

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 16 July 2012

CASE NOS.: 2011-LHC-01923, 2011-LHC-01924, 2011-LHC-01925
OWCP NOS.: 01-172614, 01-168326, 01-167067

In the Matter of:

JOSEPH W. COURCHAINED
Claimant,

v.

ELECTRIC BOAT CORPORATION,
Employer/Self-Insured.

Before: Timothy J. McGrath, Administrative Law Judge

Appearances:

Scott N. Roberts, Esq. (Scott N. Roberts, LLC), Groton, Connecticut, for the Claimant

Robert J. Quigley, Esq. (McKenney, Quigley, Izzo & Clarkin, LLP), Providence, Rhode Island,
for Electric Boat Corporation

DECISION AND ORDER AWARDING BENEFITS

I. Statement of the Case

This matter arises from a claim for compensation under the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901, *et seq.* (the "Act"). After an informal conference before the District Director of the Department of Labor's Office of Workers' Compensation Programs ("OWCP"), the matter was transferred to the Office of Administrative Law Judges for a formal evidentiary hearing, which was scheduled before me on January 23, 2012 in New London, Connecticut, at which time the parties were given an opportunity to present evidence and be heard for oral arguments.

Joseph W. Courchaine ("Claimant" or "Mr. Courchaine") testified at the hearing and documentary evidence was admitted. Employer's Exhibits ("EX") 1 – 10, Claimant's Exhibits ("CX") 1-12, and ALJ Exhibits ("ALJX") 1 – 5 were admitted without objection. Hearing Transcript ("HT") at 16-17, 21. Pursuant to a Briefing Order issued February 10, 2012, the

Claimant and Employer have filed their briefs (“Cl. Br.” and “Er. Br”) and the record is now closed.

II. Stipulations and Issues Presented

The parties offered the following stipulations in their pre-trial statements and briefs:

1. The Act, 33 U.S.C. § 901 *et seq.*, as amended, applies to this claim;
2. The alleged injury occurred in Groton, Connecticut;
3. At the time of the alleged injury there was an Employer/Employee relationship;
4. The Notice of Controversion was timely filed;
5. The Employer was timely notified of the injury;
6. The claim for benefits was timely filed;
7. The Informal Conference was conducted on June 29, 2011;
8. The Employer is not currently paying compensation or medical benefits;
9. The Claimant has not reached maximum medical improvement;
10. The Claimant is not currently working; and
11. The Employer is not seeking Special Fund relief.

ALJX-2, 3; Er. Br. 4. The only unresolved issues to be adjudicated are whether the Claimant’s work at Electric Boat Corp. (“Electric Boat”) aggravated his pre-existing right hip osteoarthritis and the nature and extent of his disability. *Id.*; HT at 5.

III. Factual Summary

Mr. Courchaine began his employment with Electric Boat in June 1973 as a burner, and quit in 1979, due to personal issues. HT at 26- 27. He returned to Electric Boat in October of 1987 as a burner until 1993, at which point he was laid off. HT at 30. His last period of employment was when he returned to Electric Boat in 2002 as a grinder until 2011, when he was again laid off. HT at 29, 32. Mr. Courchaine was still unemployed at the time of the hearing. HT at 25.

A. Claimant’s Medical History

Mr. Courchaine has been diagnosed with degenerative osteoarthritis in his right hip and dysplasia, a developmental condition caused by a misalignment of the ball and socket of the hip during fetal development. EX-2, at 13-16; EX-6, at 7-8. Both testifying physicians, Dr. Daniel Gaccione and Dr. Daniel Glenney, agree that Mr. Courchaine’s dysplasia predisposed him to develop arthritis. EX-2, at 16; EX-6, at 8.

On November 10, 2008, Mr. Courchaine underwent a left hip replacement surgery resulting from a work related injury in September 2008. CX-3, at 2; HT at 36-37. He remained off work until his treating physician, Dr. Glenney, released him to return to Electric Boat on full, unrestricted duty on February 9, 2009. CX-2, at 11; HT at 38. Mr. Courchaine continued to see

Dr. Glenney for follow up after returning to work. CX-2, 6-10. Beginning on August 14, 2009, Mr. Courchaine began complaining to Dr. Glenney about increased symptoms in his right side. CX-2, at 10. An x-ray revealed that Mr. Courchaine had developed significant arthritis in his right hip. *Id.* On April 7, 2011, Dr. Glenney noted that Mr. Courchaine had become “more and more handicapped by his right groin and thigh pain” and wanted to have hip replacement surgery on the right side. CX-2, at 7.

On June 13, 2011, Mr. Courchaine underwent right hip replacement surgery. EX-6, at 7. After that surgery Mr. Courchaine had four follow-up visits with Dr. Glenney and was seen by Dr. Gaccione for an independent medical examination. EX-2, at 6; EX-6, at 9. Following a physical examination on September 20, 2011, Dr. Glenney released Mr. Courchaine to return to Electric Boat for light-duty work as of September 26, 2011. EX-4; EX-6, at 11. Mr. Courchaine then saw Dr. Gaccione for the IME on November 3, 2011. EX-1; EX-2, at 8. As a result of his examination and discussion with Mr. Courchaine it was Dr. Gaccione’s opinion that Mr. Courchaine could return to full duty work as a grinder. EX-1, at 2. Dr. Glenney reached the same conclusion following his examination of Claimant on November 15, 2011, and he released Mr. Courchaine for full, unrestricted duty as of November 21, 2011. EX-3.

1. Claimant’s Testimony

At the hearing Mr. Courchaine testified that when he returned to Electric Boat in February 2009 after his left hip replacement surgery, he worked the second and third shifts. HT at 39. He testified his supervisor gave him his daily assignments and depending on what they were, he would have to walk to his duty location with his equipment and climb a series of stairs and ladders to access the site. HT at 43-44. Mr. Courchaine testified that during this time, his right hip would hurt more at the end of his shift, because there was a lot of activity. HT at 61. Mr. Courchaine testified his supervisors understood he was in pain and sometimes other employees would help him by carrying his gear or assisting him on a job that was particularly difficult for him. HT at 61; EX-8-11, at 43-46.

At hearing Mr. Courchaine testified he is not now physically able to do unrestricted work at Electric Boat, HT at 52, believing his right hip “didn’t heal as good and as quick as the other side” and that “[i]t still hurts...” *Id.* When asked to elaborate what prevents him from returning to Electric Boat, Mr. Courchaine stated it is the “laying down or walking or jumping over things...I got no meat. And I just bump it and, oh, it hurts like crazy. Sitting, standing, walking, it’s in constant pain.” HT at 54.

Mr. Courchaine testified that during the last office visit with Dr. Glenney, on November 15, 2011, he “probably” told Dr. Glenney the pain in his right hip had been gone for at least two to three weeks. HT at 73. Mr. Courchaine testified he agreed with Dr. Glenney’s assessment that he could do full duty saying he agreed only because he wanted to be able to collect unemployment benefits. HT at 55-56. Upon questioning, Mr. Courchaine admitted he

“stretched the truth a little bit,” regarding the extent of his pain, primarily because of his stated financial woes. HT at 73-74.

2. Dr. Daniel Gaccione

Dr. Gaccione is a board-certified orthopedic surgeon who met with Mr. Courchaine on November 3, 2011, and performed an independent medical examination. EX-1. Dr. Gaccione testified that based on a physical examination of claimant and a records review, he concluded Mr. Courchaine had developed osteoarthritis in his right hip, primarily as a result of dysplasia. EX-2, at 13. Dr. Gaccione’s professional opinion was that Mr. Courchaine’s condition and need for hip replacement surgery resulted from those factors and bore no relationship to his employment at Electric Boat. EX-2, at 24. Dr. Gaccione stated that arthritic surgery is typically done for pain; that the “the number one factor that gets people to surgery is when they have pain at night and at rest.” EX-2, at 21. Dr. Gaccione further stated that pain however is not itself an aggravation of the individual’s condition. EX-2, at 22.

Dr. Gaccione testified that during the physical examination on November 3, 2011, he spoke at length with Mr. Courchaine about the demands of Mr. Courchaine’s job. EX-2, at 9. Dr. Gaccione noted that other than some concerns about the sensitivity around the surgical incision, Mr. Courchaine did not voice any concerns about his ability to perform certain tasks required of his job. EX-2, at 37-38. Consequently, Dr. Gaccione concluded Mr. Courchaine could return to full, unrestricted duty at Electric Boat. EX-2, at 25.

3. Dr. Daniel Glenney

Dr. Glenney is a board-certified orthopedic surgeon who has been treating Mr. Courchaine since September 27, 2007. EX-6, at 5. He also previously performed Mr. Courchaine’s left hip replacement surgery on November 10, 2008. *Id.* Dr. Glenney testified that after returning to Electric Boat in February 2009 after that left hip surgery, Mr. Courchaine continually complained to him about right hip pain during follow-up visits. EX-6, at 20. Dr. Glenney testified that activities such as walking on level ground, as well as climbing stairs and ladders would exacerbate the pain in Mr. Courchaine’s hip. EX-6, at 21.

Dr. Glenney performed Mr. Courchaine’s right hip replacement surgery on June 13, 2011, and then had four post-surgery follow-up visits. EX-6, at 6, 9. He stated when he saw Mr. Courchaine on September 20, 2011, Mr. Courchaine told him his walking was slightly better though he still felt some limitations. EX-6, at 10. During the physical examination, Dr. Glenney did not elicit any pain from Mr. Courchaine; he noted however Mr. Courchaine had an “antalgic gait,” or a painful limp. EX-6, at 11. As a result of that evaluation, Dr. Glenney opined Mr. Courchaine could return to work on light duty effective September 26, 2011. *Id.* Dr. Glenney provided Mr. Courchaine with a light duty restriction letter for the employer. EX-4.

Dr. Glenney's last examination of Mr. Courchaine was on November 15, 2011, during which he annotated that "Joseph returns and states that 2-3 weeks ago the pain essentially went out of his hip. He has been walking longer and longer distances and is comfortable. The increased activity apparently has helped him. He does not have irritability in his hip today. He walks with a non-antalgic gait." EX-3; EX-6, at 15.

Dr. Glenney testified that during that physical examination Mr. Courchaine exhibited no irritability and walked without a limp or pain. *Id.* According to Dr. Glenney, at no time did Mr. Courchaine indicate during this examination that he felt he was not able to return to his job at Electric Boat. EX-7, at 17. Dr. Glenney also testified Mr. Courchaine told him on several occasions that he was going to apply for unemployment benefits, however Dr. Glenney could not remember exactly when or how Mr. Courchaine relayed this information to him. EX-6, 17-18. Based on his physical examination, including manipulation and flexing and with no complaints of pain, it was Dr. Glenney's opinion Mr. Courchaine was able to return to unrestricted work effective November 21, 2011. EX-6, at 18. He provided the Claimant with the return to work letter. EX-5.

IV. Findings of Fact and Conclusions of Law

A. Causation

To recover under the Act, Mr. Courchaine must demonstrate causation, in that his injury arose out of his employment with Electric Boat. Section 20(a) of the Act "creates a presumption that a claim for compensation comes within the provisions of the Act" and "inherent in this provision is the presumption that an injury is causally related to a worker's employment." *Rainey v. Dir., OWCP*, 517 F.3d 632, 634 (2d Cir. 2008) (quoting *Port Cooper/T. Smith Stevedoring Co., Inc. v. Hunter*, 227 F.3d 285, 287 (5th Cir. 2000)). In order to invoke the Section 20(a) presumption "[t]he claimant must make out a *prima facie* case by showing (1) that he suffered physical harm and (2) ... workplace conditions could have caused, aggravated, or accelerated the harm." *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 53 (1st Cir. 2010) (citing *Am Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 64-65 (2d Cir. 2001)). "[T]he aggravation rule does not require that a later injury fundamentally alter a prior condition. It is enough that it produces or contributes to a worsening of symptoms." *Rainey*, 517 F.3d at 636 (citing *Marinette Marine Corp. v. Office of Workers' Comp. Programs*, 431 F.3d 1032, 1035 (7th Cir. 2005)); *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 605 (1st Cir. 2004).

In the case at hand, Mr. Courchaine has provided sufficient evidence to establish his *prima facie* case to successfully invoke the Section 20(a) presumption. It is agreed by both parties that Mr. Courchaine suffers from the degenerative disease of osteoarthritis. Er. Br. at 3. According to his testimony, which is supported by the "General Dynamics Physical Task Analysis" form, Mr. Courchaine's job as a grinder required him to frequently perform physical tasks, such as crawling, climbing stairs and ladders, and squatting. CX-4; EX-8-11, at 41; HT at 43-44. Mr. Courchaine also testified that as a result of this level of activity his right hip would

hurt more at the end of his shift than it had at the beginning. HT at 62. Mr. Courchaine's testimony of how he felt at the end of his work day is supported by the medical opinions of both Dr. Glenney and Dr. Gaccione, who agree the nature of Mr. Courchaine's work as a grinder would intensify his pain symptoms. EX-2, at 26; EX-6, at 21. As such, I find Mr. Courchaine has met his initial burden to show employment conditions existed at Electric Boat that could have further aggravated his condition.

Once the claimant has established its *prima facie* case, the presumption of Section 20(a) may be invoked and the burden is then on the employer to "rebut the presumption with substantial evidence that the alleged harmful workplace condition did not cause, contribute to, or aggravate the claimant's condition." *Rainey*, 517 F.3d at 634 (quoting *Marinelli*, 248 F.3d at 64-65). "The substantial evidence standard requires the employer to 'introduce such relevant evidence as a reasonable mind might accept as adequate' to support a finding that workplace conditions did not cause the accident or injury." *Fields*, 599 F.3d at 55 (quoting *Rainey*, 517 F.3d at 637) (internal quotation marks omitted). For example, "the testimony of a physician that no relationship exists between an injury and a claimant's employment is sufficient to rebut the presumption." *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 41 (2000) (citing *Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984)).

In the case at hand, I find Electric Boat has sufficiently rebutted the Section 20(a) presumption. In his deposition testimony, Dr. Gaccione states Mr. Courchaine's pain symptoms are a manifestation of his osteoarthritis and the pain he experienced in itself is not an exacerbation of his condition. EX-2, at 22. Dr. Gaccione's professional opinion was there was no relationship between Mr. Courchaine's need for a right hip replacement and his employment at Electric Boat. EX-2, at 23-24. He opined Mr. Courchaine's need for hip replacement surgery was due to other factors such as his dysplasia and the fact that he had other "systemic signs of osteoarthritis." EX-2, at 23.

Once the employer has successfully rebutted the presumption of Section 20(a), then the ALJ must look at the record in full. *Marinelli*, 248 F.3d at 65. The ALJ is not bound to accept the opinion or theory of any one medical expert. *Todd Shipyard Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). It is within the ALJ's discretion to reject all or any part of the testimony. *Pool v. National Steel & Shipbuilding Co.*, 11 BRBS 390, 395-96 (1979); *Perini Corp. v. Heyde*, 306 F. Supp. 1321 (D.R.I. 1969). As I find the Section 20(a) presumption has been sufficiently rebutted, I will now consider the record in full.

Mr. Courchaine contends his employment at Electric Boat aggravated his osteoarthritis, necessitating the right hip replacement surgery on June 13, 2011. Cl. Br. at 2. Mr. Courchaine testified that depending on his daily work assignment he would, in addition to walking to his assigned work location with his equipment, have to climb stairs and ladders in order to complete his daily tasks. HT at 47-48. This testimony is supported by the "General Dynamics Task Analysis" form, which lists climbing stairs and ladders as frequent tasks required of a grinder.

CX-4. Mr. Courchaine further testified his right hip started to bother him in March or April of 2011, primarily as a result of his daily activities, “climbing over pipes and everything.” HT at 86. Mr. Courchaine testified that once his right hip began to bother him, he began to experience pain in all of his activities. HT at 88. In his deposition testimony, Dr. Glenney confirmed the tasks required of Mr. Courchaine would further exacerbate his pain. EX-6, at 21.

While it is Dr. Gaccione’s opinion no relationship exists between Mr. Courchaine’s employment at Electric Boat and his need for a right hip replacement surgery, given the nature of his osteoarthritis, he recognizes the increased activity of Mr. Courchaine’s job as a grinder could result in him experiencing more pain. EX-2, at 26. Dr. Gaccione states that when individuals are experiencing pain at night or at rest, it is “usually the last straw for most people” in that at that point they will elect to have surgery. EX-2, at 26-27. This opinion is corroborated by the deposition testimony of Dr. Glenney, who stated from the clinical perspective complaints of pain are taken into consideration in moving forward with surgery. EX-6, at 22. Mr. Courchaine ultimately elected to have his right hip replaced on April 7, 2011, as he had become “more and more handicapped” by the pain in his right side. CX-2, at 7; EX-6, at 22.

In light of Mr. Courchaine’s testimony, which I find credible on this issue, and the medical opinion and reports of his treating physician Dr. Glenney, I find Mr. Courchaine’s employment with Electric Boat aggravated his osteoarthritis in his right hip, resulting in his need for right hip replacement surgery. Despite Dr. Gaccione’s testimony that Mr. Courchaine’s employment was not a factor, he does not rule out the fact that the employment could have exacerbated Mr. Courchaine’s pain and furthermore agrees that pain is usually a factor for patients in electing to undergo surgery.

B. Nature and Extent of Disability

Mr. Courchaine also contends that as a result of his injury, he is incapable of resuming his former work related responsibilities and is consequently entitled to temporary total disability up to when Electric Boat produced its Vocational Assessment as well as total or partial disability benefits thereafter. Cl. Br. at 2. To establish a *prima facie* case of total disability, the claimant bears the initial burden of showing that he cannot return to his regular or usual employment due to his work-related injury. *Pietruni v. Dir., OWCP*, 119 F.3d 1035, 1038 (2d Cir. 1997). “Once a claimant demonstrates an inability to return to his job because of a work-related injury, he is considered totally disabled within the meaning of the LHWCA and the burden shifts to the employer to prove the availability of suitable alternative employment.” *Id.* (quoting *Palombo v. Dir. OWCP*, 937 F.3d 70, 73 (2d Cir. 1991)).

Mr. Courchaine testified at the hearing that as a result of his condition he is unable to perform many of the tasks required of him, such as carrying his tool bag, crawling, or frequently climbing stairs or ladders. HT at 95-96. His testimony however conflicts with the fact that both Dr. Gaccione, the independent medical examiner, and Dr. Glenney, his treating physician,

medically cleared Mr. Courchaine to return to full duty, with no restrictions. EX-1, at 2; EX-5. Both Dr. Gaccione and Dr. Glenney stated they released Mr. Courchaine back for full duty based upon their physical examinations of him and because there were no complaints of pain. EX-2, at 13, 37; EX-6, at 18. According to Dr. Glenney, Mr. Courchaine told him during the office visit on November 15, 2011, that the pain in his right hip disappeared approximately two to three weeks prior. CX-2, at 1; EX-6, at 15.

At the hearing Mr. Courchaine testified that during the follow-up visit with Dr. Glenney, he “stretched the truth” about the extent of his pain, so Dr. Glenney would release him back to full duty. HT at 73. According to Mr. Courchaine while he was not sure that “the pain had gone away...it wasn’t as bad as it was” and he “needed to get back to work because of financial reasons.” HT at 74. He also testified during his deposition and at the hearing that he told Dr. Glenney “something to the effect” that he needed to be released in order to collect unemployment benefits. EX-8-22, at 87; HT at 76.

While Mr. Courchaine states he was not truthful with Dr. Glenney about his ability to return to work, at some points during his testimony Mr. Courchaine indicates he agreed with his doctors that he could do full unrestricted work. When asked whether he agreed with Dr. Glenney’s assessment that he could return to full duty, he stated “Yes. He said so, so I figured I could...He’s the doctor, and he says go ahead.” HT at 76. Mr. Courchaine similarly testified during his deposition that he was truthful when he told Dr. Glenney he thought he could return to his job full duty with no restrictions, but since he has realized he probably could not. EX-8-22, at 86.

The question I have to address is whether or not he can return to his usual employment. At the hearing I was able to closely observe Mr. Courchaine’s demeanor and his responses to questions posed by both counsel. I have also carefully considered his deposition testimony. Throughout his testimony Mr. Courchaine equivocates as to the statements he made to Dr. Glenney during the November 2011 follow-up appointment and physical examination. EX-8. Ultimately I do not find his testimony credible concerning his inability to return to work at his usual employment.

The medical evidence presented in this case shows that two board certified orthopedic surgeons released Mr. Courchaine back to full duty with no restrictions. Most importantly in my mind is the opinion of Dr. Glenney who said claimant could go back to work on full duty without restriction. Dr. Glenney has been claimant’s treating physician for over three years and he performed both hip replacement surgeries. Dr. Glenney was very familiar with Mr. Courchaine and his medical conditions. Dr. Glenney credibly testified to his treatment and follow-up visits with the claimant and his discussions with him. His findings were recorded in his office notes. Likewise, Dr. Gaccione, the independent medical examiner released Mr. Courchaine back to full duty based on his examination and discussion.

There was no medical evidence presented by the claimant to substantiate that he still has medical issues or problems that prevent him from returning to work. If he is still having issues, as he testified, I would have expected to see some updated medical information or a doctor's report, advising of any limitations or problems he was experiencing. No such medical evidence was offered and claimant testified he has not returned to see Dr. Glenney.

The only evidence offered to contradict the objective medical evidence is Mr. Courchaine's own testimony that he is not capable of returning. Although he testified he believed there would be physical problems if he went back as a grinder, he testified about the physical activities he is currently engaged in. Ms. Susan Chase, a vocational consultant, testified about her discussions with and evaluation of Mr. Courchaine, and the physical activities he said he was doing. EX-9 at 3, EX-10 at 21, 22. She testified that Mr. Courchaine reported he had no difficulties with walking, standing, lifting, carrying, kneeling, squatting and driving. EX-10 at 22.

Furthermore, even if I were to find Mr. Courchaine credible on the issue, an ALJ may find an employee able to do his usual work despite his complaints of pain, when a physician finds no functional impairment. *Peterson v. Washington Metro. Area Transit Auth.*, 13 BRBS 891 (1981). The medical evidence as well as the testimony of both orthopedic surgeons indicates Mr. Courchaine can resume his employment at Electric Boat. Additionally, at no time did Mr. Courchaine return to see Dr. Glenney about complaints of pain, or other problems, or inform Dr. Glenney that he is not able to perform full duty. HT at 79; EX-8-22, at 86; EX-6, at 18-19. Accordingly, based on the evidence before me, I find Mr. Courchaine can return to his usual employment at Electric Boat.

Since I find Claimant is able to return to his usual employment at Electric Boat, it is not necessary to address the merits of whether the Employer has provided suitable alternative employment.

C. Amount of Compensation

The Act provides "[i]n case of disability total in character but temporary in quality 66 2/3 per centum of the average weekly wages shall be paid to the employee during the continuance thereof." 33 U.S.C. § 908(b). The Claimant reports that his average weekly wage at the time of injury was \$1, 209.34 per week. Sixty-six and two thirds per centum of that amount is \$806.23. Therefore, I find the Claimant is entitled to \$ 806.23 per week from June 15, 2011 to November 3, 2011.

Since the Claimant has not received the full amount of the compensation due, he is additionally entitled to interest on any compensation amounts that were not timely paid. *See Foundation Constructors v. Dir.*, *OWCP*, 950 F.2d 621, 625 (9th Cir. 1991). The appropriate interest rate shall be determined pursuant to 28 U.S.C. § 1961 (2006) as of the filing date of this Decision and Order with the District Director.

D. Medical Benefits

An employer found liable for the payment of compensation is additionally responsible pursuant to Section 7(a) of the Act for those medical expenses reasonably and necessarily incurred as a result of a work related injury. 33 U.S.C. § 907; *Dupre v. Cape Romaine Contractors, Inc.*, 23 BRBS 86, 94 (1989) (citing *Pernell v. Capitol Hill Masonry*, 11 BRBS 532, 539 (1979)). Whether a specific condition for which claimant has been treated is work-related is a causation issue under Section 2(2), and the Section 20(a) presumption applies to this issue. However, the presumption does not aid claimant in establishing compliance with Section 7. See *Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112 (1996); *Shahady v. Atlas Tile & Marble Co.*, 13 BRBS 1007 (1981) (Miller, dissenting), *rev'd on other grounds*, 682 F.2d 968 (D.C. Cir. 1982). Treatment is compensable even though it is due only partly for a work-related condition. *Kelley v. Bureau of Nat'l Affairs*, 20 BRBS 169 (1988); *Turner v. Chesapeake & Potomac Telephone Co.*, 16 BRBS 255, 258 (1984).

As stated above, the Claimant's right hip osteoarthritis is compensable because I found his work at Electric Boat aggravated the pre-existing condition, therefore the entire resulting disability is compensable. See *Rainey*, 517 F.3d at 636; *Blanchette v. OWCP*, 998 F.2d 109, 112 (2d Cir. 1993). Therefore, any medical expenses reasonably and necessarily incurred as a result of his right hip osteoarthritis are also compensable. 33 U.S.C. § 907; *Dupre*, 23 BRBS at 94.

E. Attorney's Fees

Having successfully established his right to compensation, the Claimant is entitled to an award of attorney's fees under Section 28 of the Act. 33 U.S.C. § 928; *American Stevedores v. Salzano*, 538 F.2d 933, 937 (2d Cir. 1976).

V. Order

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the entire record, the following order is entered:

1. The Employer, Electric Boat Corp., shall pay the Claimant, Joseph W. Courchaine, temporary total disability compensation pursuant to 33 U.S.C. § 908(b) from June 15, 2011 to November 3, 2011, at the rate of \$806.23 per week;
2. Electric Boat Corp. shall pay the Claimant interest on any past due compensation benefits at the Treasury Bill rate applicable under 28 U.S.C. § 1961 (2006), computed from the date each payment was originally due until paid;
3. Electric Boat Corp. shall pay for all reasonable and necessary medical benefits pursuant to Section 7 of the Act, 33 U.S.C. § 907;

4. All computation of benefits and other calculations provided for in this Order are subject to verification and adjustment by the District Director; and
5. If the Claimant seeks an award of attorney's fees and costs pursuant to 33 U.S.C. § 928, an application conforming to the requirements of 20 C.F.R. § 702.132(a) (2008) shall be filed within 30 days of the date on which this Order is filed in the office of the District Director. Should the Employer object to any fees or costs requested in the application, the parties' attorneys shall discuss and attempt to informally resolve the objections. Any agreement reached between the parties as a result of these discussions shall be filed with the court in the form of a stipulation. In the event that the parties are unable to resolve all issues relating to the requested fees and costs, the Employer's objection shall be filed no later than 30 days following service of the fee application. **The objections must be accompanied by a certification that the objecting party made a good faith effort to resolve the issues with the Claimant's attorney prior to the filing of the objections.**

SO ORDERED.

A

TIMOTHY J. McGRATH
Administrative Law Judge

Boston, Massachusetts