U.S. Department of Labor

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

BRB No. 21-0234

DIANE M. JEFFERSON Claimant-Respondent v. MARINE TERMINALS CORPORATION (EAST) dba PORTS AMERICA, INCORPORATED and PORTS INSURANCE COMPANY, INCORPORATED Employer/Carrier-Petitioners	)	DATE ISSUED: 09/28/2021 DECISION and ORDER

Appeal of the Decision and Order of Larry W. Price, Administrative Law Judge, United States Department of Labor.

Allison S. Leard (Leard Law Firm, LLC), Charleston, South Carolina, for Claimant.

Brian P. McElreath and Cassandra L. Sereta (Lueder, Larkin & Hunter, LLC), Mount Pleasant, South Carolina, for Employer/Carrier.

Before: BOGGS, Chief Administrative Appeals Judge, GRESH and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Larry W. Price's Decision and Order (2020-LHC-00075) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq*. (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 applicable law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant injured her ankle while working for Employer on February 14, 2016. Initially, she received conservative treatment and physical therapy (PT) for an ankle sprain. CXs 1-3. By May 31, 2017, Claimant considered surgical options for her ankle, and in June 2017, Dr. Blake Ohlson performed surgery. *See* CX 6 at 40; TR at 34. In September 2017, Claimant complained of back pain, which Dr. Ohlson attributed to her altered gait due to her ankle injury. On October 30, 2017, he referred her for another course of PT at RSF-ATI for her ankle and also referred her to a spine specialist, Dr. Steven Poletti, whom she never saw. CX 6 at 37-40. Dr. Ohlson determined Claimant's ankle condition reached maximum medical improvement (MMI) on January 17, 2018, and needed no additional treatment; however, he stated her back needed treatment. CX 6 at 16-17, 37-38.

Based on Dr. Ohlson's recommendation for an examination of her back, Employer sent Claimant to Dr. Don Stovall, another spine specialist, on February 8, 2018. CX 9. He concluded her back pain is likely due to mixed sources – her existing degenerative condition and a temporary aggravation due to her altered gait from her ankle injury. He stated Claimant was not a surgical candidate, recommended a course of PT which he ordered be performed at Progressive Physical Therapy, and stated Claimant should return for evaluation after that treatment.[1] *Id.* at 6-7. From the chronology of Claimant's treatment for her back injury, it appears Employer approved Dr. Stovall's recommendation for PT but made the appointment at RSF-ATI where Claimant had previously received PT for her ankle injury. Her original PT appointment for her back was scheduled for June 22, 2018, at RSF-ATI. Claimant changed it to July 5, 2018, but did not attend.[2] DX 2 at 3.

[1] In his first report, Dr. Stovall was very clear that, despite his examination of Claimant, he did not develop a patient-doctor relationship with her. However, he nevertheless made the PT referral and mentioned a follow-up visit with her. CX 9. Claimant testified she did not recall Dr. Stovall referring her to PT. TR at 36-37. She did not go to Progressive for PT.

[2] She does not recall why she changed the June PT appointment or why she did not go to the rescheduled July PT appointment. TR at 39-40.

Claimant first saw Dr. Donald Johnson at Southeastern Spine Institute (SSI) on September 5, 2018, for evaluation of her back condition. He diagnosed low back pain and recommended a steroid injection, core strengthening, and conservative care. As Claimant was not a surgical candidate, Dr. Johnson ordered her first steroid injection that day, stated she would be followed by the "nonoperative partners," and requested a conservative care consultation. CX 10 at 6. At SSI, Dr. Leonard Forrest and Physician's Assistant (PA) Gabrielle Hayden evaluated Claimant on September 19, 2018. They agreed on a steroid injection plan and a course of PT with a follow-up visit 2-3 weeks after the injection. *Id.* at 9. At the follow-up on October 10, PA Meghan Nix prescribed another injection and PT when Claimant's pain subsided but still suggested home stretching and exercise. *Id.* at 11. In conjunction with that plan, Employer scheduled a PT appointment for November 7, 2018, at RSF-ATI.[3] DX 2 at 1. When Claimant did not attend this appointment,[4] Employer suspended benefits,[5] CX 14, and sought an order from the district director validating its action, *see* DX 24. The district director, however, recommended Employer continue to pay benefits, *id.*, and the disputed case proceeded to the Office of Administrative Law Judges (OALJ). DXs 5, 9, 24.

On July 1, 2019, Employer filed a Motion for Summary Decision (M/SD) seeking approval of its termination of temporary total disability benefits (TTD) for the finite period between November 8, 2018, and June 14, 2019. Claimant filed a response, asserting she has a right to choose her treating physician who then chose her PT facility, so there was no "refusal" to attend medical treatment. *See* DX 24 at 3. Judge Monica Markley disagreed with Claimant's statement of the issue, finding Claimant has no right under the Act to choose her own physical therapist.[6] *Id.* at 4-5. She also denied Employer's M/SD because

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[3] November 7 was four weeks after Claimant's third epidural injection on October 10.

[4] RSF-ATI tried to reschedule; Claimant stated she had no intention of going to RSF-ATI for PT, but instead wanted to go to SSI. DX 2 at 1, 7. DX 2 also shows the difficulty RSF-ATI had in contacting Claimant after she did not attend her July 5 appointment. DX 2; TR at 59.

[5] Employer had paid temporary total disability benefits (TTD) from February 15, 2016, until November 7, 2018. Stips. at 1; DX 23.

[6] Judge Markley described the question before her: "this is not a case of the treating physician making a specific referral to a particular provider that the Employer/Carrier will not authorize. This is a case of the Claimant asserting a right to make a choice of facility or physical therapist, when the Longshore Act provides no such right." DX 24 at 4.

she found the question of whether Employer's suspension of benefits was permissible requires fact-finding. *Id.* at 5. Thereafter, having received notice from Claimant of the parties' agreement going forward, she cancelled the hearing and remanded the case to the district director. Order of Remand (Aug. 13, 2019); DX 10.[7]

Employer resumed TTD payments on June 14, 2019, but ceased those payments again on October 19, 2019, because Claimant failed to attend the work hardening program Dr. Forrest prescribed and because he cleared her to resume work in some longshore jobs. Stips. at 1; CX 10 at 38, 40-42; DXs 15-17, 23. Following an informal conference on September 10, 2019, the claims examiner stated it was not unreasonable for Claimant to refuse to attend the recommended work hardening program and concluded Employer must reinstate TTD benefits until Dr. Forrest clearly determines Claimant's back condition is at MMI. CX 12. The case again came before the OALJ. CX 13.

Prior to the hearing, the parties again agreed to stipulations on the amounts paid, MMI reached as of August 26, 2019, and Claimant's return to her usual work as of June 5, 2020. Stips. at 1. Left unresolved, however, were the questions of whether Claimant is entitled to her choice of physical therapist, whether a PT facility or a physical therapist is a "physician" under the Act, whether Claimant unreasonably refused to attend authorized PT,[8] and whether Claimant is entitled to TTD from November 8, 2018 through June 14, 2019, and from October 20 to November 8, 2019.[9] Stips. at 2.

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[7] Employer authorized PT and treatment with Dr. Forrest at SSI immediately following the May 2019 settlement conference, but did not reinstate benefits until one month later. DXs 10, 24 at 2. It also agreed to pay Claimant's counsel's attorney's fee. DX 10.

[8] In summary, Claimant's PT history is as follows: Select Physical Therapy for her ankle in 2016; RSF-ATI for her ankle from January 2017 to January 2018; Dr. Stovall recommended Progressive PT for her back in February 2018, but Employer made the appointment at RSF-ATI instead, which Claimant refused to attend; RSF-ATI was also authorized in October 2018, the appointment was made in November 2018, per Dr. Forrest's recommendation for back PT, but Claimant did not go; SSI PT approved in May 2019 for Claimant's back; and she first went to SSI PT in June 2019.

[9] The parties, however, agreed at the October 2020 hearing that the only issue before the ALJ was Claimant's entitlement to TTD between November 2018 and June 2019. TR at 30-31.

The ALJ held a telephone hearing on October 29, 2020. Decision and Order at 1 (2020-LHC-00075, issued Jan. 21, 2021). Addressing Section 7(d)(4), 33 U.S.C. §907(d)(4), and its two-part test for determining whether a claimant unreasonably and unjustifiably refused medical treatment, he found Employer showed Claimant's refusal was objectively unreasonable, but Claimant's "refusal to participate in physical therapy at Roper Physical Therapy [RSF-ATI] was reasonable and justified." Decision and Order at 4-5.[10] Accordingly, he ordered Employer to pay TTD for the finite period in question and interest on those benefits. *Id.*

On appeal, Employer challenges the ALJ's award of benefits during the period Claimant refused to attend prescribed and authorized PT. Claimant responds, urging affirmance of the ALJ's decision.

Suspension of Benefits

Employer contends the ALJ's finding that Claimant's refusal is "reasonable and justified" is internally inconsistent with his finding Claimant's refusal was objectively unreasonable and is erroneous due to his failure to properly apply the two-part test under Section 7(d)(4). It also asserts his decision does not satisfy the requirements of the Administrative Procedure Act because he did not discuss all of the relevant evidence, he relied on the claims examiner's recommendation,[11] he drew unnecessary inferences which contradicted Claimant's testimony regarding her reasons for changing her appointments and refusing to attend, and he ignored one of the parties' stipulations. Additionally, Employer contends the ALJ's decision gives Claimant the right to choose her physical therapist or physical therapy facility – a right it alleges she does not possess under the Act.

Claimant responds, asserting it was correct to award benefits because her "desire to attend physical therapy at the facility of her treating physician instead of one chosen by Employer/Carrier was reasonable and justified." Cl. Brief at 2, 9. She asserts the ALJ applied the law properly, and therefore the Board should affirm his decision.

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[10] The ALJ agreed with Judge Markley's statement that the Act does not give Claimant a choice of physical therapist or PT facility. Decision and Order at 4 n.1; DX 24.

[11] Employer asserts the claims examiner also failed to properly apply the two-part test and, therefore, reached an incorrect conclusion. It also disputes the ALJ's finding that Claimant relied on the claims examiner's recommendation in refusing to attend the prescribed PT because the recommendation was not issued until well after Claimant's first refusal to attend.

Section 7(d)(4) of the Act gives the administrative law judge the discretion to suspend compensation during any period in which a claimant unreasonably refuses to submit to medical or surgical treatment or to an employer's or the Secretary's expert's examination. 33 U.S.C. §907(d)(4);[12] *Maryland Shipbuilding & Drydock Co. v. Jenkins*, 594 F.2d 404, 10 BRBS 1 (4th Cir. 1979); *B.C. [Casbon] v. Int'l Marine Terminals*, 41 BRBS 101 (2007); *Dodd v. Crown Cen. Petroleum Corp.*, 36 BRBS 85 (2002); 20 C.F.R. §702.410(c). Determining whether a claimant's refusal is "unreasonable" involves a two-prong inquiry: whether the refusal is objectively "unreasonable" and, if so, whether it is nevertheless subjectively "justified." *Pittsburgh & Conneaut Dock Co. v. Director, OWCP*, 473 F.3d 253, 40 BRBS 73(CRT) (6th Cir. 2007).

The "reasonableness" of a refusal is an objective inquiry that examines whether an ordinary person in the claimant's position would object to the treatment. "Justification" is a subjective inquiry that evaluates the individual claimant's particular reasons for refusing to submit to treatment. *Hrycyk*, 11 BRBS at 241-242; *see Pittsburgh & Conneaut*, 473 F.3d at 261-262, 40 BRBS at 77-79(CRT); *Malone*, 29 BRBS at 110. The employer bears the burden of proof of showing the employee's refusal was unreasonable; if carried, the burden shifts to the employee to show circumstances justified her refusal. *Hrycyk*, 11 BRBS at 241-242. Only if the refusal is found to be both unreasonable and unjustified may compensation be suspended, but even then it is still at the administrative law judge's discretion. 33 U.S.C. §907(d)(4); *Hrycyk*, 11 BRBS at 241-243. If the administrative law judge determines suspension is warranted, benefits cease as of the date of refusal and recommence on the date of compliance. *Casbon*, 41 BRBS at 104 (Board affirmed suspension of benefits until the date the claimant actually attended a medical examination); 20 C.F.R. §702.410(c).

Employer disputes the ALJ's application of the subjective part of the test.[13] We agree. Despite correctly citing the Section 7(d)(4) test, the ALJ applied incorrect and

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[12] Section 7(d)(4) states:

> If at any time the employee unreasonably refuses to submit to medical or surgical treatment, or to an examination by a physician selected by the employer, the Secretary or administrative law judge may, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension, unless the circumstances justified the refusal.

[13] The ALJ found Employer demonstrated Claimant's refusal to attend PT at RST-ATI was objectively unreasonable because Employer accommodated Claimant's request to change physicians and provided Claimant all recommended treatment. D&O at 4; *see*

inconsistent language in concluding Claimant's "refusal to participate in physical therapy at Roper Physical Therapy was reasonable and justified." D&O at 4. In this regard, he has not adequately explained why he finds her refusal justified, particularly in light of his determination that it was reasonable for Employer to require her to attend physical therapy at the location she previously had received physical therapy for her ankle. The ALJ's logic for finding Claimant's actions "justified" is therefore suspect.

First, he stated: "I credit Claimant's testimony concerning her migraine headaches and confusion regarding the June and July appointments." D&O at 4. While it is within his discretion to credit Claimant's testimony, the record demonstrates her testimony on this matter is at certain points conflicting and confusing, which the ALJ neglected to adequately address prior to crediting her testimony. For example, Claimant stated she could not say with certainty she was aware of her scheduled PT appointments at RSF-ATI, testified she could not recall the dates of her scheduled PT appointments, and she seemingly confused the timing of the June/July RSF-ATI PT appointments with her later "understanding" that all of her treatment would be done at SSI (even though her first visit with SSI was not until September).[14] Further, the parties stipulated Claimant, herself, rescheduled the June 22, 2018, appointment to July 5, 2018 (so she must have been aware of the original June 2018 appointment), but did not attend and did not reschedule it. TR at 8, 27-28.[15] Finally, when

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Hrycyk, 11 BRBS at 241-242. We affirm this finding as it is unchallenged on appeal. *Scalio v. Ceres Marine Terminals, Inc*., 41 BRBS 57 (2007). Our focus, therefore, is solely on the ALJ's consideration of the second prong of the test.

[14] Claimant stated:

> I can't say with certain[t]y that I was aware of [a June/July appointment] prior to me setting up appointments or attempting to set up appointments at Southeastern because I was under the understanding that that was the facility for treatment for me so everything was going to be done there. That's the understanding I was under.

TR at 27. When asked directly about not answering calls from RSF-ATI in July, when she had not yet been to SSI, Claimant stated she does not "have this packet" with dates to refer to and is "not a recorder" of all of her appointment information. TR at 44. She also stated she may have been waiting for approval from Employer's Carrier to go to SSI for treatment and that may explain why she did not answer July emails from RSF-ATI about PT appointments (though those were already authorized). TR at 43-44.

[15] The parties additionally stipulated: Employer authorized PT sessions starting in May 2018; Claimant's nurse case manager advised her counsel that Claimant needed to

clarifying that she may have been confused about the dates and/or may have rescheduled her appointment to July 5 because of migraines, Claimant specifically testified:

> Wait a minute [now]. Let's not say that I moved the June whatever date that is because of my migraine. I explained to you that I have migraines and certain things have happened during the course of my treatment that cause me to have to cancel and to switch appointments, but I can't tell you that June 22nd or any date like that because I don't have that kind of notes.

TR at 39. When asked a follow-up question about why she did not attend the July 5 appointment that she made, she said she did not know. TR at 40. Because Claimant specifically said not to attribute her June appointment change to the migraines she had, the ALJ erred in making such an inference. In any event, the contemporaneous records give no reason for her changing the June 22 appointment and missing the July appointment. They do, however, indicate she could not be reached afterward. DX 2 at 1-4. Claimant gave no justification for refusing to attend authorized treatment, even treatment which Employer's expert initially authorized and which was consistent with a treating physician's recommendation. *See Casbon*, 41 BRBS at 104-105.

Second, the ALJ stated Employer permitted treatment to be done at SSI "shortly" after the June/July appointment issues. While this is true, and Claimant first went to SSI to see physicians and a physician assistant in September 2018, the ALJ's next statement is not supported by substantial evidence. He stated: "Claimant credibly testified that it was her understanding that Dr. Forrest wanted her to attend the physical therapy at Southeastern Spine Institute and that all of her back and hip treatment would be performed there." Decision and Order at 5. This misrepresents Dr. Forrest's actual statement, which recommended PT but stated there was no reason it had to be done at SSI. CX 10 at 13; DX 4.[16] Claimant recalled her conversation with Dr. Forrest, but testified "I wasn't dealing

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call to reschedule her PT appointment; Employer rescheduled the appointment for November 7; Claimant did not attend that appointment either; and Dr. Forrest is Claimant's chosen physician. TR at 7-8 (typo says May 2019); DX 2.

[16] On November 28, 2018, Dr. Forrest stated:

> [t]he intention was for [Claimant] to have physical therapy in addition to having the recent SI injection done. [Claimant] states that she has been approved for this, but has not been approved for this physical therapy to be done here. [She] states adamantly that *she* wants the therapy done at [SSI].

with what he was saying whether it mattered or not. I was dealing with the understanding I was given. . . .” TR at 29. Finally, when asked why she did not attend the November 7 appointment at RSF-ATI despite her doctor indicating it did not matter where her PT was done, Claimant stated: “I will restate my answer. It’s because the agreement that we had was that my treatment was being done at [SSI].” TR at 51. But the agreement she is referring to was not reached until May 2019.[17] TR at 52-53; *see* DX 10. So, even if there is sufficient evidence to support the ALJ’s statement about Claimant’s confusion, only her testimony “supports” her “understanding” of her treatment being done at SSI as of June or July 2018, or as of November 7, 2018. There is no evidence to support the ALJ’s inference that Dr. Forrest required PT to be done at SSI or that his statement in November 2018 conveyed such an understanding to Claimant.[18]

Third, while there is evidence to support the ALJ’s finding that Dr. Forrest initially delayed Claimant’s PT in October 2018 until her pain subsided, CX 10 at 11, 13, the ALJ again concluded: “Given this medical advice from her treating physician, I find Claimant’s action reasonable and justified.” Decision and Order at 5.[19] However, Dr. Forrest’s *October* recommendation did not justify Claimant’s failing to attend her earlier *June and July* PT appointments.

Lastly, we note the ALJ improperly relied on the claims examiner’s recommendation as support for his conclusion.[20] An ALJ should not rely on the claims

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> * * * *From my perspective, there is no reason that the therapy has to be done at our facility*, but it certainly is fine if it is done here.

CX 10 at 13; DX 4 (emphasis added).

[17] Employer authorized PT at SSI commencing in May 2019. *See* DXs 10, 24; TR at 53. CX 10 at 13, 15 indicates PA Emily Finn saw Claimant on May 22, 2019.

[18] After a few months of PT and a functional capacity examination, Dr. Forrest cleared Claimant to return to longshore work in October 2019. CX 10 at 40-42.

[19] Apparently this statement refers to Claimant’s missing her November 7, 2018 PT appointment, which, in fact, was scheduled for four weeks *after* Claimant’s third epidural injection.

[20] In this regard, the ALJ stated:

> The Claims Examiner found ‘it is not unreasonable for the claimant to receive physical therapy at Southeastern Spine Institute.’ *I find Claimant’s*

examiner's memorandum in making findings. *Weikert v. Universal Mar. Serv. Corp.*, 36 BRBS 38 (2002) (while the district director actively supervises a claimant's medical care, issues which involve factual disputes as opposed to those which are purely discretionary are for the administrative law judge to decide); *Raimer v. Willamette Iron & Steel Co.*, 21 BRBS 98 (1988) (hearing before the administrative law judge is *de novo*; administrative law judge is not bound by the district director's opinion or recommendation); 20 C.F.R. §702.317(c) (materials transmitted to the OALJ must not include the district director's recommendations or memos). In addition, the informal conference occurred, and the memorandum resulting from it was issued, in *December 2018* – so any recommendation favorable to Claimant from the claims examiner at that time *could not have affected* Claimant's decisions to avoid her scheduled PT sessions in June, July, and November 2018.

The ALJ's analysis of the issue of Claimant's justification for her refusing to attend her scheduled PT appointments is primarily focused on Claimant's testimony and, at most, two medical reports (regarding the slight delay in her receiving PT in October 2018), and therefore does not include a consideration of the whole record.[21] While the justification prong addresses a subjective issue which relies heavily on an individual claimant's thoughts and perspective, the ALJ did not consider other relevant evidence, i.e., evidence produced contemporaneously with the period when Claimant refused to attend her scheduled PT appointments, to determine whether Claimant's testimony and thoughts matched what was actually happening, or what she was aware of, at the time. *Malone*, 29 BRBS at 111-112; *Hrycyk*, 11 BRBS at 242.[22]

> *action further reasonable and justified after the Parties received this direction*. I find the suspension of benefits was not proper.

Decision and Order at 5 (emphasis added); *see also* DX 24.

[21] The ALJ's failure to consider the whole record is magnified by his failure to cite to any evidence in his discussion. Decision and Order at 4-5.

[22] The Board explained:

> There may be countless individual subjective reasons why a particular claimant would refuse a recommended procedure. The task . . . when evaluating this aspect of the standard is to take these reasons or apparently irrational responses and make an informed judgment, within his or her broad discretion, concerning *whether or not the particular circumstances provide sufficient justification* for the individual decision to refuse the procedure.

As the ALJ did not consider all the relevant evidence as to the justification prong, and as he mischaracterized other evidence, we vacate his decision and remand the case for further consideration. *Malone*, 29 BRBS at 111-112;[23] *cf. Soliman v. Global Terminal & Container Serv., Inc.*, 47 BRBS 1 (2013) (reasonable to refuse second eye surgery recommended by the employer's physician). On remand, the ALJ must address the justification prong in terms of all of the relevant evidence discussed herein, keeping in mind his own finding that Claimant does not get to choose a particular PT facility.[24] Insofar as that finding is concerned, we address for the sake of clarity whether Claimant is entitled to her "choice" of where to receive PT.[25]

Choice of Physical Therapy Facility

Section 7(a) of the Act provides employers shall furnish "medical, surgical, and other attendance or treatment . . . for such period as the nature of the injury or the process of recovery may require." 33 U.S.C. §907(a). Section 7(b) states the "employee shall have the right to choose an attending physician authorized by the Secretary to provide medical care under this chapter as hereinafter provided." 33 U.S.C. §907(b). The Act's definition of "physician" is found at 20 C.F.R. §702.404. Section 702.404 provides:

Hrycyk, 11 BRBS at 242 (emphasis added). The question requiring resolution is "was Claimant justified in behaving as she did," as opposed to "do her current thoughts/confusion constitute retroactive justification."

[23] In *Malone*, the Board stated:

> [the alj] must reconsider claimant's deposition and hearing testimony *as well as any other evidence relevant to the question* of whether claimant's reasons for refusing the laminectomy are justified.

Malone, 29 BRBS at 112 (emphasis added).

[24] Employer scheduled Claimant's appointments at a facility she had recently attended for her ankle injury; Claimant did not establish there was anything improper with also scheduling her back PT there – other than her "belief" or desire to have all of her back treatment done in one place. HT at 29.

[25] Employer contends the ALJ's decision implicitly and erroneously granted Claimant the right to choose her own PT provider. *But see* n.10, *supra*. Claimant does not directly address this issue in her response brief.

> The term *physician* includes doctors of medicine (MD), surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. . . . Naturopaths, faith healers, and other practitioners of the healing arts which are not listed herein are not included within the term "physician" as used in this part.

In this case, both Judge Markley and the ALJ correctly found claimants do not have a right to choose their own physical therapist or PT facility under the Act. Decision and Order at 4 n.1; DX 24; *see* 20 C.F.R. §702.404. The statute is silent as to the definition of "physician," and the regulation does not list physical therapists as being considered physicians. 33 U.S.C. §907; *Potter, et al. v. Elec. Boat Corp.*, 41 BRBS 69 (2007) (pharmacists); *Bang v. Ingalls Shipbuilding, Inc.*, 32 BRBS 183 (1998);[26] 20 C.F.R.

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[26] In *Bang*, the Board reversed the award of PT expenses because a chiropractor prescribed PT and Section 702.404 limits compensable chiropractic treatment.

§702.404.[27] Consequently, we hold the Act does not give Claimant the choice of selecting her own physical therapist or PT facility.

Accordingly, we vacate the ALJ's Decision and Order and remand for further consideration consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[27] We note there is no other statutory or regulatory provision pertinent to this case which would compel a different result. *See Jones v. Huntington Ingalls, Inc.*, 55 BRBS 1 (2021) (Boggs, J. dissenting), *rev'g in pertinent part on recon.*, 51 BRBS 29 (2017) (pursuant to 33 U.S.C. §908(c)(13), an audiologist is a "physician" under Section 702.404).