

BRB Nos. 02-0357
and 02-0357A

LOREN E. FREDIEU)
)
 Claimant-Respondent)
 Cross-Petitioner)
)
 v.)
) DATE ISSUED: Feb. 6, 2003
PREMIER INDUSTRIES)
)
 and)
)
EAGLE PACIFIC)
INSURANCE COMPANY)
)
 Employer/Carrier-)
 Petitioners)
 Cross-Respondents) DECISION and ORDER

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

Earl G. Pitre (Pitre, Halley & Associates, L.L.P.), Lake Charles, Louisiana, and Kyle Wheelus, Beaumont, Texas, for claimant.

Chris A. Lorenzen (Crain, Caton & James, P.C.), Houston, Texas, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, HALL and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals and claimant cross-appeals the Decision and Order Awarding Benefits (2001-LHC-964) 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 supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls*

Associates, Inc., 380 U.S. 359 (1965).

On October 15, 1998, claimant was injured when a metal scaffolding bar fell on him from a height of 20 feet. Claimant, who was wearing a hard hat, was taken to the doctor's office and then to the hospital where all objective testing was negative. He was diagnosed with a cerebral concussion, and he later reported he was suffering from debilitating headaches, memory loss, and other symptoms. Claimant was referred to a neurosurgeon. His MRI and EMG results were normal, so he was referred to psychologist where he began receiving biofeedback treatment. ALJ Ex. 1; Emp. Exs. 4-8, 10-12, 14-17, 20, 23-24. Due to the development of depression, claimant was also referred for psychiatric treatment. During the two years following his injury, claimant underwent four neuropsychological evaluations. Interpretations of the results of these evaluations differed as to whether claimant had a cognitive impairment in addition to depression. Claimant sought total disability benefits based on his doctors' opinions.

In a 52-page decision, the administrative law judge found that claimant, overall, is credible, that he has established a *prima facie* case of work-related depression, that employer rebutted the presumption, and that, on the record as a whole, claimant's depression is work-related. Decision and Order at 30, 33-35. Next, the administrative law judge determined that claimant established a *prima facie* case that continuing medical treatment is reasonable and necessary and that employer failed to rebut this presumption. *Id.* at 36-37. He then found that claimant's various conditions reached maximum medical improvement as follows: any cognitive disorder claimant may have had resolved as of May 19, 1999; any sensorimotor disorder claimant may have had resolved as of June 17, 1999; any other symptoms including headaches reached maximum medical improvement as of March 1, 2000. *Id.* at 41, 44. Further, although he found that claimant has work-related depression, he concluded that the condition does not prevent claimant from returning to his usual work. Accordingly, the administrative law judge concluded that claimant is not entitled to total disability benefits beyond March 1, 2000, and employer is entitled to a credit for benefits paid after that date. *Id.* at 49-50, 52. The administrative law judge, therefore, awarded claimant temporary total disability benefits, based on an average weekly wage of \$916.32 per week and a compensation rate of \$610.88 per week, from October 15, 1998, through March 1, 2000, future medical benefits for treatment of depression, interest and an attorney's fee. *Id.* at 32, 52. Employer appeals, BRB No. 02-0357, and claimant cross-appeals, BRB No. 02-0357A, the administrative law judge's decision.¹

¹Both parties have requested oral argument in their appellate briefs. These motions are denied, as they were not filed in separate documents in accordance with 20 C.F.R. §§802.219, 802.305, and, in any event, the motions are moot in light of our decision herein.

Employer challenges the administrative law judge's determinations that claimant suffers from work-related depression and is entitled to continuing psychiatric treatment. Substantial evidence of record supports the administrative law judge's determination that claimant's depression is related to his work injury. In addition to the opinions of Drs. Perez and Ware that not working can contribute to a depressed state, notwithstanding the fact that claimant remained out of work longer than the administrative law judge deemed necessary, the opinions of Drs. Gripon and Mathew, see Decision and Order at 35 n.9, also support the finding that claimant's depression is work-related. Specifically, Dr. Gripon stated that claimant's symptoms of anxiety and depression are "classic" for closed head injuries, Cl. Ex. 7, and Dr. Mathew stated that claimant's depression is related to his post-concussion syndrome and is work-related. Emp. Ex. 28; see also Cl. Ex. 13 (Dr. Weil, an independent medical examiner, stated that claimant's symptoms are related to his post-concussion syndrome). As there is substantial evidence of record to support the administrative law judge's determination, we affirm his finding that claimant suffers from work-related depression. As claimant's depression is work-related, numerous medical experts stated that claimant required psychiatric treatment, and there is no evidence that such treatment is unreasonable or unnecessary, we also affirm the award of continuing medical benefits. *Amos v. Director, OWCP*, 153 F.3d 1051 (1998), *amended*, 164 F.3d 480, 32 BRBS 144(CRT) (9th Cir. 1999), *cert. denied*, 528 U.S. 809 (1999); *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 84(CRT) (2^d Cir. 1997); *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380 (1990); *Turner v. The Chesapeake & Potomac Telephone Co.*, 16 BRBS 255 (1984).

Claimant cross-appeals the administrative law judge's decision. In his 99-page brief, claimant challenges the denial of total disability benefits by arguing that the administrative law judge was biased against Dr. Patterson, that he erred in determining the credibility of the witnesses, and that he erred in setting the dates of maximum medical improvement. Claimant, however, essentially is asking the Board to reweigh the evidence. It is well established that an administrative law judge is entitled to evaluate the credibility of all witnesses, including doctors, and may draw his own conclusions from the 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 (2^d Cir. 1961). It is solely within his discretion to accept or reject all or any part of any testimony according to his judgment. *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). The Board may not reweigh the evidence, but may assess only whether there is substantial evidence to support the administrative law judge's decision. *Miffleton v. Briggs Ice Cream Co.*, 12 BRBS 445 (1980), *aff'd*, No. 80-

²The administrative law judge erred in giving claimant the benefit of the Section 20(a), 33 U.S.C. §920(a) presumption, in assessing whether future psychiatric treatment is reasonable and necessary. *Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112 (1996). However, as there is substantial evidence supporting the award of continuing medical benefits, we hold that the administrative law judge's error is harmless.

1870 (D.C. Cir. 1981). In this case, the opinions of Drs. Perez and Ware, and the administrative law judge's reasonable interpretations of the reports of Drs. Goebel and Lopez support his findings as to the various dates of maximum medical improvement. Cl. Ex. 11; Emp. Exs. 33, 37, 41. Further, Dr. Lopez found that claimant's headaches were controllable with medication as of March 1, 2000. The reports that followed similarly indicated that, while on medication, claimant's headaches were less intense and less frequent, and Drs. Perez and Ware determined the headaches were not debilitating and did not prevent claimant from returning to work. Thus, it was reasonable for the administrative law judge to establish March 1, 2000, as the date of maximum medical improvement for claimant's headaches and for him to find that claimant could return to his usual work as of that date. Cl. Ex. 11; Emp. Exs. 41, 43-48. As substantial evidence supports the administrative law judge's decision, we reject claimant's arguments. See *generally Diosdado v. Newpark Shipbuilding & Repair, Inc.*, 31 BRBS 70 (1997); *Johnson v. Toledo Overseas Terminal Co.*, 10 BRBS 478 (1979), *aff'd mem.*, 647 F.2d 165 (6th Cir. 1981).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge

³We also reject the assertion that the administrative law judge was biased against Dr. Patterson. The statement he made at the hearing, Tr. at 298-299, simply indicates he questioned the need for the continuation of biofeedback treatment given by Dr. Patterson. As Dr. Patterson was no longer treating claimant, as the administrative law judge credited portions of Dr. Patterson's opinion on other matters, such as with regard to claimant's headaches, and as the administrative law judge's decision explains his rational reasons for crediting the opinions of Drs. Perez and Ware, regarding disability, over that of Dr. Patterson, there is no evidence of bias.