BRB No. 01-0869

GENE AUTRY WILSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NABORS OFFSHORE CORPORATION	)	DATE ISSUED: August 7, 2002
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

John Michael Morrow, Jr. (Morrow, Morrow, Ryan & Bassett), Opelousas, Louisiana, for claimant.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2000-LHC-1764) of Administrative Law Judge Lee J. Romero, Jr., 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 Outer Continental Shelf Lands Act, 43 U.S.C. §1331 *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 worked as a floorhand for employer on an oil rig in the Gulf of Mexico. On May 11, 1999, claimant alleged he slipped and fell about ten feet while descending a ladder; his safety harness "jerked" him back into the air causing him to strike his body against a mud trough. Although no one witnessed the accident, claimant was able to summon a co-worker to remove him from the safety harness, as claimant hung suspended above the deck floor. Claimant was examined by Dr. Cenac on May 12, 1999, who returned claimant to full duty, after x-rays to claimant's hip and back were normal. Claimant returned to Dr. Cenac on May 19, 1999, complaining of numbness in his right foot and increasing low back pain. Dr. Cenac ordered various diagnostic tests, prescribed physical therapy, and restricted claimant to light duty work based solely on claimant's subjective

complaints of pain.

Claimant worked for five days in employer's light duty program, but was terminated by employer on June 15, 1999, for failure to contact employer on May 31, 1999 or to return to work on that date. At the hearing, claimant argued that, when Dr. Tassin, his family physician, examined him on May 25, 1999, the doctor told claimant he could not return to his usual employment because of his May 11, 1999, work accident. Dr. Tassin also restricted claimant from driving long distances, which meant claimant was unable to reach employer's light duty program in Houma, Louisiana; claimant contends he so advised employer by phone, prior to his termination. Claimant further contended that Dr. Lorio, an orthopedic specialist, who first examined claimant on July 8, 1999, continued to restrict claimant from performing his duties as a floorhand. On January 31, 2000, Dr. Lorio returned claimant to light duty work.

In his Decision and Order, the administrative law judge relied on the stipulation of the parties that a workplace incident occurred on May 11, 1999, and claimant's testimony that he sustained a harm, to find the evidence sufficient to establish invocation of the presumption under Section 20(a) of the Act, 33 U.S.C. §920(a), that claimant's injury is work-related. The administrative law judge also found that Dr. Cenac's opinion is sufficient to establish rebuttal of the presumption, as Dr. Cenac opined that claimant did not sustain any injury from the May 11, 1999, incident. He relied on claimant's various negative diagnostic tests, his examinations of claimant, and his review of medical records from other physicians. After weighing the evidence as a whole, the administrative law judge concluded that the opinions of Dr. Cenac and Dr. Bunch, that claimant is not disabled by any work injury, outweighs the opinions of Drs. Tassin and Lorio, and Ms. Mullins, each of whom opined that claimant was unable to perform the heavy manual duties of a floor hand, because of injuries claimant sustained in the work accident. The administrative law judge concluded that these latter opinions are deserving of little weight because they are derived from claimant's testimony, which the administrative law judge found is not credible.[1] Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in not crediting the opinions of Drs. Tassin and Lorio that claimant was temporarily totally disabled from May 11, 1999 until January 31, 2000. Claimant also contends that the administrative law judge erred in finding

[1]For example, the administrative law judge found claimant's testimony to be incredible as it contained numerous inconsistencies, *i.e.*, what parts of his body he injured in the incident, and because surveillance videotapes introduced by employer showed claimant performing tasks relevant to performing his job as a floorhand that he asserted the accident left him unable to perform.

that claimant is not totally disabled from returning to his usual employment. Employer has not responded to this appeal.

We affirm the denial of benefits, as the administrative law judge's weighing of the evidence is rational and his decision is supported by substantial evidence. Dr. Cenac opined that claimant had no injury or disability from the work accident. His opinion is based on the results of various tests he conducted, as well as those conducted by other medical professionals, which were completely negative for objective signs of injury. EXs B, P. Dr. Cenac also stated that claimant did not sustain a soft tissue injury due to the lack of evidence of any mechanical dysfunction supporting claimant's subjective complaints. EX P at 19. Dr. Bunch, who has a Ph.D. in anatomy and neuroanatomy, conducted a functional capacities evaluation (FCE) on claimant on August 30, 2000. EXs A, D. His physical examination of claimant was completely negative for any impairments, as were the neurological and musculoskeletal tests. Claimant demonstrated the ability to work at the medium level with a partial capacity for heavy work; Dr. Bunch stated that this result was self-limited by claimant's subjective complaints of pain.[2]

On the other hand, Dr. Tassin stated that claimant sustained soft tissue injuries which would resolve over a period varying from "a couple of weeks to a couple of months." EX S at 12. Dr. Lorio stated that claimant has a soft tissue injury, and that he cannot return to his usual work as demonstrated by the results of the FCE conducted by Sandra Mullins, a physical therapist. EXs D, Q. This FCE demonstrated that claimant could work only at the medium level, with a maximum lifting ability of 35 pounds. EXs E, R. Dr. Cenac stated that the FCE conducted by Ms. Mullins was suspect in that Ms. Mullins did not account for signs that there may be a non-organic basis for claimant's complaints of pain. EX P at 28; *see* n. 2, supra.

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[2]The psychological testing performed on claimant by Dr. Bunch demonstrated a high probability that there are non-organic reasons for claimant's complaints, which could be malingering for secondary gain, symptom magnification, or psychological or psychosomatic disorders. EX 0 at 23. Dr. Cenac testified that he believed claimant to be malingering.

The administrative law judge found that the opinions of Drs. Cenac and Bunch outweigh the opinions of Dr. Tassin, Dr. Lorio and Ms. Mullins. The administrative law judge stated that the medical evidence and diagnoses proffered in support of claimant's case are based solely on claimant's subjective complaints, which he discredited. The administrative law judge emphasized that none of the various diagnostic tests administered disclosed any objective findings of trauma or injury. Thus, he found the opinions of Dr. Cenac and Dr. Bunch better supported by the underlying test results, and therefore, better reasoned.[3] In adjudicating a claim, it is well established that an administrative law judge as the trier-of-fact is entitled to weigh the medical evidence and to draw his own inferences from it, and he is not bound to accept the opinion or theory of any particular witness. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir.1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes* 289 F.2d 403 (2d Cir. 1961). To the extent that claimant seeks a re-weighing of the evidence, such is beyond our scope of review. *Director, OWCP v. Jaffe New York Decorating*, 25 F.3d 1080, 28 BRBS 30(CRT)(D.C. Cir.1994); *Miffleton v. Briggs Ice Cream Co.*, 12 BRBS 445 (1980), *aff'd*, No. 80-1870 (D.C. Cir.1981). Moreover, the administrative law judge's decision to discredit claimant's testimony concerning his level of pain is not "inherently incredible" or "patently unreasonable." *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 discussed claimant's conflicting deposition and hearing testimony, including that concerning previous injuries claimant sustained. The administrative law judge also relied on videotape surveillance evidence showing claimant performing work in excess of his stated capabilities. Decision and Order at 25-26. Thus, as the administrative law judge fully weighed the evidence, and as his weighing is rational and the credited opinions of Drs. Cenac and Bunch constitute substantial evidence to support his conclusion, we affirm the administrative law judge's determination that claimant did not sustain any injury or disability as a result of the work accident.

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[3]The administrative law judge also credited Dr. Bunch's opinion over that of Ms. Mullins, as he is more highly credentialed.

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge