

BRB No. 07-0840

M.B.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
P & O PORTS OF BALTIMORE,	)	DATE ISSUED: 04/29/2008
INCORPORATED	)	
	)	
and	)	
	)	
PORTS INSURANCE	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Ralph Romano,  
Administrative Law Judge, United States Department of Labor.

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

Heather H. Kraus (Semmes, Bowen & Semmes), Baltimore, Maryland, for  
employer/carrier.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2007-LHC-0155) of Administrative Law Judge Ralph Romano 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, a longshoreman, was injured when the wheels of a chassis pushed a pinbox onto his right foot on February 14, 2003. Employer paid temporary total disability compensation for the period of January 25 to May 15, 2005, following surgery

to claimant's foot. 33 U.S.C. §908(b). Employer also paid benefits for a seven percent permanent impairment of the foot pursuant to Section 8(c)(4), (19), 33 U.S.C. §908(c)(4), (19). Claimant sought compensation for a 12 percent impairment of his right foot. In his Decision and Order, the administrative law judge found that claimant sustained a two percent impairment to his right foot. Accordingly, he denied further benefits.

Claimant appeals, contending that the administrative law judge erred in relying on Dr. Pollack's opinion and in not considering other factors supporting claimant's entitlement to benefits for a greater impairment. Employer responds, urging affirmance of the administrative law judge's decision.

In the event of an injury to a scheduled member, recovery for a claimant's permanent partial disability under Section 8(c), 33 U.S.C. §908(c), is confined to the schedule in Section 8(c)(1)-(19), 33 U.S.C. §908(c)(1)-(19). *Potomac Electric Power Co. v. Director, OWCP [PEPCO]*, 449 U.S. 268, 14 BRBS 363 (1980). In a case such as this which does not involve hearing loss, the administrative law judge is not bound by any particular standard or formula but may consider medical opinions and observations in addition to claimant's description of symptoms and the physical effects of his injury in assessing the extent of claimant's permanent impairment. *See, e.g., Cotton v. Army & Air Force Exch. Services*, 34 BRBS 88 (2000); *Pimpinella v. Universal Maritime Serv., Inc.*, 27 BRBS 154 (1993).

Two physicians addressed the extent of claimant's impairment. Dr. Pollack, a Board-certified orthopedic surgeon, treated claimant from September 2004 through May 2005, at which time he released claimant to return to full-duty work with no physical restrictions. CX 6. Based upon the American Medical Association *Guides to the Evaluation of Permanent Impairment* (AMA Guides), Dr. Pollack opined that claimant suffered a two percent impairment of the right lower extremity. EX 1. Dr. Gordon, also a Board-certified orthopedic surgeon, examined claimant once on February 15, 2005, and also using the AMA Guides, found that claimant has a seven percent impairment of the right foot, as well as an additional five percent impairment based on scarring, for a total of 12 percent impairment of the right foot. CX 1. At the hearing, Dr. Pollack testified that he disagreed with Dr. Gordon's finding of an additional five percent impairment based on scarring, as claimant's scar is not symptomatic. HT at 28-31.

We affirm the administrative law judge's decision to credit the opinion of Dr. Pollack. The administrative law judge found both physicians equally qualified, but chose to rely upon the opinion of Dr. Pollack because he had examined claimant a number of times whereas Dr. Gordon examined claimant on only one occasion. Dr. Pollack acknowledged that he and Dr. Gordon were aware of claimant's complaints of pain, but Dr. Pollack opined that this pain was not due to claimant's scar. Therefore, he stated that

an additional five percentage point impairment rating based on scarring was not warranted. Moreover, contrary to claimant's contention, Dr. Gordon's opinion that claimant's sensory deficit in his lateral plantar nerve warrants a seven percent impairment rating is not supported by the *AMA Guides*, which specifically state that a seven percent rating is for *complete* sensory loss. *AMA Guides* (5<sup>th</sup> ed.) at 550 and Table 17-37. Neither physician diagnosed complete sensory loss. The administrative law judge also discussed claimant's testimony concerning his physical symptoms, and found that Dr. Pollack's opinion appropriately took these into account.

It is well established that the administrative law judge is entitled to determine the weight to be accorded to the evidence of record and that the Board cannot reweigh the evidence. See *Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5<sup>th</sup> Cir. 1962). The administrative law judge's decision to credit the opinion of Dr. Pollack is rational, and the finding that claimant has only a two percent permanent impairment is supported by substantial evidence. *Cotton*, 34 BRBS 88; *Mazze v. Frank J. Holleran, Inc.*, 9 BRBS 1053 (1978). Therefore, we affirm the administrative law judge's denial of further benefits.

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge