

ROBERT DRAGOVICH	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TODD PACIFIC SHIPYARDS	)	DATE ISSUED:
CORPORATION	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Ellin M. O'Shea, Administrative Law Judge, United States Department of Labor.

James M. McAdams (Pierry & Moorhead), Wilmington, California, for claimant.

Eugene L. Chrzanowski (Littler, Mendelson, Fastiff & Tichy), Long Beach, California, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (90-LHC-2205) of Administrative Law Judge Ellin M. O'Shea 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant injured his back while working for employer as a rigger on July 3, 1989. He returned to work from July 8 to July 11, 1989, at which time employer closed its San Pedro shipyard. Employer voluntarily paid claimant temporary total disability benefits for July 7, 1989, and from August 21, 1989, to January 26, 1990. 33 U.S.C. §908(b). On March 12, 1990, claimant secured employment with a different employer as a carpenter until November 4, 1990, when he was laid-off due to lack of work.

\*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).

Claimant sought benefits under the Act for uncompensated periods of alleged temporary

total disability until the date he secured alternate employment. Thereafter, claimant sought to establish entitlement to benefits for permanent partial disability, based on an alleged loss of wage-earning capacity due to the work injury. 33 U.S.C. §908(c)(21), (h). In her Decision and Order, the administrative law judge determined that claimant recovered from his back injury by November 15, 1989, without any residual permanent impairment. The administrative law judge also determined that claimant does not require further injury-related medical care and that claimant did not sustain a loss of wage-earning capacity as the result of his work injury. Accordingly, the administrative law judge denied the claim for compensation.

On appeal, claimant challenges the administrative law judge's denial of his claim for compensation. Specifically, claimant contends that the medical evidence establishes a work-related permanent disability, and that the administrative law judge therefore erred by failing to explicitly consider the extent of any resultant loss in his wage-earning capacity. Employer responds, urging affirmance.

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 and Construction Co.*, 17 BRBS 56 (1985). In the instant case, the administrative law judge, in concluding that claimant had fully recovered without any residual impairment from his work injury by November 15, 1989, credited and relied upon the opinion of Dr. London over the opinion of Dr. Rhodes, noting that Dr. London treated and examined claimant on several occasions, while Dr. Rhodes examined claimant only once. After examining claimant on November 15, 1989, Dr. London opined that claimant had recovered from his work-related lumbosacral strain, that claimant did not require further medical treatment, that claimant did not sustain any permanent disability, and that claimant was capable of returning to his regular work duties without restrictions. EX 21.

Regarding an MRI and CT scan of claimant's back, which demonstrate a slight disc bulge at L5/S1 and a slight to mild bulge at L4-5, the administrative law judge specifically credited Dr. London's testimony that the discs are not herniated, nor are the bulging discs orthopedically or neurologically significant because there is no objective evidence of nerve root impingement. The administrative law judge noted that Dr. London's opinions are supported by the opinion of Dr. Fein, who also treated claimant's back injury and found no evidence of disc herniation. EX 15.

We hold that the administrative law judge committed no error in relying upon the testimony of Dr. London, as supported by the opinion of Dr. Fein, rather than the testimony of Dr. Rhodes, to conclude that claimant had recovered from his work injury and did not sustain any permanent impairment as of November 15, 1989. 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, *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). Thus, as the administrative law judge's credibility determinations are rational and within his authority as factfinder, and as these credited opinions constitute substantial evidence to

support the administrative law judge's ultimate findings, we affirm the administrative law judge's determination that claimant sustained no impairment subsequent to November 15, 1989.<sup>1</sup> *See generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Therefore, the administrative law judge's denial of compensation is affirmed.<sup>2</sup>

Lastly, as we affirm the administrative law judge's finding that claimant's physical condition had fully resolved without permanent residual impairment and that claimant was capable of returning to his usual employment duties as of November 15, 1989, we hold that the administrative law judge committed no reversible error in concluding that claimant did not sustain a loss of wage-earning capacity subsequent to that date. *See generally Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd mem. sub nom. Chong v. Director, OWCP*, 909 F.2d 1488 (9th Cir. 1990).

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

SO ORDERED.

NANCY S. DOLDER  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge

ROBERT J. SHEA  
Administrative Law Judge

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<sup>1</sup>We note that the administrative law judge acted within his discretion in declining to credit claimant's subjective complaints of pain. *See Donovan*, 300 F.2d at 741.

<sup>2</sup>Although claimant contends that the Act must be liberally construed and doubtful questions of law and fact must be resolved in his favor, the United States Supreme Court recently held that the "true doubt rule" does not apply to cases under the Longshore Act because it violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. §556(d), which requires that the party seeking the award bear the burden of persuasion. *Director, OWCP v. Greenwich Collieries*, U.S. , 114 S.Ct. 2251, 28 BRBS 43 (CRT)(1994).