BRB No. 12-0468

RONNIE W. ADAMS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SERVICE EMPLOYEES INTERNATIONAL, INCORPORATED	)	DATE ISSUED: 03/26/2013
	)	
and	)	
	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order on Remand Denying Claimant's Request for Modification of Kenneth A. Krantz, Administrative Law Judge, United States Department of Labor.

Ronnie W. Adams, Mount Croghan, South Carolina, *pro se*.

Grover E. Asmus (Asmus & Gaddy, LLC), Mobile, Alabama, for employer/carrier.

Before: SMITH, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order on Remand Denying Claimant's Request for Modification (2008-LDA-00323) of Administrative Law Judge Kenneth A. Krantz 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 Defense Base Act, 42 U.S.C. §1651 *et seq*. (the Act). In an appeal by a claimant without representation by counsel, 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. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

This case has been before the Board twice previously. Only the pertinent facts and procedural history will be reiterated. Claimant, who had been diagnosed with degenerative disc disease prior to working for employer, sustained neck and back injuries on October 26, 2005, when the truck he was driving was struck from behind by another motor vehicle in Iraq. In his initial Decision and Order, the administrative law judge applied Section 20(a), 33 U.S.C. §920(a), to presume that claimant's post-December 2005 back and neck conditions are related to the work accident; he found that employer established rebuttal of the Section 20(a) presumption, and determined that, on the record as a whole, claimant's post-December 11, 2005, symptoms are not causally related to his employment with employer. The administrative law judge found that claimant was unable to resume his usual employment duties with employer during the period that his symptoms were work-related and that employer did not establish the availability of suitable alternate employment during that time. Accordingly, the administrative law judge awarded claimant temporary total disability benefits from October 27 through December 11, 2005, as well as medical benefits related to his cervical strain. 33 U.S.C. §§907, 908(b).

Claimant appealed the decision, BRB No. 09-0872, and the Board dismissed the appeal, remanding the case to the administrative law judge for modification proceedings. On March 30, 2010, the administrative law judge denied claimant's request for modification, finding that claimant's new evidence did not warrant a finding that there was a mistake in fact in the initial evaluation of the medical evidence of record. Claimant appealed this decision to the Board, BRB No. 10-0435, and the Board, in an Order dated April 29, 2010, reinstated claimant's prior appeal, BRB No. 09-0872, and consolidated claimant's two appeals for purposes of decision. The Board affirmed the award of temporary total disability benefits and affirmed the denial of benefits subsequent to December 11, 2005. Nevertheless, in light of two new exhibits submitted by claimant, the Board vacated the denial of claimant's request for modification and remanded the case for the administrative law judge to reconsider the request for modification. *Adams v. Service Employees Int'l.*, BRB Nos. 09-0872, 10-0435 (Jan. 19, 2011).

On remand, the administrative law judge again denied modification, finding the newly submitted evidence to be unreasoned and adding no substantive content to the doctors' previous opinions. Claimant, without the assistance of counsel, appeals this decision. Employer responds, urging affirmance.

Section 22, 33 U.S.C. §922, provides the only means for changing otherwise final compensation orders. Under Section 22, any party-in-interest, at any time within one year of the last payment of compensation or within one year of the rejection of a claim, may request modification because of a mistake in fact or change in condition.

Metropolitan Stevedore Co. v. Rambo [Rambo I], 515 U.S. 291, 30 BRBS 1(CRT) (1995); 20 C.F.R. §702.373. The party requesting modification bears the burden of showing that the claim comes within the scope of Section 22. *See, e.g., Metropolitan Stevedore Co. v. Rambo [Rambo II]*, 521 U.S. 121, 31 BRBS 54(CRT) (1997); *R.V. [Vina] v. Friede Goldman Halter,* 43 BRBS 22 (2009); *Vasquez v. Continental Maritime of San Francisco, Inc.*, 23 BRBS 428 (1990).

Previously, in weighing the record as a whole, the administrative law judge credited the opinion of Dr. Richmond over the contrary opinions of Drs. Jaffe, Lehman and Goldberger, to conclude that claimant's October 26, 2005, work accident resulted in a cervical strain which did not cause claimant's current symptoms or exacerbate or aggravate claimant's pre-existing spinal pathology.[1] The administrative law judge specifically found that Drs. Jaffe, Lehman, and Goldberger were not aware of claimant's pre-injury neck and back symptoms and that only Dr. Richmond's opinion took into consideration claimant's pre-accident symptoms and treatment. Decision and Order at 29.

In seeking modification of the administrative law judge's decision, claimant submitted two exhibits: a November 4, 2009, letter authored by Dr. Goldberger and a January 6, 2010, letter authored by Dr. Jaffe, wherein each physician opined, after reviewing claimant's pre-injury medical records, that claimant's present medical conditions are related to the work incident in Iraq. On the first remand, the administrative law judge found that, although claimant provided his pre-injury medical history to Drs. Goldberger and Jaffe subsequent to the administrative law judge's initial decision, claimant's delay in providing the records did not warrant a finding that the administrative law judge's decision was based on a mistake in fact.

On second remand, the administrative law judge found the newly-submitted opinions of Drs. Goldberger and Jaffe to be unreasoned. Specifically, although Dr. Goldberger's letter stated that he reviewed "medical records and court decision," the administrative law judge found that it failed to specify which medical records Dr. Goldberger reviewed and failed to tie the records to his opinion that the work-related injury exacerbated an underlying condition. The administrative law judge found that Dr. Jaffe's letter "reflect[ed] at most an ambiguous conclusion that fails to affirmatively acknowledge the existence of a preexisting condition or a review of records." Decision and Order on Remand at 6. Thus, the administrative law judge found Dr. Jaffe's new letter "adds substantively no content to his original finding and is ambiguous, conclusory,

[1]Dr. Richmond opined that no objective evidence connected claimant's spinal pathology to his work accident. EX 22B. By contrast, Drs. Jaffe, Lehman, and Goldberger all attributed claimant's degenerative disc disease, in part, to the work accident. CXs 1, 20.

and devoid of explanation or reasoning." *Id*. at 7. As there was no new evidence with respect to the opinions of Drs. Lehman and Richmond, the administrative law judge adopted his previous findings regarding their opinions. Weighing all the evidence, the administrative law judge determined that the newly-submitted evidence did not add anything to the opinions of Drs. Goldberger and Jaffe and that Dr. Richmond's opinion remains the best reasoned and entitled to the greatest weight because Dr. Richmond considered claimant's pre-existing spinal pathology, explained his reasoning, and tied his conclusions to the materials he reviewed and to his examination of claimant. *Id*. at 6-7. Thus, the administrative law judge concluded that "neither the wholly new evidence, nor the cumulative evidence, nor reflection on the evidence initially submitted demonstrates a mistake of fact that would serve as a ground for modification." *Id*. at 7.

The administrative law judge has considerable discretion evaluating and weighing the evidence of record, including medical evidence. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). Because substantial evidence supports the administrative law judge's finding that Drs. Goldberger and Jaffe did not tie their opinions to any underlying evidence, he rationally determined that their new opinions did not add anything to their previous opinions and gave them less weight than that of Dr. Richmond. Consequently, we affirm the administrative law judge's finding that the new evidence weighed by itself, or in conjunction with the old evidence, does not establish a mistake in fact in the original decision. *Manente v. Sea-Land Serv., Inc.*, 39 BRBS 1 (2004). We, therefore, affirm the denial of claimant's petition for modification and of additional benefits.

Accordingly, the administrative law judge's Decision and Order on Remand Denying Claimant's Request for Modification is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge