BRB No. 00-0535

LEONARDO CONENNA	)	
	)	
Claimant-Petitioner	)	
	)	
	)	
AMERICAN STEVEDORING, LIMITED	)	DATE ISSUED:
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	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Philip J. Rooney (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

Christopher J. Field (Weber, Goldstein, Greenberg & Gallagher, L.L.P.), Jersey City, New Jersey, for employer/carrier.

Before: SMITH and McATEER, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (98-LHC-0249) of Administrative Law Judge Robert D. Kaplan 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 cargo handler, was injured on February 28, 1997, in a work-related

accident. The parties stipulated that claimant injured his back, right shoulder and head in this accident, and that, as a result, claimant was temporarily totally disabled from March 1, 1997 through August 20, 1998. The parties disputed the nature and extent of claimant's physical and psychological disability after August 21, 1998, as well as employer's liability for payment of various medical bills. The administrative law judge denied additional disability benefits, and found that employer is liable only for physical therapy administered by Drs. Patel and Parisi from March 31, 1997 through May 31, 1997, and for evaluations performed from March 3, 1997 through August 31, 1997.

On appeal, claimant contends that the administrative law judge erred in denying additional disability benefits for his work-related physical and psychological conditions, and in failing to hold employer liable for the totality of medical treatment rendered by Drs. Patel and Parisi. Employer responds, urging affirmance of the administrative law judge's decision.

In order to establish a *prima facie* case of total disability, claimant must prove that he is unable to perform his usual pre-injury employment due to his work-related injury. *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56 (1985). In the instant case, the administrative law judge found that claimant had neither a disabling physical nor psychiatric condition after August 21, 1998. The administrative law judge credited the opinions of Drs. Koval and Head that claimant has no disabling physical problem and could return to his usual employment over the opinion of Dr. Patel that claimant is permanently totally disabled from his work-related physical injuries. *See* Emp. Exs. 10, 11, 23 at 19, 24 at 34-35; Cl. Exs. 9, 13. With regard to claimant's alleged psychological conditions, the administrative law judge credited Dr. Head's opinion that claimant is feigning both physical and psychological symptoms, and that any depression he has is mild and non-disabling, over the opinion of Dr. Mannucci that claimant is permanently totally disabled by a work-related major affective disorder. *See* Emp. Exs. 11, 24 at 34-35; Cl. Exs. 8, 12 at 23.

In adjudicating a claim, it is well established that an administrative law judge is entitled to weigh the evidence, and is not bound to accept the opinion or theory of any particular medical examiner; rather the administrative law judge may draw his own inferences and conclusions from the evidence. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). The administrative law judge rationally credited the opinions of Dr. Koval, an independent Board-certified orthopedist retained by the Department of Labor, and Dr. Head, Board-certified in neurology and psychology, that claimant has no disabling physiological disabilities that prevent his return to his usual employment. The administrative law judge pointed out that Dr. Koval supported his opinion with specific examination findings, and that this is in contrast to the lack of detail for Dr. Patel's rationale that claimant is permanently and totally physically disabled. Moreover, the administrative law judge found

that Dr. Koval's orthopedic opinion that claimant can return to his usual employment is entitled to greater weight because of Dr. Head's opinion that there is no neurological evidence that claimant has a current physical disability.[1] Decision and Order at 9. Additionally, the administrative law judge emphasized that Dr. Patel, a general surgeon, admitted that she did not possess the same expertise in fields such as orthopedics and neurology, the fields of Drs. Koval and Head. *Id.* Finally, the administrative law judge stated that Dr. Swearingen's impression that claimant was magnifying symptoms as early as April 30, 1998, lends weight to the similar opinions expressed subsequently by Drs. Koval and Head. As the Board may not re-weigh the evidence, and as substantial evidence supports the administrative law judge's finding, we affirm his determination that claimant does not have any physical disability precluding his return to his former position. *See generally Gacki v. Sea-Land Service, Inc.*, 33 BRBS 127 (1998).

Similarly, the administrative law judge rationally credited Dr. Head's opinion that claimant does not have, and never had, any psychiatric condition that restricts him from returning to his longshore job, over the contrary opinion of Dr. Mannucci that claimant is permanently and totally disabled from major depression caused by claimant's work-related physical injuries. In so concluding, the administrative law judge stated that as he had found that claimant has no physical disability, the entire foundation of Dr. Mannucci's opinion is undermined. The administrative law judge also relied on Dr. Head's unequivocal statement that claimant was feigning both neurologic and psychiatric symptoms. As the administrative law judge findings are supported by substantial evidence, we affirm the administrative law judge's denial of continuing disability benefits. *See generally Marinelli v. American Stevedoring, Ltd.*, 34 BRBS 112 (2000).

Claimant also contends that the administrative law judge erred in finding that employer is not liable for physical therapy administered by Drs. Patel and Parisi after March 31, 1997, and for their examinations of claimant after August 31, 1997. The administrative law judge first noted that the office notes of the physicians are very sketchy, and fail to state what physical therapy was provided and what results were obtained from the therapy. Cl. Ex. 13 at 70-71. He further found that Dr. Patel's testimony as to the therapy performed is "so

[1]Contrary to claimant's contention that Dr. Head's opinion compels a finding that claimant was disabled until April 16, 1999, the date of his examination of claimant, Dr. Head stated in his report that he would have expected claimant's physical complaints to have resolved within four to six weeks of the accident. Emp. Ex. 11.

vague" that it demonstrates her inability to describe exactly what therapy was provided to claimant.

In addition, the administrative law judge credited the opinion of Dr. Manzione, who is Board-certified in orthopedic and reconstructive surgery, that the only necessary physical therapy was that administered in the first six weeks after the work accident. Emp. Ex. 18 at 3. Dr. Manzione stated that therapy after six weeks should include rehabilitative exercises, and that the contemporaneous notes of Drs. Patel and Parisi lack any information concerning the types of exercises carried out or claimant's clinical progress. Without this "basic documentation," Dr. Manzione stated that there is no indication that more than 12 weeks of physical therapy was warranted.[2] Dr. Manzione further opined that given the nature of claimant's injury as described by Dr. Patel, only the first six months of office visits were necessary for the treatment of claimant's injury. *Id.* at 3-4.

We affirm the administrative law judge's limiting of employer's liability for the services rendered by Drs. Patel and Parisi to that which Dr. Manzione stated was necessary. Employer is liable for reasonable medical expenses necessary for the treatment of claimant's work-related injury. 33 U.S.C. §907(a). It is claimant's burden to establish the necessity of treatment rendered for his work-related injury. *See generally Schoen v. U. S. Chamber of Commerce*, 30 BRBS 112 (1996); *Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988); *Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988). Moreover, the administrative law judge is entitled to determine the weight to be accorded the varying medical opinions of record. *See generally Calbeck,* 306 F.2d 693; *Donovan*, 300 F.2d 741; *John W. McGrath Corp.*, 289 F.2d 403. Inasmuch as the administrative law judge rationally found that Dr. Patel's office records and testimony are deficient as to the treatment rendered claimant, and as Dr. Manzione's opinion supports the administrative law judge's finding that the treatment at issue was not necessary for claimant's work-related injury, we reject claimant's contentions of error. The administrative law judge's limited award of medical benefits is affirmed as it is rational, supported by substantial evidence and in accordance with law. *Id.*

[2]In the alternative, Dr. Manzione opined that even if appropriate physical exercises were performed and documented, a home exercise program would have been indicated. Emp. Ex. 18 at 3-4.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

J. DAVITT McATEER
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge