

BRB No. 99-796

CHARLES BERRY)	
)	
Claimant-Respondent)	
)	
v.)	
)	
TRANSOCEAN TERMINAL)	DATE ISSUED: _____
OPERATORS)	
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	
ASSOCIATION, LIMITED)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

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

William S. Vincent, Jr., New Orleans, Louisiana, for claimant.

Collins C. Rossi (Tolar & Rossi), Metairie, Louisiana, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order and the Order Denying Motion for Reconsideration (98-LHC-1583) 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.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with

law. 33 U.S.C. §921(b)(3); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant worked as a freight handler for employer. On July 21, 1996, while loading steel plates into a boxcar, claimant began sweating profusely, he became weak and dizzy, he had chest pains and his vision went black on two occasions. He went to the hospital and was diagnosed with dehydration and acute renal failure. Tr. at 71, 78-81. Claimant has not worked since this incident.

The administrative law judge weighed the medical evidence and determined that claimant is unable to return to his usual work as a freight handler due to his hypertensive condition and his susceptibility to dehydration and acute renal failure. Decision and Order at 16; Order Denying Recon. at 3-4. Based on the parties’ stipulation that, if claimant cannot return to his usual work, he has a post-injury wage-earning capacity of \$260 per week, Decision and Order at 2, the administrative law judge awarded claimant permanent partial disability benefits from October 28, 1996, and continuing. *Id.* at 16. The administrative law judge also awarded medical benefits and granted employer’s request for Section 8(f), 33 U.S. C. §908(f), relief. *Id.* at 17, 21. Employer moved for reconsideration of the award of permanent partial disability benefits, but the administrative law judge denied reconsideration and affirmed his decision. Employer appeals these decisions, and claimant responds, urging affirmance.

Employer contends the administrative law judge erred in finding that claimant has a continuing disability from the work injury on July 21, 1996. It argues that Dr. Vorhoff’s opinion is insufficient to satisfy claimant’s burden of establishing the nature and extent of his disability, as Dr. Espenan’s opinion demonstrates that claimant’s work-related conditions have resolved. The administrative law judge gave greater weight to the opinions of Drs. Mims and Vorhoff than to that of Dr. Espenan in assessing claimant’s disability.

Dr. Mims, a kidney specialist, determined that claimant suffered from dehydration and acute renal insufficiency and that both conditions resolved prior to claimant’s discharge from the hospital. Emp. Ex. 6 at 74-75. He also noted in April 1997 that claimant’s kidney function does not prevent him from working. Emp. Ex. 10. Dr. Vorhoff, claimant’s treating physician for the work injury, determined that claimant has a history of uncontrolled high blood pressure and that condition, in conjunction with his usual work, makes him susceptible to suffer a recurrence of an acute “heat stroke” type of renal failure. Cl. Ex. 6 at 29, 43. While he deferred to Dr. Mims on the assessment of any damage to claimant’s kidneys, he nevertheless restricted claimant from returning to work and from lifting over five or ten pounds because of this history and his susceptibility to acute heat stroke and dehydration in his work. Cl. Exs. 1, 6 at 15; Tr. at 82.

The administrative law judge provided an extensive and rational explanation for crediting the opinions of Drs. Mims and Vorhoff to find claimant suffered from acute renal failure in 1996 and that he could not return to his usual work. Decision and Order at 16; Order Denying Recon. at 2-4. These opinions constitute substantial evidence supporting the administrative law judge's decision. Dr. Espenan's difference of opinion with regard to claimant's disability status, which is based on his belief that claimant did not suffer from acute renal failure and is not prevented from returning to work because of that condition, Tr. at 28, 31, 57, 61, is insufficient in and of itself to establish error on the part of the administrative law judge. The administrative law judge is required to determine the credibility of witnesses and to weigh the evidence. He has done so in this case, and it is not for the Board to re-evaluate the evidence. *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991); *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 (2^d Cir. 1961); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969); *Miffleton v. Briggs Ice Cream Co.*, 12 BRBS 445 (1980), *aff'd*, No. 80-1870 (D.C. Cir. 1981). The administrative law judge found, based on the opinions of Drs. Mims and Vorhoff, that claimant's working conditions caused the dehydration which caused the renal failure. Further, the administrative law judge concluded that claimant's disability is related to that 1996 incident of dehydration and acute renal failure, as well as his pre-existing hypertension. Decision and Order at 16; Order Denying Recon. at 3. It matters not that claimant's work-related symptoms have subsided because claimant has established through credible medical evidence that a return to his usual work conditions is likely to aggravate his pre-existing high blood pressure, which increases the likelihood of future episodes of dehydration and acute renal failure. Cl. Ex. 6 at 61, 77; see *Crum v. General Adjustment Bureau*, 738 F.2d 474, 16 BRBS 115(CRT) (D.C. Cir. 1984); *Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989); *Boone v. Newport News Shipbuilding & Dry Dock Co.*, 21 BRBS 1 (1988). Therefore, we reject employer's contention that the administrative law judge erred in awarding permanent partial disability benefits, and

we affirm his decisions.¹

¹We reject employer's contention that the administrative law judge erred in denying reconsideration. The administrative law judge specifically stated that Dr. Bowers' notes are illegible, Decision and Order at 11, and our review of the record reveals that Dr. Vorhoff testified that Dr. Bowers' records establish evidence of claimant's long-standing high blood pressure. Cl. Ex. 6 at 45. Employer fails to demonstrate error in the administrative law judge's consideration of this evidence, and its argument that the administrative law judge violated the Administrative Procedure Act is rejected. The administrative law judge clearly stated he reviewed, and reconsidered, all the evidence of record before making his decision. Order Denying Recon. at 2.

Accordingly, the administrative law judge's decisions are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge