therefore, is compensable under Section 7, 33 U.S.C. §907, and he also ordered employer to pay the medical bill for claimant's initial treatment at UTMB Galveston.[1] *Id*. at 15.

[1] In his Supplemental Order Amending Decision, the administrative law judge stated that employer should pay the medical providers directly, rather than pay claimant. Order at 2.

Claimant appeals the administrative law judge's maximum medical improvement and suitable alternate employment findings. Claimant also challenges the potential implications of the administrative law judge's evaluation of the reports of Dr. Howie, and he further asserts the decision does not comport with the Administrative Procedure Act (APA), 5 U.S.C. §557, because the administrative law judge did not discuss all of claimant's work-related conditions. BRB No. 16-0417. Employer responds that claimant's contentions are without merit. Claimant filed a reply brief. Employer appeals the administrative law judge's findings that the claim was timely filed pursuant to Section 13 and the compensability of claimant's treatment at Bodies in Balance. BRB No. 16-0417A. Claimant filed a response brief, and employer filed a reply brief.

Section 13

We first address employer's contention that the administrative law judge erred in finding that the claim was timely filed. Section 13(a), 33 U.S.C. §913(a), applies in traumatic injury cases and provides that the right to compensation is barred unless the claim is filed within one year of the date claimant is aware, or in the exercise of reasonable diligence should have been aware, of the relationship between the injury and the employment. 33 U.S.C. §913(a);[2] *Ceres Gulf, Inc. v. Director, OWCP [Fagan]*, 111 F.3d 17, 31 BRBS 21(CRT) (5th Cir. 1997). Employer must establish that it filed a Section 30(a) report of injury, 33 U.S.C. §930(a), as a predicate to rebutting the Section

[2] Section 13(a) provides:

> Except as otherwise provided in this section, the right to compensation for disability or death under this chapter shall be barred unless a claim therefore [sic] is filed within one year after the injury or death. If payment of compensation has been made without an award on account of such injury or death, a claim may be filed within one year after the date of the last payment. Such claim shall be filed with the deputy commissioner in the compensation district in which such injury or death occurred. The time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment.

33 U.S.C. §913(a).

20(b) presumption that the claim was timely filed, 33 U.S.C. §920(b).[3] *Blanding v. Director, OWCP*, 186 F.3d 232, 33 BRBS 114(CRT) (2d Cir. 1999); 20 C.F.R. §§702.201-202. Pursuant to Section 30(f), 33 U.S.C. §930(f), the Section 13(a) time limitation is tolled until such time as the employer complies with Section 30(a).[4] *Aurelio v. Louisiana Stevedores, Inc.*, 22 BRBS 418 (1989), *aff'd*, 924 F.2d 105 (5th Cir. 1991) (table).

We agree with employer that the administrative law judge erred in finding that employer is precluded from rebutting the Section 20(b) presumption because employer did not file a Section 30(a) report within 10 days of the September 15, 2011 work injury and because the notice of injury form inaccurately stated claimant's address. By letter dated September 30, 2011, employer submitted an LS-202, Notice of Injury Form, to the OWCP, which apparently was received on October 14, 2011. EX 17 at 4. The form contains the Ball Street address in Galveston where claimant lived while working for employer.[5] 33 U.S.C. §930(a); 20 C.F.R. §702.202(b). Claimant supplied this address to employer on February 9, 2011. *See* EX 1 at 11. As employer's notice of injury contains

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[3] Section 20(b) provides:

> In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary--
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> ***
>
> (b) That sufficient notice of such claim has been given.

33 U.S.C. §920(b).

[4] Section 30(f) provides in pertinent part that:

> the limitations in subdivision (a) of section 913 of this title shall not begin to run against the claim of the injured employee or his dependents entitled to compensation, or in favor of either the employer or the carrier, *until* such report shall have been furnished as required by the provisions of subsection (a) of this section.

33 U.S.C. §930(f) (emphasis added).

[5] Claimant lived in Galveston while working for employer, rather than commute approximately 100 miles from Cleveland, Texas, where he maintained his primary residence. *See* Tr. at 42-46; EX 1 at 29-35. Section 30(a) requires that the notice of injury provide the injured worker's address. 33 U.S.C. §930(a); 20 C.F.R. §702.202(b).

the address claimant provided to employer, there is no basis for the administrative law judge's finding that employer incorrectly filled out the Section 30(a) report.

More significantly, while Section 30(a) provides that employer's first report of injury "shall be filed" with the OWCP within 10 days of the injury, Section 30(f) states only that the Section 13(a) limitations period is tolled *until* the Section 30(a) report is filed. *See* n.4, *supra*. Thus, the Section 13(a) time limitation was tolled pursuant to Section 30(f) only until October 14, 2011, at the latest. Accordingly, the administrative law judge's finding that claimant's claim was timely filed because employer did not comply with Section 30(a) is reversed.

Section 13(a) further provides that the time for filing a claim is tolled until one year after the last voluntary payment of compensation, which in this case was on January 5, 2012.[6] EX 16 at 1; *see* n.2, *supra*. Thus, the Section 13(a) limitations period commenced on this date. *See Vodanovich v. Fishing Vessel Owners Marine Ways, Inc.*, 27 BRBS 286 (1994); 33 U.S.C. §913(a). The OWCP received claimant's LS-203, Claim for Compensation, on October 27, 2014. EX 17 at 50. This claim was untimely filed with respect to the date of the last voluntary payment.

Citing *Walker v. Rothschild Int'l Stevedoring Co.*, 526 F.2d 1137, 3 BRBS 6 (9th Cir. 1975), the administrative law judge further stated that attending physicians' reports indicating the possibility of continuing disability filed with the OWCP within a year after the termination of voluntary payments will suffice to meet the requirements of Section 13(a). *See* Decision and Order at 11. This is an accurate statement of the law. Any writing filed with the OWCP may constitute a claim so long as it discloses an intention to assert a right to compensation. *Avondale Industries, Inc. v. Alario*, 355 F.3d 848, 37 BRBS 116(CRT) (5th Cir. 2003); *Vodanovich*, 27 BRBS 286; *Bingham v. General Dynamics Corp.*, 14 BRBS 614 (1982); *see also Fireman's Fund Ins. Co. v. Bergeron*, 493 F.2d 545 (5th Cir. 1974). However, the administrative law judge did not discuss any evidence of record in terms of this law.[7] Therefore, we vacate the administrative law

[6] The administrative law judge cited the text of Section 13(b)(1), 33 U.S.C. §913(b)(1), suggesting that employer did not timely raise a statute of limitations defense. As employer raised the issue at the first hearing before an administrative law judge, employer's defense was not waived. *See Lewis v. Norfolk Shipbuilding & Dry Dock Co.*, 20 BRBS 126 (1987); 33 U.S.C. §919(d).

[7] The administrative law judge merely acknowledged claimant's argument that Dr. Cardona sought reimbursement for his services within 12 months after employer's voluntary payment of benefits ceased, but did not analyze the evidence in light of controlling law.

judge's finding that claimant filed a timely claim under the Act. We remand the case for him to address any evidence relevant to whether claimant filed with the OWCP, within one year of the last voluntary payment, any other writing that could constitute a claim under the Act.

Medical Benefits

Employer challenges the administrative law judge's finding that it is liable for the medical treatment provided at Bodies in Balance. The administrative law judge found that Donnie Amaya, employer's claims adjuster, authorized Dr. Cardona's treatment at Bodies in Balance and that this treatment was reasonable and necessary based on the deposition testimony of claimant's treating physician, Dr. Siller. Decision and Order at 11, 15. Accordingly, the administrative law judge ordered that employer pay claimant's medical bill from Bodies in Balance, totaling $16,270.

Section 7(a) of the Act requires that employer pay for its injured worker's medical treatment. 33 U.S.C. §907(a).[8] In order for a medical expense to be assessed against the employer, the expense must be reasonable and necessary for treatment of the work injury. *Ramsey Scarlett & Co. v. Director, OWCP [Fabre]*, 806 F.3d 327, 49 BRBS 87(CRT) (5th Cir. 2015); *Weikert v. Universal Maritime Service, Corp.*, 36 BRBS 38 (2002). Claimant must request prior authorization for changing medical providers. 20 C.F.R. §702.406(a); *see Lynch v. Newport News Shipbuilding & Dry Dock Co.*, 39 BRBS 29 (2005); 33 U.S.C. §907(b), (d)(1).

The administrative law judge found credible the testimony of claimant's daughter, Jennifer Gonzales, that Mr. Amaya approved a change of physician from Dr. Siller, an orthopedist, to Dr. Cardona, a psychiatrist, for pain management treatment. Decision and Order at 11, 15; *see* Tr. at 117, 129. The administrative law judge also credited Dr. Siller's deposition testimony that he authorized pain management treatment at Bodies in Balance. Decision and Order at 15; *see* CX 18; EX 21 at 9-12, 47. The administrative law judge found that Dr. Siller did not attempt to second guess Dr. Cardona's treatment modalities because pain management is not his specialty and he was unfamiliar with the therapy recommended by Dr. Cardona, who is board-certified in neurology and psychiatry. Decision and Order at 11; *see* EX 21 at 26.

[8] Employer's liability for medical benefits is not affected by whether claimant's claim for compensation was timely filed under Section 13. *See generally Marshall v. Pletz*, 317 U.S. 383 (1943); *Wheeler v. Newport News Shipbuilding & Dry Dock Co.*, 637 F.3d 280, 45 BRBS 9(CRT) (4th Cir.), *cert. denied*, 132 S.Ct. 757 (2011); *Siler v. Dillingham Ship Repair*, 28 BRBS 38 (1994).

On appeal, employer relies on Mr. Amaya's hearing testimony that he denied a request for treatment at Bodies in Balance and that he did not authorize Dr. Cardona's treatment. *See* Tr. at 162, 189-190. Moreover, employer argues that Dr. Cardona's treatment modalities, such as spiritual health coaching, spiritual dowsing, healing foods nutrition sessions, the art of breathing, aromatherapy, and yoga postural breathing exercises are not reasonable and necessary. While Dr. Siller testified that he was skeptical of some of Dr. Cardona's treatment methods, he conceded that Dr. Cardona is better qualified to treat patients with chronic pain syndrome, he relies upon the pain management specialist to determine appropriate modalities, and the medical records from Bodies in Balance show improvement in claimant's physical and psychological condition over the course of his treatment. EX 21 at 13-19, 24-26, 42, 49; CX 21 at 30-31.

An administrative law judge's credibility determinations are not to be overturned unless they are "inherently incredible or patently unreasonable." *Lennon v. Waterfront Transport*, 20 F.3d 658, 28 BRBS 22(CRT) (5th Cir. 1994); *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Moreover, it is impermissible for the Board to substitute its views for those of the administrative law judge; thus, the administrative law judge's findings may not be disregarded merely on the basis that other inferences could be drawn from the evidence. *See Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991). As the administrative law judge's crediting of Ms. Gonzales's testimony that Mr. Amaya authorized Dr. Cardona's treatment and Dr. Siller's deposition testimony that he referred claimant to Dr. Cardona and deferred to Dr. Cardona's expertise on the reasonableness of the treatment modalities is rational and supported by substantial evidence, we affirm the administrative law judge's conclusion that employer is liable for the medical treatment provided by Dr. Cardona at Bodies in Balance. *Fabre*, 806 F.3d 327, 49 BRBS 87(CRT); *Pozos v. Army & Air Force Exch. Serv.*, 31 BRBS 173 (1997).

APA

We next address claimant's appeal. BRB No. 16-0417. Claimant contends that the administrative law judge's decision does not comport with the APA because it fails to address all of the medical conditions he asserts are related to the work accident.[9] We disagree. In his decision, the administrative law judge listed these other conditions as: disc protrusion at L5-S1, lumbar radiculitis, sciatica, chronic pain syndrome, depression and anxiety. The administrative law judge's finding that claimant has work-related degenerative osteoarthritis is sufficient under the APA with respect to the enumerated

[9] The APA requires the administrative law judge's decision to include a statement of "findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented in the record." 5 U.S.C. §557(c)(3)(A); *see* 33 U.S.C. §919(d).

back conditions. Decision and Order at 13; *see generally James J. Flanagan Stevedores, Inc. v. Gallagher*, 219 F.3d 426, 34 BRBS 35(CRT) (5th Cir. 2000).

Regarding the pain syndrome, depression and anxiety, the administrative law judge sufficiently addressed these conditions when he found that Dr. Cardona's treatment was reasonable and necessary. Claimant testified that he sought treatment for depression from Dr. Cardona. Tr. at 82-83. The June 26, 2012 mental health assessment at Bodies in Balance diagnosed claimant with severe depression and anxiety associated with a pain disorder and recommended that claimant receive chronic pain management treatment, which included group psychotherapy and individual counseling, and which it subsequently provided claimant. CX 21 at 2-5. The last medical records from Bodies in Balance dated August 3, 2012, note that claimant "is making significant progress in the chronic pain program" with "a significant decrease in anxiety" and "is more energetic and regaining interests in activities." *Id.* at 30. The note from claimant's last individual counseling session states that claimant "presents with a brighter affect and congruent mood" and "a significant decrease in anxiety." *Id*. at 31. As the administrative law judge found that the psychological treatment from Bodies in Balance was compensable, he was not required to further address these psychological conditions.[10] *See generally Gallagher*, 219 F.3d 426, 34 BRBS 35(CRT); *H.B. Zachry Co. v. Quinones*, 206 F.3d 474, 34 BRBS 23(CRT) (5th Cir. 2000).

Claimant also raises the absence in the administrative law judge's Order of an award for future medical treatment. We agree. In his decision, the administrative law judge found that claimant "had no knee or back pain . . . until the fall at work after which his underlying degenerative osteoarthritis became symptomatic resulting in a meniscectomy and eventual need for bilateral knee replacements." Decision and Order at 13. However, in the "Order" portion of his decision, the administrative law judge did not hold employer liable for future treatment for claimant's work injuries. Pursuant to Section 7(a) of the Act, employer remains liable for medical benefits "for such period as the nature of the injury or the process of recovery may require." On remand, the administrative law judge should determine if there is an evidentiary basis for an award of future medical benefits and, if so, enter an award for reasonable and necessary treatment for claimant's work-related back and knee injuries. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993); *see Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004) (award of future medical benefits "does not prevent the parties from further litigating the propriety or reasonableness of any specific medical expense."); 20 C.F.R. §702.348; n.8, *supra*.

[10] Claimant did not seek additional treatment for chronic pain, depression and anxiety. *See* Cl. Post-Hearing Br. at 29.

Maximum Medical Improvement

Claimant raises on appeal additional issues which we shall address in the event the administrative law judge finds on remand that claimant's claim was timely filed. These issues are moot if claimant's claim was untimely filed.

Claimant challenges the administrative law judge's finding that his disability was permanent rather than temporary. The administrative law judge did not find that claimant's condition reached maximum medical improvement on a particular date, but he credited Dr. Vanderweide's deposition testimony that claimant reached maximum medical improvement 12 weeks after undergoing right knee arthroscopic surgery on November 9, 2011. Decision and Order at 14; *see* EX 4 at 20. In contradiction to this finding, the administrative law judge awarded claimant compensation for permanent total disability from January 12 to January 30, 2012, a period less than 12 weeks after the surgery. Claimant also asserts the administrative law judge erred by focusing solely on the right knee injury, because he subsequently underwent pain management treatment and the administrative law judge found that he requires bilateral knee replacements. We agree that these considerations require remand. Accordingly, if necessary on remand, the administrative law judge should reconsider the date of maximum medical improvement and address the nature of all of claimant's disabling conditions, consistent with law. *Gulf Best Electric, Inc. v. Methe*, 396 F.3d 601, 38 BRBS 99(CRT) (5th Cir. 2004); *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649 (5th Cir. 1968), *cert. denied*, 394 U.S. 976 (1969); *Misho v. Global Linguist Solutions*, 48 BRBS 13 (2014).

Suitable Alternate Employment

Claimant challenges the administrative law judge's finding that employer established the availability of suitable alternate employment. Claimant contends he was not aware he had been released for light-duty work by Dr. Siller in December 2011 and that he did not receive employer's January 30, 2012 offer of light-duty employment in Galveston. Claimant also contends the position is not geographically accessible to him because, after the work injury, he moved over 100 miles from Galveston to his primary residence in Cleveland, Texas. *See* Tr. at 42-46. Moreover, claimant asserts that until March 8, 2012, he was receiving injury-related physical therapy near his residence in Cleveland, Texas. Claimant also argues that the paper-filing position was sheltered employment, because he does not speak English, and he left school in Mexico by age 14. *See* CX 9.

The administrative law judge found that employer does not contest claimant's inability to perform his usual work. Decision and Order at 14. Once claimant establishes that he is unable to perform his usual work due to his work injury, the burden shifts to employer to demonstrate the availability of realistic job opportunities within the geographic area where claimant resides, which claimant, by virtue of his age, education, work experience, and physical restrictions, is capable of performing. *New Orleans*

(Gulfwide) Stevedores v. Turner, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981). Employer can meet its burden of establishing the availability of suitable alternate employment by offering claimant a job in its facility, including a light-duty job, provided that it is necessary work. *Darby v. Ingalls Shipbuilding, Inc.*, 99 F.3d 685, 30 BRBS 93(CRT) (5th Cir. 1996). Sheltered employment, on the other hand, is a job for which clamant is paid even if he cannot do the work; such employment is insufficient to constitute suitable alternate employment. *See Buckland v. Dep't of the Army/NAF/CPO*, 32 BRBS 99 (1997).

The administrative law judge found that employer offered claimant suitable light-duty work at its Galveston facility in conformance with Dr. Siller's December 29, 2011 work release. CX 5 at 15; EX 3. The administrative law judge rejected claimant's contention that he was unaware that Dr. Siller had released him for light-duty work and did not receive this job offer. The administrative law judge relied on Dr. Vanderweide's deposition testimony that, on February 29, 2012, he discussed the work release with claimant and claimant informed him that he had been offered light-duty work, which he declined. EX 4 at 15. As the administrative law judge's finding is supported by substantial evidence, we reject claimant's contention that he was unaware of the light-duty job offer. *See generally Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 29 BRBS 79(CRT) (5th Cir. 1995); *Mijangos*, 948 F.2d 941, 25 BRBS 78(CRT); *Cordero*, 580 F.2d 1331, 8 BRBS 744.

Regarding claimant's contention that employer's light-duty job offer at its facility in Galveston is not in the proper geographic area, the administrative law judge is afforded considerable discretion in determining the relevant labor market in evaluating whether employer has established the availability of suitable alternate employment. *Wood v. U.S. Dep't of Labor*, 112 F.3d 592, 31 BRBS 43(CRT) (1st Cir. 1997);[11] *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 28 BRBS 96(CRT) (4th Cir. 1994).[12] The proper

[11] In *Wood*, the United States Court of Appeals for the First Circuit held that an employee's chosen community is presumptively the proper choice for determining his post injury earning capacity, unless and until employer shows that the move to the community was unreasonable, or that a refusal to move again is unreasonable, or that reasonableness aside, the prejudice to employer is just too severe. As to what constitutes justification, the court agreed that economic judgments ought generally to control and that personal grounds may not be an excuse for refusing to take a better job. *Wood*, 112 F.3d at 597, 31 BRBS at 46-47(CRT).

[12] In *See*, the United States Court of Appeals for the Fourth Circuit held that a variety of factors should be considered in determining the relevant labor market, including claimant's residence at the time he filed for benefits, his motivation for relocating after the accident, the legitimacy of that motivation, the duration of his stay in

community or geographic area in which an employer must identify suitable jobs is based on the facts of each case. *See Patterson v. Omniplex World Services*, 36 BRBS 149 (2003); *Holder v. Texas Eastern Products Pipeline, Inc.*, 35 BRBS 23 (2001); *Kilsby v. Diamond M Drilling Co.*, 6 BRBS 114 (1977), *aff'd sub nom. Diamond M Drilling Co. v. Marshall*, 577 F.2d 1003, 8 BRBS 658 (5th Cir. 1978). Typically, the relevant community is where the claimant resides or where he resided at the time of his injury. *See Beumer v. Navy Personnel Command/MWR*, 39 BRBS 98 (2005); *Wilson v. Crowley Maritime*, 30 BRBS 199 (1996).

The administrative law judge did not address the suitability of the light-duty job at employer's facility in Galveston in terms of its location or in view of claimant's limited education. *See generally Ceres Marine Terminal v. Hinton*, 243 F.3d 222, 35 BRBS 7(CRT) (5th Cir. 2001); CX 22. Therefore, the administrative law judge must address these issues on remand if claimant's claim was timely filed. As employer also offered a labor market survey, the administrative law judge should address this evidence if he finds that the proffered job with employer is not suitable. EX 18; CX 22; *see generally Montoya v. Navy Exch. Serv. Command*, 49 BRBS 51 (2015). Finally, the administrative law judge should address claimant's alternative contention that, even if employer's job offer established suitable alternate employment, he is entitled to total disability compensation during the period from May 25 to September 20, 2012, when Dr. Cardona stated in the attending physician's reports that claimant was totally disabled. CX 28 at 29, 33; *see J.R. [Rodriguez] v. Bollinger Shipyard, Inc*., 42 BRBS 95 (2008), *aff'd sub nom. Bollinger Shipyards, Inc. v. Director, OWCP*, 604 F.3d 864, 44 BRBS 19(CRT) (5th Cir. 2010).

Admission of Evidence

Claimant challenges the implication of the administrative law judge's consideration of Dr. Howie's March 31, 2015 report stating that claimant requires bilateral knee replacements. The administrative law judge initially granted employer's motion to exclude this exhibit. Tr. at 123. After the hearing, the administrative law judge reconsidered this ruling and, upon informing the parties, determined that the exhibit could be essential to a decision on the issue of the necessity of bilateral knee replacement surgery, and that inclusion of the exhibit could potentially avoid the need for a modification hearing. Order Admitting Proposed Exhibit 31 and Reopening the Record at 3. Thus, the administrative law judge admitted the exhibit. In his Decision and Order,

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the new community, his ties to the new community, the availability of suitable jobs in that community as opposed to those in his former residence and the degree of undue prejudice to employer in having to prove suitable alternate employment in the new community. *See*, 36 F.3d at 382-384, 28 BRBS at 104-105(CRT).

however, the administrative law judge did not specifically rely on Dr. Howie's opinion for any of his findings of fact.

On appeal, claimant contends that the administrative law judge's order with respect to the admission of Dr. Howie's report precludes his obtaining Section 22 modification in the future for knee replacement surgery, based on a change of condition. 33 U.S.C. §922. We reject this contention.

We note, first, that claimant offered Dr. Howie's report into evidence. Moreover, upon finding the evidence relevant, the administrative law judge properly admitted it. *See* 20 C.F.R. §702.338. In addition, the admission of the report does not constrain claimant's ability to seek modification of the award if he becomes disabled after undergoing knee surgery, assuming his original claim was timely filed. Claimant must seek modification within one year of the last payment of compensation or the last adverse decision, whichever is later, and establish that his condition has changed or that there was a mistake in a determination of fact in the prior decision. 33 U.S.C. §922; *Metropolitan Stevedore Co. v. Rambo [Rambo I]*, 515 U.S. 291, 30 BRBS 1(CRT) (1995); *Huntington Ingalls Ind., Inc. v. Eason*, 788 F.3d 118, 49 BRBS 33(CRT) (4th Cir. 2015), *cert. denied*, 136 S.Ct. 1376 (2016); *Pacific Ship Repair & Fabrication, Inc. v. Director, OWCP [Benge]*, 687 F.3d 1182, 46 BRBS 35(CRT) (9th Cir. 2012); *Betty B Coal Co. v. Director, OWCP*, 194 F.3d 491 (4th Cir. 1999); *Moore v. Virginia Int'l Terminals, Inc.*, 35 BRBS 28 (2001); *see also Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9 (2001), *aff'd mem.,* 32 F. App'x 126 (5th Cir. 2002); *Ezell v. Direct Labor, Inc.*, 33 BRBS 19 (1999). As previously stated, a claim for medical benefits is not subject to any time limitations.

Accordingly, the administrative law judge's finding that claimant's claim was timely filed is vacated, and the case remanded for further consideration in accordance with this opinion. Should the administrative law judge find on remand that the claim was timely filed, he must address claimant's arguments regarding the date of maximum medical improvement and suitable alternate employment. Moreover, the administrative law judge should address claimant's entitlement to future medical benefits for his work injury and include an order to that effect. In all other respects, the Order Admitting Proposed Exhibit 31 and Reopening the Record, the Decision and Order, and the Supplemental Order Amending Decision are affirmed.

SO ORDERED.

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GREG J. BUZZARD
Administrative Appeals Judge

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RYAN GILLIGAN
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge