BRB No. 97-0516

FIDELLA A. EDSALL	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
NEXCOM	)	
	)	
and	)	
	)	
CRAWFORD & COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order-Awarding Benefits and Decision and Order on Motion for Reconsideration of Joel F. Gardiner, Administrative Law Judge, United States Department of Labor.

Raymond E. Gallison, Jr., Bristol, Rhode Island, for claimant.

Thomas R. Kelly and Richard F. van Antwerp (Robinson, Kriger & McCallum, P.A.), Portland, Maine, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order-Awarding Benefits and Decision and Order on Motion for Reconsideration (96-LHC-0134, 96-LHC-0135) of Administrative Law Judge Joel F. Gardiner 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*., as extended by the Nonappropriated Fund Instrumentalities

Act, 5 U.S.C. §8171 *et seq. (*the Act).[1] 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, a seamstress, sustained work-related carpal tunnel syndrome which she alleges caused her temporary total disability from January 25, 1995, and continuing.[2] Although the administrative law judge found that claimant established her *prima facie* case of total disability, he also found that employer established suitable alternate employment by offering claimant a light duty position within restrictions stated by Drs. Weiss and Gooding, at the same wage rate as her pre-injury work. The administrative law judge thus concluded that claimant is not entitled to any additional compensation after May 1, 1995, the date she refused to return to the light duty position offered by employer. The administrative law judge awarded claimant continuing medical benefits.

On appeal, claimant challenges the administrative law judge's finding that employer established suitable alternate employment. Employer responds in support of the administrative law judge's decision.

Once claimant establishes that she is unable to perform her usual work, the burden shifts to employer to demonstrate the availability of realistic job opportunities

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[1]By Order dated November 25, 1997, the Board dismissed this appeal and remanded the case to the district director for reconstruction of the administrative record. The Board reinstated this appeal on its docket on July 30, 1998, upon receipt of the record.

[2]The parties agree, and the medical opinions of record support, that claimant has not yet reached maximum medical improvement. Claimant has had a surgical release on the left arm, and employer voluntarily paid temporary total disability benefits for several time periods.

within the geographic area where claimant resides, which claimant, by virtue of her age, education, work experience and physical restrictions, is capable of performing. *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981). Employer can meet its burden by offering claimant a suitable job in its facility. *Darby v. Ingalls Shipbuilding, Inc.*, 99 F.3d 685, 30 BRBS 93(CRT) (5th Cir. 1996).

The administrative law judge's determination that employer established suitable alternate employment is rational and supported by substantial evidence. In the instant case, claimant worked pre-injury as a stitcher tailoring Navy uniforms. Her duties included the use of scissors, chalk and a razor blade, and she operated a heavy duty sewing machine, using her arms to push clothing. Employer's personnel manager, Ms. Newton, testified that she offered claimant a position in May 1995 within Dr. Weiss' restrictions, and in September 1995 Ms. Newton spoke to claimant, again offering her light duty work which claimant was advised met Dr. Gooding's restrictions.[3] Similarly, Ms. Gull, the manager of the NEXCOM Tailor Shop, where claimant worked, agreed with Ms. Newton's testimony that work was available in May and September 1995 within the restrictions placed by Drs. Weiss and Gooding.[4]

[3]Ms. Newton testified that the May 1995 job employer offered claimant would not involve heavy lifting and that someone would do the cutting for her. The September 1995 job offer also did not involve cutting and claimant would guide material through the sewing machine.

[4]After viewing a videotape of the proposed post-injury modified job, Ms. Gull testified that claimant would have guided material through a blind stitch machine which was self-propelling and is run by knee and foot controls. She testified further that claimant would not have a quota, would be able to get up to walk around as needed, would have someone for help if needed, would be able to take regular

breaks, and would have been required to work several hours a day initially with a gradual increase in hours worked. She testified, however, that claimant had never inquired of her concerning the requirements of employer's modified position.

In finding that employer established suitable alternate employment by offering claimant a modified job, the administrative law judge relied on the opinions of Drs. Weiss and Gooding that claimant could undertake work activities, that she should wear wrist splints, and lift no more than five pounds with either arm. Dr. Gooding additionally stated that claimant could not perform hand stitching, cutting or repetitive upper arm activities. Dr. Gooding viewed a videotape of the proposed job, *see* n.4, *supra*, and approved the job as being within his restrictions. The administrative law judge rationally accorded less weight to the contrary opinions of claimant's physicians Drs. Chudolij, Doerr and Hubbard that the modified work offered by employer is unsuitable for claimant because the doctors' opinions are based on claimant's subjective complaints which do not correlate with the objective medical tests.[5] Additionally, the administrative law judge found claimant's credibility questionable, which detracted from the weight the administrative law judge gave these physicians' opinions. Specifically, the administrative law judge pointed out that claimant consistently failed to convey to her physicians the opportunity for modified work, she failed to discuss any kind of accommodation with employer, and on several occasions she changed doctors for unclear reasons. Inasmuch as the administrative law judge's weighing of the evidence is rational, *see generally John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961), and his finding is supported by substantial evidence, we affirm the administrative law judge's finding that employer established suitable alternate employment by offering claimant a light duty job at its facility at the same wage rate claimant earned before her injury. *Darby*, 99 F.3d at 685, 30 BRBS at 93(CRT). Consequently, we affirm the denial of disability benefits.[6]

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[5]Dr. Chudolij's May 10, 1995 opinion, that claimant was unable to lift more than five pounds continuously without aggravation of her symptoms ostensibly places employer's modified job offer within Dr. Chudolij's restrictions. The administrative law judge found that to the extent the opinions of Drs. Weiss and Chudolij are in conflict, the administrative law judge would accept the opinion of Dr. Weiss over that of Dr. Chudolij because Dr. Weiss is a specialist in orthopedics, hand and elbow surgery, who reviewed claimant's entire medical history and examined her, and whose opinion is supported by Dr. Gooding, who also is an orthopedic specialist. The administrative law judge discounted Dr. Chudolij's opinion, although he is the treating physician, because he is an anesthesiologist who estimated that five percent of his patients had carpal tunnel syndrome.

[6]We need not address claimant's contention that Dr. Gooding is biased because he has a business relationship with Dr. Weiss inasmuch as claimant did not raise this contention below. *See generally Hite v. Dresser Guiberson Pumping*, 22 BRBS 87 (1989). In any event, the record fails to demonstrate any evidence of a

business relationship that would cast doubt on the credibility of either Dr. Weiss or Dr. Gooding. Dr. Gooding performed an independent medical examination of claimant at the request of the Department of Labor.

Accordingly, the administrative law judge's Decision and Order-Awarding Benefits and Decision and Order on Motion for Reconsideration are affirmed.

SO ORDERED.

BETTY JEAN HALL
Chief Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON
Acting Administrative Appeals Judge