

ALVIN MINOR)	
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Claimant-Petitioner)	
)	
v.)	
)	
NEWPORT NEWS SHIPBUILDING AND)	
DRY DOCK COMPANY)	DATE ISSUED: 08/27/2003
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Fletcher E. Campbell, Jr.,
Administrative Law Judge, United States Department of Labor.

John H. Klein (Montagna Breit Klein Camden L.L.P.), Norfolk, Virginia,
for claimant.

Christopher R. Hedrick (Mason, Mason, Walker & Hedrick, P.C.), Newport
News, Virginia, for self-insured employer.

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

PER CURIAM:

Employer appeals the Decision and Order (02-LHC-0430) of Administrative Law
Judge Fletcher E. Campbell, 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 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 injured his left elbow at work in 1989; he was diagnosed with olecranon
bursitis with a fractured olecranon spur. In 1991, claimant underwent surgery to excise a
large dorsal ganglion in his left wrist. Dr. Stiles opined that this ganglion was the result

of repetitive motion at work. CX 3b. Claimant apparently received benefits for a three percent arm impairment due to these conditions. 33 U.S.C. §908(c)(1); Tr. at 7; CX 3c. Claimant returned to work in 1992. In 1999, claimant complained to Dr. Stiles of left wrist pain. Dr. Stiles opined that claimant has a six percent impairment of the upper extremity, in addition to the previous impairment due to carpal instability. CX 1d; CX 3d. Claimant sought additional permanent partial disability benefits. In his Decision and Order, the administrative law judge credited the opinion of Dr. Stiles, claimant's treating orthopedist, over the opinions of Drs. Davlin and McArthur that claimant does not have an additional impairment. Therefore, the administrative law judge awarded claimant permanent partial disability compensation for a six percent impairment to his left arm. 33 U.S.C. §908(c)(1).

On appeal, employer contends that the administrative law judge erred in crediting the opinion of Dr. Stiles over the opinions of Drs. Davlin and McArthur. Claimant responds, urging affirmance.

Employer argues that the administrative law judge erred in crediting the opinion of Dr. Stiles solely on the basis of his status as claimant's treating physician. Employer also argues that Dr. Stiles's opinion cannot be credited because he does not explain the basis for his opinion that claimant has a six percent impairment under the American Medical Association *Guides to the Evaluation of Permanent Impairment* (AMA *Guides*).

In 1999, Dr. Stiles ordered an x-ray of claimant's left wrist. The x-ray revealed cystic changes in the lunate, some sclerosis of the articular surface of the radius, and a collapse of the navicular lunate space with sclerosis. CX 1d. Based on this x-ray, Dr. Stiles stated that claimant has a six percent impairment of the arm under the AMA *Guides* due to his carpal instability. *Id.*; CX 3d. In a report dated May 18, 2000, Dr. Davlin interpreted an x-ray as showing mild narrowing of the radio-scaphoid articulation. He diagnosed a SLACK wrist deformity and possible carpal tunnel syndrome. Dr. Davlin stated claimant's range of motion was normal, as were all objective tests except for a positive Phalen's maneuver. Dr. Davlin stated that pain is not a ratable factor, and therefore, due to the lack of objective findings, "it is difficult to rate the patient's wrist." EX 1. Dr. McArthur authored a report in April 2002 following an examination of claimant. He noted claimant had reduced, but equal, range of motion in both wrists, and full flexion of both wrists. He stated claimant appears to have chronic overuse syndrome with mild tendonitis and arthritis, but that this condition is not ratable "at this point." EX 6. Finding that Dr. Stiles's opinion was not as well reasoned as it could be, the administrative law judge nonetheless credited it, as Dr. Stiles treated claimant over a number of years and based his rating on the AMA *Guides*.

We reject employer's contention that the administrative law judge erred in crediting Dr. Stiles's opinion on the basis of his status as the treating physician. The administrative law judge rationally credited Dr. Stiles's opinion because he is both claimant's treating physician and an orthopedic surgeon. The administrative law judge reasoned that Dr. Stiles treated claimant over the course of eight years, whereas Drs. Davlin and McArthur each examined claimant on only one occasion.¹ Decision and Order at 5. Thus, the administrative law judge did not give automatic deference to the treating physician's opinion, but rationally found that Dr. Stiles was more familiar with claimant's condition due to his years of treating claimant. Furthermore, the administrative law judge considered the opinions of Drs. Davlin and McArthur, and rationally found they lacked support.² See *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438 (4th Cir. 1997). The administrative law judge is entitled to weigh the medical evidence of record, and employer has not demonstrated error in the administrative law judge's decision to credit Dr. Stiles's opinion. See generally *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963). While the administrative law judge did state that Dr. Stiles's opinion was not "well-reasoned," he did not reject it

¹Employer contends on appeal that Drs. Davlin and McArthur are orthopedic surgeons, specializing in treatment of the hands. This assertion is not borne out by the record. In its list of exhibits, Employer's Exhibit 1 is said to contain the May 18, 2000 report of Dr. Davlin and his curriculum vitae. The curriculum vitae, however, is not appended to the report. With regard to Dr. McArthur, his report is contained in Employer's Exhibit 6; the letterhead states "Plastic Surgery Center of Hampton Roads," and one of the surgical areas stated is "surgery of the hand." Dr. McArthur's specialty, however, is not specifically referenced.

²Employer placed into evidence a chapter of the Fifth Edition of the *AMA Guides*. EX 3. The Fifth Edition, however, was not published until November 2000, after Dr. Stiles and Dr. Davlin offered their opinions as to the extent of claimant's impairment. Thus, the administrative law judge may have erred in stating that Dr. Davlin's opinion regarding the ratable of pain is inconsistent with the Fifth Edition of the *AMA Guides*. Table 26 of the Fourth Edition specifically states, "Pain and loss of strength are *not* rated separately." *AMA Guides*, 4th ed. at 3/61 (emphasis in original). It is not clear, however, that Dr. Davlin and Dr. McArthur were evaluating claimant on the same basis as was Dr. Stiles, as the *AMA Guides* provide separate rating schemes for loss of motion, flexion and grip strength, and for carpal instability. See *AMA Guides*, 4th ed. at 3/36-3/38; EX 3hh-3ll (*AMA Guides*, 5th ed.). It appears that the opinions of Drs. Davlin and McArthur are based, at least to some degree, on the absence of objective findings in the range of motion, flexion and grip strength tests. In any event, as the administrative law judge's decision is supported by substantial evidence, any error is harmless.

as unreasoned, he gave valid reasons for crediting Dr. Stiles rather than the other physicians, and he ultimately found his opinion adequate to support the award.

In this regard, Dr. Stiles's opinion is substantial evidence to support the award of permanent partial disability benefits. Contrary to employer's contention that there is no basis for Dr. Stiles's opinion that claimant has a six percent impairment, Dr. Stiles stated that claimant has carpal instability based on the x-ray findings and rated this impairment at six percent under the *AMA Guides*. CX 1d; 3d. According to Table 26 of the Fourth Edition of the *AMA Guides*, entitled "Upper Extremity Impairment Due to Carpal Instability Patterns," a patient may be diagnosed with a mild, or six percent, impairment, due to arthritic changes shown on x-ray. Thus, Dr. Stiles has provided the reasoning for his opinion, and his opinion is consistent with the *AMA Guides*. Moreover, the record also contains his office notes documenting eight years of treatment for claimant's condition. Based on this record, we cannot say that the administrative law judge's decision to ultimately rely on Dr. Stiles is so inherently incredible or patently unreasonable that it should be set aside. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Consequently, we affirm the administrative law judge's award of permanent partial disability benefits as it is supported by substantial evidence. *See generally Pimpinella v. Universal Maritime Service Corp.*, 27 BRBS 154 (1993).

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge