

BRB No. 98-0244

PAUL D. WHITE)
)
 Claimant-Petitioner) DATE ISSUED:
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 v.)
)
 I.T.O. CORPORATION OF BALTIMORE,)
 INCORPORATED)
)
 Self-Insured)
 Employer-Respondent) DECISION and ORDER

Appeal of the Decision and Order of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Myles R. Eisenstein, Baltimore, Maryland, for claimant.

David P. Chaisson and Robert J. Lynott (Thomas & Libowitz, P.A.), Baltimore, Maryland, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (97-LHC-0556) of Administrative Law Judge Jeffrey Tureck 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, a longshoreman, was injured on April 3, 1995, during the course of his employment when a chain wrapped around his leg and he was temporarily suspended in the air. Claimant was subsequently treated for swelling and pain in his left leg and underwent surgical drainage of a hematoma on April 22, 1995. Claimant was released to return to his usual job duties on June 16, 1995, and returned to work on June 18, 1995.

In his Decision and Order, the administrative law judge credited the medical reports

and testimony of Dr. Badder in determining that claimant was entitled to permanent partial disability compensation pursuant to Section 8(c)(2), 33 U.S.C. §908(c)(2), for a two percent impairment to his left leg.

On appeal, claimant challenges the administrative law judge's determination that he is entitled to permanent partial disability compensation based on a two percent impairment to his left leg. Specifically, claimant asserts that the administrative law judge erred in crediting the opinion of Dr. Badder, his long-term treating physician, over the opinion of Dr. Russell, who opined that claimant sustained a fifteen percent impairment to his leg. Employer responds, urging affirmance of the administrative law judge's decision in its entirety.

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 Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding & Const. Co.*, 17 BRBS 56 (1985). In the instant case, the administrative law judge, in awarding claimant compensation based upon a two percent impairment rating, relied upon the opinion of Dr. Badder, claimant's treating physician and the physician who performed claimant's surgery. In rendering this determination, the administrative law judge specifically noted that Dr. Badder was claimant's treating physician and was actively engaged in treating claimant from the time of his accident until July 1996, EX 4, providing claimant with excellent treatment. HT at 37. The administrative law judge concluded that Dr. Badder's opinion regarding the extent of claimant's impairment was consistent with his medical notes and treatment of the patient and accounted for claimant's subjective complaints of numbness and swelling.¹ EX 11. The administrative law judge declined to rely on the opinion of Dr. Russell, who examined claimant on only one occasion, in part because he was not in as good of a position to analyze claimant's level of disability.

We hold that the administrative law judge committed no error in relying upon the opinion of Dr. Badder in determining claimant's left leg impairment. In adjudicating a

¹Moreover, the record reflects that Dr. Badder accounted for the subjective factors of pain, discomfort, limitation of endurance, and functional impairment in arriving at his rating, EX 4, and his opinion comports with Dr. Sellman's studies reflecting a sensory or motor polyneuropathy mild in severity, EX 5, and claimant's release to work without medically imposed physical restrictions.

claim, it is well-established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences from it, *see Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988), and he 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). Moreover, the administrative law judge is not bound by any particular standard or formula but may consider a variety of medical opinions and observations in addition to claimant's description of symptoms and physical effects of his injury in assessing the extent of claimant's disability. *Pimpinella v. Universal Maritime Service, Inc.*, 27 BRBS 154 (1993). In the instant case, the administrative law judge rationally weighed the evidence; accordingly, as Dr. Badder's opinion constitutes substantial evidence to support the administrative law judge's ultimate finding, we affirm the administrative law judge's determination that claimant suffers from a two percent permanent partial disability to his left leg. *O'Keefe*, 380 U.S. at 359.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge