BRB No. 91-1496

JOHNNY BARTHEL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MARITIME LABOR, INCORPORATED	)	DATE ISSUED:
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Robert G. Mahony, Administrative Law Judge, United States Department of Labor.

Johnny Barthel, Tampa, Florida, *pro se*.

Donald S. Bennett (Fowler, White, Gillen, Boggs, Villareal & Banker, P.A.), Tampa, Florida, for self-insured employer.

Before: DOLDER, Acting Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order (89-LHC-1650) of Administrative Law Judge Robert G. Mahony 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). In reviewing this *pro se* appeal, the Board 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. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 F.2d 359 (1965); 33 U.S.C. §921(b)(3); 20 C.F.R. §§802.211(e), 802.220.

Claimant was injured on March 10, 1988, during the course of his employment with employer, when he was struck by a forklift, suffering two broken ribs. Soon after the accident, claimant's treating physician, Dr. Silverfield, took x-rays of claimant's spine, which were essentially negative. Claimant attempted to return to work on two occasions, working only a few days each time, but eventually terminated his employment because of ongoing pain. Employer voluntarily paid claimant temporary total disability compensation from March 10, 1988 to June 20, 1988. 33 U.S.C. §908(b). Claimant has not worked since February 1989.

In his Decision and Order, the administrative law judge, relying on the opinions of Drs. Castellvi, Eckart and Afield, determined that claimant sustained no permanent disability as a result

of his March 1988 work incident and that claimant was capable of returning to work as of June 20, 1988. As employer had paid claimant temporary total disability benefits through that date, the administrative law judge found that claimant is not entitled to any additional compensation. Additionally, the administrative law judge found that as claimant had fully recovered from his injury by June 20, 1988, no additional medical treatment was necessary or authorized; accordingly, the administrative law judge denied claimant's claim for medical benefits subsequent to June 20, 1988.

On appeal, claimant, appearing *pro se*, challenges the administrative law judge's denial of his claim for compensation and medical benefits. Employer responds, urging affirmance of the administrative law judge's Decision and Order.

It is well established that claimant bears the burden of establishing the nature and extent of any disability sustained as a result of a work-related injury. *See Anderson v. Todd Shipyards, Inc.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding and Construction Co.*, 17 BRBS 56 (1985). In the instant case, the administrative law judge, in concluding that claimant did not sustain a compensable impairment subsequent to June 20, 1988, credited and relied upon the opinions of Drs. Castellvi, Eckart and Afield, specifically noting the superior qualifications of Drs. Castellvi and Eckart. In his June 13, 1988 report, Dr. Castellvi, an orthopedic surgeon, noted that while claimant's x-rays showed minimal cervical spondylosis in the upper cervical spine, his myelogram and CT scan were essentially unremarkable; Dr. Castellvi assessed minimal cervical spondylosis and recommended that claimant return to work on June 20, 1988. Cl. Ex. 2. In his deposition of September 1989, Dr. Castellvi reiterated his opinion that claimant could have returned to work as of June 20, 1988 without restrictions, that he had sustained no permanent impairment, and that he did not require active care. Emp. Ex. 1 at 7-9. Claimant was subsequently examined by Dr. Eckart, who also is an orthopedic surgeon. Dr. Eckart concurred with Dr. Castellvi, stating in his July 1989 report that claimant is able to resume his duties as a longshoreman, that he did not sustain a permanent injury, and that he does not require further medical treatment. Cl. Ex. 6. Dr. Afield, a psychiatrist, opined that claimant did not suffer any psychiatric disability due to his injury and, from a psychiatric standpoint, claimant could return to work.[1] Emp. Ex. 2 at 12-13.

In contrast, Dr. Huffman, a chiropractor, reported in May 1990, that claimant had suffered several vertebral misalignments in his cervical, thoracic and lumbar spine, and that he sustained a 25 percent whole man impairment. Cl. Ex. 8. Another chiropractor, Dr. Markland, similarly stated in September 1989 that claimant was not yet capable of returning to work; in August 1990, however, Dr. Markland opined that claimant had reached maximum chiropractic treatment. Cl. Ex. 5. Also in September 1989, Dr. Pansara diagnosed claimant as having a soft tissue injury with pain in the lower back, nape of neck and lower chest wall and opined that claimant is unable to engage in employment which requires lifting weights, walking and looking downward constantly. Cl. Ex. 3. In February 1990, Dr. Baker diagnosed significant spinal stenosis and concluded that claimant is totally unable to perform his job as a longshoreman. Cl. Ex. 12.

[1]Dr. Afield conducted a psychiatric evaluation, and thus noted that he did not know whether claimant could return to work from a physical standpoint. Emp. Ex. 2 at 12-13.

The administrative law judge could properly rely upon the testimony of Drs. Castellvi, Eckart and Afield, rather than upon the testimony of Drs. Huffman, Markland, Pansara, and Baker in concluding that claimant sustained no continued impairment subsequent to June 20, 1988. In rendering his credibility determinations, the administrative law judge specifically noted the superior qualifications of Drs. Castellvi and Eckart, and, additionally, stated that he had given less weight to the opinion of Dr. Baker since that physician did not have access to Dr. Castellvi's records when rendering his diagnosis. *See* Decision and Order at 9. In adjudicating a claim, an administrative law judge is not bound to accept the opinion or theory of any particular witness. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). Rather, the administrative law judge is entitled to evaluate the credibility of all witnesses and draw his own inferences from the evidence. *See John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). Thus, as the administrative law judge's credibility determinations are rational and within his authority as factfinder, and as these credited opinions constitute substantial evidence to support the administrative law judge's ultimate findings, we affirm the administrative law judge's determination that claimant sustained no compensable impairment subsequent to June 20, 1988. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Therefore, the administrative law judge's denial of compensation is affirmed.

Lastly, claimant contends that the administrative law judge erred in failing to award medical benefits subsequent to June 20, 1988. We disagree. Section 7(a) of the Act, 33 U.S.C. §907(a), states that "[t]he employer 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." In order for a medical expense to be assessed against the employer, the expense must be both reasonable and necessary, *see* 20 C.F.R. §702.402, and the claimant must establish that the medical expenses are related to the injury. *Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988); *see generally Maguire v. Todd Pacific Shipyards Corp.*, 25 BRBS 299 (1992). In the instant case, the administrative law judge, based on the opinions of Drs. Castellvi and Eckart, found that no additional medical

treatment was necessary or authorized after June 20, 1988. As we affirm the administrative law judge's finding that claimant's physical condition has resolved as of June 20, 1988, we hold that the administrative law judge committed no reversible error in failing to award claimant medical expenses subsequent to that date. *See Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988).

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

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge