

M.M.)	
)	
Claimant)	
)	
v.)	
)	
CENTOFANTI MARINE SERVICES,)	
INCORPORATED)	
)	
and)	
)	
LEGION INSURANCE COMPANY/ INSERVCO INSURANCE SERVICES, INCORPORATED)	DATE ISSUED: 09/28/2007
)	
Employer/Carrier- Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits and Denying Section 8(f) Relief of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

John D. O'Brien and Patrick A. Sheldon (O'Brien, Rulis & Bochicchio, LLC), Pittsburgh, Pennsylvania, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits and Denying Section 8(f) Relief (2005-LHC-2400) of Administrative Law Judge Daniel L. Leland (the administrative law judge) 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 which 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).

Claimant sustained a work-related head injury while working as a welder trainee for employer on April 7, 1998. As a result, Administrative Law Judge Michael P. Lesniak found claimant entitled to, and employer liable for, temporary total disability and medical benefits from April 7, 1998. The Board affirmed Judge Lesniak's award of benefits. [*M.M.*] *v. Centofanti Marine Services, Inc.*, BRB No. 00-0796 (Mar. 29, 2001) (unpub.). On August 11, 2004, claimant sought to modify Judge Lesniak's award of benefits from temporary to permanent total disability. Employer responded, and additionally sought Section 8(f) relief, 33 U.S.C. §908(f), alleging that claimant's alcohol and drug addiction constituted a pre-existing permanent partial disability.¹

In his decision, the administrative law judge determined that claimant's condition had reached permanency, that claimant's work-related seizure disorder precluded him from returning to his usual employment, and that employer did not offer any evidence of suitable alternate employment. The administrative law judge therefore concluded that claimant is entitled to permanent total disability benefits.² The administrative law judge denied employer's request for Section 8(f) relief, finding that the evidence is insufficient to establish that claimant's alcohol and drug addiction was a pre-existing permanent partial disability, and that even if it was, that claimant's work-related seizure disorder, standing alone, caused claimant's present permanent total disability.

On appeal, employer challenges the administrative law judge's denial of its request for Section 8(f) relief.

Employer contends that the administrative law judge erred in finding that it did not establish the contribution element for Section 8(f) relief, alleging that claimant's present totally disabling condition occurred as a result of both his pre-existing alcohol and drug

¹ The Director, Office of Workers' Compensation Programs (the Director), filed a post-hearing response brief with the administrative law judge in opposition to employer's request. The Director has not responded to employer's appeal.

² The parties stipulated that claimant reached maximum medical improvement with regard to his work-related injury on January 1, 2002. HT at 7-8.

dependence and work-related seizure disorder. An employer may be granted Special Fund relief, in the case of permanent total disability, if it establishes that the claimant had a manifest pre-existing permanent partial disability and that his permanent total disability is not due solely to the subsequent work injury. 33 U.S.C. §908(f)(1); *Pennsylvania Tidewater Dock Co. v. Director, OWCP [Lewis]*, 202 F.3d 656, 34 BRBS 55(CRT) (3^d Cir. 2000); *Dominey v. Arco Oil & Gas Co.*, 30 BRBS 134 (1996). If employer fails to establish any of these elements, it is not entitled to Section 8(f) relief. *Id.* With regard to the contribution element in a case involving permanent total disability, the United States Court of Appeals for the Third Circuit, within whose jurisdiction the instant case arises, has held that an employer is not entitled to Section 8(f) relief unless it can demonstrate that workplace injuries alone would not have rendered its employee permanently and totally disabled. *Lewis*, 202 F.3d 656, 34 BRBS 55(CRT).

The administrative law judge found that claimant's prior alcohol and drug addiction did not contribute to his total disability. Decision and Order at 5. In this regard, both Drs. Valeriano and Reidy attributed claimant's present disability to his permanent seizure disorder due to the work injury, which the administrative law judge found exclusively disabled him from gainful employment. Claimant's Exhibits (CXs) 4, 5; Employer's Exhibit (EX) 25. The administrative law judge observed that Dr. Reidy "made a half-hearted effort to tie claimant's current disability to his prior alcohol and drug abuse." Decision and Order at 5. As the administrative law judge found, Dr. Reidy's opinion loosely ties claimant's current disability to both his work-related injury and prior alcohol and drug abuse. EX 25. Specifically, Dr. Reidy stated "it cannot be directly ascertained whether [claimant's seizures] are from the patient's history of drug and alcohol abuse and prior head injury, from the injury in question, from his use of benzodiazepines and other centrally active medications for his current seizure disorder, or from a combination of all of the above, which I would consider most likely." EX 25. The administrative law judge specifically addressed Dr. Reidy's opinion and concluded that her admission that the cause of claimant's present disability "cannot be ascertained" in conjunction with the doctor's subsequent statement that a combination of all of claimant's conditions is "most likely" the cause of the seizure disorder, renders the opinion too equivocal to support a finding that claimant's total disability is not due solely to his work injury. Decision and Order at 5.

An administrative law judge is entitled to weigh the evidence, and may draw his own inferences and 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). In this case, the administrative law judge properly rejected Dr. Reidy's opinion as insufficient to meet employer's burden of establishing that the work injury alone did not cause claimant's disability. The record contains no other evidence stating that claimant's prior alcohol and drug addiction contributed to his present total disability.

Therefore, we affirm the administrative law judge's conclusion that employer has not established the contribution element for entitlement to Section 8(f) relief.³ *Sealand Terminals, Inc. v. Gasparic*, 7 F.3d 321, 323, 28 BRBS 7(CRT) (2^d Cir. 1993). Consequently, the administrative law judge's denial of employer's request for Section 8(f) relief is affirmed. *Id.*

Accordingly, the administrative law judge's Decision and Order - Awarding Benefits and Denying Section 8(f) Relief is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

³ In light of this, we need not address employer's contention that the administrative law judge erred in finding that claimant's alcohol and drug addition did not constitute a pre-existing permanent partial disability for the purpose of Section 8(f) relief.