BRB No. 00-0639

ZDENKO KOLANOVIC	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
GLOBAL TERMINAL AND CONTAINER SERVICES, INCORPORATED	)	DATE ISSUED: March 19, 2001
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Philip J. Rooney (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

John F. Karpousis (Freehill, Hogan & Mahar, LLP), New York, New York, for self-insured employer.

Before: SMITH and McATEER, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (99-LHC-0274) of Administrative Law Judge Ralph A. Romano 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 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).

On February 3, 1996, claimant, a cargo handler, allegedly injured his sternum, head, neck, lower back and right knee, when he fell from a ladder while unloading cargo. Employer voluntarily paid temporary total disability benefits and various medical benefits from February 4, 1996 until June 8, 1996. Thereafter, claimant filed a claim for benefits

under the Act seeking continuing permanent total disability compensation and medical benefits for physical and psychological injuries.

In his Decision and Order, the administrative law judge denied claimant benefits after June 8, 1996, finding that claimant did not suffer from any physical or psychiatric disability that would preclude return to his pre-injury employment. The administrative law judge found employer liable for any medical bills claimant incurred with Dr. Rankl, a psychiatrist, prior to June 8, 1996, inasmuch as employer voluntarily paid claimant disability benefits until that date, but he denied reimbursement for Dr. Rankl's treatment in 1999.

On appeal, claimant contends that the administrative law judge erred in denying him additional disability benefits. Claimant contends that there is no support for the administrative law judge's decision to terminate benefits as of June 8, 1996, that the administrative law judge erred in crediting the opinions of the physicians proffered by employer, and that he erred in failing to award benefits for disability resulting from the surgery to remove a mass from his chest, which Dr. Isakovic stated was made symptomatic by the work accident. Employer responds, urging affirmance.

We first address claimant's contention that he is entitled to benefits for any disability resulting from the surgery to remove a fibrotic mass from his chest, as employer did not introduce any evidence contrary to Dr. Isakovic's testimony that this condition was aggravated by the work accident. Dr. Isakovic stated on deposition that claimant has gynecomastia, which is not caused by trauma.[1] CX 13 at 26-27. He further stated, however, that in October 1996 claimant was diagnosed with a fibrotic mass with chronic inflamation within the gynecomastia, which Dr. Isakovic opined was due to the bruising/bleeding that occurred when claimant injured his sternum in the work accident. *Id*. at 27, 73-74, 114; *see also* EX P (Dr. Bennett's report of February 6, 1996, stating that claimant bruised his chest in the work accident). Dr. Isakovic removed this mass, which was determined not to have been cancerous.

[1]Gynecomastia refers to the overgrowth of a male's breast. CX 13 at 113.

The administrative law judge did not address claimant's entitlement to benefits due to his surgery for removal of the fibrotic mass, although this issue was raised by claimant.[2] As there is no evidence contrary to Dr. Isakovic's opinion that this surgery was related to claimant's injury, we hold that this fibrotic mass is work-related. *See* 33 U.S.C. §920(a). *See generally* *Louisiana Ins. Guar. Ass'n v. Bunol*, 211 F.3d 294, 34 BRBS 29(CRT) (5th Cir. 2000); *Carlisle v. Bunge Corp.*, 33 BRBS 133 (1999), *aff'd,* 227 F.3d 934, 34 BRBS 79(CRT) (7th Cir. 2000). Claimant, therefore, is entitled to disability benefits resulting from the surgery for the removal of the mass, as well as related medical benefits. The case is remanded to the administrative law judge for consideration of the extent and duration of claimant's disability following surgery.[3]

We next address claimant's contention that the administrative law judge erred in denying claimant total disability benefits for his other physical injuries and an allegedly work-related psychological condition. Claimant bears the burden of establishing the nature and extent of his disability. *Trask v. Lockheed Shipbuilding & Const. Co.*, 17 BRBS 56, 59 (1985); *see generally* *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). In order to establish a *prima facie* case of total disability, claimant must prove that he is unable to perform his usual work due to the work injury. *See, e.g.*, *Palombo v. Director, OWCP*, 937 F.2d 70, 25 BRBS 1(CRT) (2d Cir. 1991).

[2]Dr. Isakovic was deposed after the formal hearing, and both parties questioned the physician extensively on the issue of the work-relatedness of the fibrotic mass. In his post-hearing brief to the administrative law judge, claimant raised his entitlement to benefits following the surgery for the excision of the mass.

[3]Dr. Isakovic stated at his November 1999 deposition that claimant had no residual disability due to this surgery or to the injury to the sternum. CX 13 at 110-111.

We reject claimant's contention that the administrative law judge erred in denying him benefits after June 8, 1996, except for those occasioned by the aforementioned surgery. Contrary to claimant's contention, the administrative law judge's decision comports with the requirements of the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A). The administrative law judge mentioned the opinion of each physician, albeit briefly, and gave rational reasons for crediting the opinions establishing that claimant is capable of returning to his usual work. Specifically, the administrative law judge rationally credited the opinions of Drs. Head (EX LL), Lubliner (EX KK), Koval (EX I), Bennett (EX P), and Genova (EX EE), that claimant does not suffer from any psychiatric/orthopedic/neurologic impairments which prevent his return to his previous work. Decision and Order at 4. The administrative law judge specifically found that Drs. Head and Lubliner have superior qualifications than does Dr. Isakovic, who stated that claimant is totally disabled.[4] Decision and Order at 6. The administrative law judge also gave less weight to the respective opinions of Drs. Rosa and Rankl that claimant is physically and psychologically disabled, as their opinions are based on claimant's subjective complaints, which the administrative law judge found are not credible.[5] Finally, the opinions of Dr. Genova, dated May 22, 1996, and Dr. Bennett, dated February 15, 1996, support the administrative law judge's termination of claimant's benefits as of June 8, 1996, except for the disability occasioned by claimant's surgery, discussed *supra*.

In adjudicating a claim, it is well established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences from it, and is not bound to accept the opinion or theory of any particular witness. *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). The Board may not reweigh the evidence, but must affirm determinations that are supported by substantial evidence. *See, e.g., Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994). Moreover, the administrative law judge is entitled to evaluate the credibility of all witnesses. The Board must affirm these credibility determinations unless they are "inherently incredible or patently unreasonable." *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*,

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[4]Dr. Head is Board-certified in neurology and psychiatry. Dr. Lubliner is Board-certified in orthopedic surgery. By contrast, Dr. Isakovic is a Board-eligible general surgeon who has not been able to pass the certification examination.

[5]The administrative law judge found that claimant's testimony is not credible due, *inter alia*, to the opinions of some physicians that claimant malingered after this and previous injuries, and videotapes showing claimant engaged in activities beyond his supposed capabilities. Decision and Order at 5.

440 U.S. 911 (1979). Thus, as the administrative law judge fully weighed the evidence, and as the credited medical opinions constitute substantial evidence to support his conclusion, we affirm the administrative law judge's finding that claimant did not establish his inability to perform his usual work subsequent to June 8, 1996.

Accordingly, the case is remanded to the administrative law judge for findings regarding claimant's entitlement to disability benefits for the surgery necessitated by the work-related fibrotic mass. In all other respects, we affirm the administrative law judge's Decision and Order terminating benefits after June 8, 1996.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

J. DAVITT McATEER
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge