BRB No. 92-1132

BILAL RAHMAN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
WESTERN TRANSPORTATION COMPANY	)	
	)	
	)	
and	)	DATE ISSUED:
	)	
NATIONAL UNION FIRE INSURANCE	)	
	)	
and	)	
	)	
CRAWFORD & COMPANY	)	
	)	
Employer/Carrier/	)	
Agent-Respondents	)	DECISION AND ORDER

Appeal of the Decision and Order on Remand of Charles W. Campbell, Administrative Law Judge, United States Department of Labor.

Michael D. Royce (Royce, Swanson & Thomas), Portland, Oregon, for claimant.

Stephen R. Rasmussen (Scwabe, Williamson & Wyatt), Portland, Oregon, for employer/carrier/agent.

Before: BROWN and McGRANERY, Administrative Appeals Judges, and SHEA, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Decision and Order On Remand (88-LHC-1120) of Administrative Law Judge Henry B. Lasky 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 findings of fact and conclusions of law

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(1988).

of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

This is the second time that this case has been appealed to the Board. Claimant injured his back on October 10, 1983, while working for employer in its pallet shop. In addition to suffering a back injury, claimant was diagnosed as suffering from clinical depression for which he received counseling from Dr. LeBray, a psychologist. Employer voluntarily paid claimant disability compensation, but the administrative law judge made no finding as to the exact amount and duration of payments. Claimant subsequently sought additional compensation based upon his psychological condition.

In his initial decision, the administrative law judge found that although claimant's orthopedic condition had returned to its pre-injury level, claimant could not return to his usual employment because of his work-related psychological condition. The administrative law judge also determined that claimant's psychological condition reached maximum medical improvement on March 21, 1985, based on the reports of Dr. Colbach, a Board-certified psychiatrist, and of an orthopedic panel which stated claimant's condition was stationary. Further, the administrative law judge found that employer established suitable alternate employment, that claimant had a loss of wage-earning capacity of $212.80 per week, and that claimant was entitled to future psychological care. Employer appealed, and claimant cross-appealed, the administrative law judge's decision to the Board. *See Rahman v. Western Transportation Co.*, BRB Nos. 89-450/A (May 13, 1991). The Board determined, *inter alia*, that the administrative law judge erred in failing to address all of the relevant evidence of record when rendering his findings regarding the nature and extent of claimant's disability. The Board thus remanded the case for the administrative law judge to reconsider these issues. *See Rahman,* slip op. at 3-4.

On remand, the administrative law judge credited and relied on the opinions of Drs. Colbach and Janzer in determining that claimant's psychological condition does not prevent him from returning to his usual work. The administrative law judge also reaffirmed his prior finding that claimant reached maximum medical improvement on March 21, 1985, based on Dr. Colbach's and the orthopedic panel's opinions.

On appeal, claimant challenges the administrative law judge's findings regarding his ability to return to work and the date upon which he reached maximum medical improvement. Employer responds, urging affirmance.

Initially, we reject claimant's contention that the administrative law judge erred in denying his claim for additional compensation benefits. It is well-established that claimant bears the burden of proving the nature and extent of any disability sustained as a result of a work-related injury. *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56 (1985). In order to establish a *prima facie* case of total disability, claimant must show that he is unable to return to his usual work. *See Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Blake v. Bethlehem Steel Corp.*, 21

BRBS 49 (1988). In the instant case, the administrative law judge, in concluding that claimant's psychiatric condition did not preclude his return to work as of March 19, 1985, credited the opinion of Dr. Colbach, as supported by the opinion of Dr. Janzer, over the opinions of Drs. LeBray and Colistro, noting that Dr. Colbach's opinion was well-reasoned and thorough.

Dr. Colbach, a Board-certified psychiatrist who initially examined claimant on March 19, 1985, opined that claimant suffers no ongoing, work-related psychological impairment as a result of his work injury and that claimant could return to work. Emp. Ex. 27. On August 7, 1985, Dr. Colbach again evaluated claimant and subsequently opined that claimant did not have a psychiatric impairment which would keep him from returning to work. Emp. Ex. 34. Dr. Colbach's evaluation is supported by the opinion of Dr. Janzer who, on May 1, 1986, stated that claimant's psychiatric condition was stationary as of May 1986, and suggested that claimant was exaggerating his symptoms. Emp. Ex. 51. In contrast, Dr. LeBray, a psychologist, opined that claimant's condition was not stationary and that claimant cannot return to his usual work. Dr. LeBray indicated on a work capabilities form dated July 25, 1988, that claimant had no significant limitations in most psychological areas, although he had moderate limitations including his ability to understand, remember and carry out detailed instructions. Cl. Ex. 19. Dr. Colistro, although opining that claimant's depression resulted from his work injury and was not stationary, stated on September 6, 1988, that claimant is capable of working. Cl. Ex. 22.

We hold that the administrative law judge committed no error in relying upon the testimony of Dr. Colbach, as supported by the opinion of Dr. Janzer, rather than the testimony of Drs. LeBray and Colistro in concluding that claimant was not psychologically precluded from returning to his usual work subsequent to March 19, 1985.[1] Contrary to claimant's contention, the administrative law judge is not bound to accept the opinion or theory of claimant's treating physician; rather, it is well-established that the administrative law judge is entitled to evaluate the credibility of all witnesses, including doctors, weigh the medical evidence, and draw his own inferences and conclusions from it. *See 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). In this case, the administrative law judge's credibility decisions are rational and within his authority as factfinder. *See generally Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988). Thus, as these credited opinions constitute substantial evidence to support the administrative law judge's ultimate finding, we affirm the administrative law judge's determination that claimant sustained no psychiatric impairment which would preclude his return to work as of March 19, 1985. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).

[1]We note that the administrative law judge additionally found that the work restrictions imposed by Dr. LeBray, which indicated that claimant had no significant limitations in most psychological areas, but had moderate limitations including his ability to understand, remember and carry out detailed instructions, were compatible with the requirements of his usual employment duties with employer. *See Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140, 145 (1992).

Claimant also contends that the administrative law judge erred in determining the date he reached maximum medical improvement. Specifically, claimant alleges that the administrative law judge erred in rejecting the opinion of Dr. LeBray regarding this issue. We disagree.

A disability is considered permanent as of the date claimant's condition reaches maximum medical improvement or if the condition has continued for a lengthy period and appears to be of lasting or indefinite duration. *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649, *petition for reh'g denied sub nom. Young & Co. v. Shea*, 404 F.2d 1059 (5th Cir. 1968), *cert. denied*, 394 U.S. 976 (1969); *Mills v. Marine Repair Service*, 21 BRBS 115 (1988), *modified on recon.*, 22 BRBS 335 (1989). A determination of maximum medical improvement is primarily a question of fact based on medical evidence. *Ballesteros v. Western Willamette Corp.*, 20 BRBS 184 (1988). A finding of fact establishing the date of maximum medical improvement must be affirmed if supported by substantial evidence. *Mason v. Bender Welding & Machine Co.*, 16 BRBS 307 (1984).

In this case, the administrative law judge on remand found that claimant's condition reached maximum medical improvement on March 21, 1985, based upon the unequivocal March 19, 1985 report of Dr. Colbach and Dr. Janzer's subsequent concurrence that claimant's psychological condition was stationary. In making this determination, the administrative law judge specifically gave less weight to the testimony of Dr. LeBray, who opined on July 25, 1988, that claimant's condition, although not yet stationary, could reach maximum medical improvement in approximately six months with vocational assistance and continued therapy, and Dr. Colistro, who opined that claimant was not psychologically stationary as of July 25, 1988. Specifically, in crediting the opinions of Drs. Colbach and Janzer, the administrative law judge noted that both Drs. Colbach and Janzer are psychiatrists, while Drs. LeBray and Colistro are psychologists, and that the opinions of Drs. Colbach and Janzer were better-reasoned. The administrative law judge's decision to credit the testimony of Drs. Colbach and Janzer on this issue is rational and within his authority as factfinder. *See generally Cordero*, 580 F.2d at 1311, 8 BRBS at 744. We therefore affirm the administrative law judge's finding that claimant's condition became permanent on March 21, 1985. *See Mason*, 16 BRBS at 307.

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

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge