

BRB No. 92-2333

ADELINE TORAIN COTTON ¹)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
NEWPORT NEWS SHIPBUILDING)	
AND DRY DOCK COMPANY)	DATE ISSUED:
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Peter McC. Giesey, Administrative Law Judge, United States Department of Labor.

Adeline Riggs Torain Cotton, Franklin, Virginia *pro se*.

Lawrence P. Postol (Seyfarth, Shaw, Fairweather & Geraldson), Washington, D.C., for employer.

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

PER CURIAM:

Claimant, representing herself, appeals the Decision and Order on Remand (85-LHC-0515) of Administrative Law Judge Peter McC. Giesey 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). In reviewing this *pro se* appeal, the Board 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); 20 C.F.R. §§802.211(e), 802.220.

This is the second time that this case has been appealed to the Board. To briefly recapitulate, claimant was injured during the course of her employment as a tank tester on July 27, 1977, when a

¹We note that claimant appears to have resumed use of her maiden name, Riggs, *see* Appeal Letter dated December 1, 1994; however, as the surname Cotton appears on the administrative law judge's decision and the prior decision of this Board, it is used in the caption.

metal plate fell two feet, striking her on her right shoulder and chest, and fracturing her sternum. Claimant attempted to return to work in September 1977 and January 1978, but was released from work by employer on January 19, 1978, for violating the union contract requiring that she call employer once every five days when she is absent from work. Employer voluntarily paid claimant temporary total disability benefits from July 29 to September 7, 1977, and from September 29, 1977, to December 4, 1977. In his first Decision and Order, the administrative law judge determined that claimant had no continuing physical or mental disability which arose out of her work injury and that, therefore, she was entitled to no further compensation under the Act. Claimant then appealed the administrative law judge's decision to the Board. *See Cotton v. Newport News Shipbuilding and Dry Dock Co.*, 23 BRBS 380 (1990). The Board, after holding that the administrative law judge erred in failing to discuss the copious medical evidence of record, vacated the administrative law judge's decision and remanded the case for the administrative law judge to consider and discuss all of the medical evidence regarding claimant's alleged physical and psychological disabilities. Additionally, the administrative law judge was instructed on remand to specifically consider claimant's entitlement, if any, to medical benefits for treatment of both her physical and psychological injuries pursuant to Section 7 of the Act, 33 U.S.C. §907. 23 BRBS at 383-388.

On remand, the administrative law judge found that the physical effects from claimant's July 1977 work-injury have long since healed and any psychological disability which claimant may have does not render her incapable of performing gainful employment; claimant's claim for compensation benefits was thus denied.

On appeal, claimant, appearing *pro se*, challenges the administrative law judge's denial of her claim for benefits under the Act. 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 did not sustain a compensable impairment, relied upon the opinions of Drs. Fitzer and Belgae. In 1982, Dr. Fitzer opined that claimant could be working full time in any type of heavy work whatsoever, EX-37; thereafter, in 1985, Dr. Fitzer reiterated his opinion that claimant could work full time without any restrictions. EX-57. Dr. Belgae noted in 1983 that claimant possesses sufficient neurological integrity to accomplish any task. EX-48. These medical opinions are supported by the testimony of Dr. Freedenburg, claimant's psychiatrist, who placed no work restrictions on claimant and concedes that claimant could and should return to work. *See* Tr. at 72-74, 89. The administrative law judge's decision to credit the opinions of Drs. Fitzer and Belgae is rational and within his authority as factfinder. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). These credited opinions, however, address only the nature and extent of claimant's disability subsequent to 1982; the administrative law judge did not address the medical evidence of record regarding claimant's alleged inability to work prior to this date and subsequent to December 4, 1977, during which time her fractured sternum was in the process of healing. Thus, as the credited opinions of Drs. Fitzer and Belgae constitute substantial evidence that claimant sustained no compensable impairment

subsequent to 1982, we affirm the administrative law judge's determination that claimant sustained no impairment subsequent to 1982. *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). The administrative law judge's determination that claimant sustained no impairment between December 4, 1977 and 1982 is vacated, and the case remanded for the administrative law judge to render specific findings regarding this period of alleged disability.

Lastly, we note that in the Board's decision remanding the case to the administrative law judge, the Board expressly instructed the administrative law judge to consider whether claimant is entitled to medical benefits for the treatment of both her physical and psychological injuries. *See Cotton*, 23 BRBS at 387-388. On remand, however, the administrative law judge failed to discuss this issue. Section 802.405(a) of the regulations governing the operations of the Board provides that "[w]here a case is remanded, such additional proceedings shall be initiated and such other action shall be taken as is directed by the Board." 20 C.F.R. §802.405(a). *See Obert v. John T. Clark and Son of Maryland*, 23 BRBS 157 (1990); *Randolph v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 443 (1989). We hold that the administrative law judge erred when he failed to comply with the Board's remand order. Thus, on remand, the administrative law judge is once again instructed to consider the claimant's entitlement to medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907.

Accordingly, the administrative law judge's Decision and Order on Remand is affirmed in part and vacated in part, and the case is remanded for further proceedings in accordance with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge