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| CLARENCE TURNQUIST, JR. |) | |
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| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
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| CONSOLIDATED RAIL |) | DATE ISSUED: <u>Jan. 23, 2001</u> |
| CORPORATION |) | |
| |) | |
| Self-Insured |) | |
| Employer-Respondent |) | DECISION and ORDER |

Appeal of the Decision and Order on Reconsideration of Richard E. Huddleston, Administrative Law Judge, United States Department of Labor.

Steven C. Schletker, Covington, Kentucky, for claimant.

Patrick M. Foy (Gallagher, Sharp, Fulton & Norman), Cleveland, Ohio, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order on Reconsideration (96-LHC-1366) of Administrative Law Judge Richard E. Huddleston 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 laborer, sustained work-related bilateral carpal tunnel syndrome. Claimant had right hand surgery performed by Dr. Lubahn on January 11, 1996, and left hand surgery performed on March 21, 1996. In his initial decision, the administrative law judge awarded claimant temporary total disability benefits from January 1, 1996, through May 23, 1996. 33 U.S.C. §908(b). The administrative law judge denied claimant's claim

for permanent partial disability benefits, finding that claimant did not produce sufficient evidence to establish that his condition was permanent.

Claimant filed a motion for reconsideration. Based on stipulations submitted with the motion, the administrative law judge found that claimant reached maximum medical improvement on May 23, 1996, and that claimant had returned to work for employer. The administrative law judge found, however, that claimant does not have any residual impairment to either hand or arm, and he therefore denied claimant benefits under the schedule. 33 U.S.C. §908(c)(1), (3), (19).

On appeal, claimant contends the administrative law judge erred in finding that claimant has no residual impairment, and therefore in denying benefits under the schedule. Employer responds, urging affirmance.

Claimant first contends the administrative law judge erred in interpreting the opinion of his treating physician, Dr. Lubahn, as stating that claimant does not have any impairment. In this regard, claimant avers that Dr. Lubahn simply does not perform disability ratings pursuant to the American Medical Association *Guides to the Evaluation of Permanent Impairment* (AMA Guides), but that his opinion, nonetheless, supports a finding that claimant has a permanent impairment in each hand. The administrative law judge stated that Dr. Lubahn found diminished grip strength and range of motion, but that Dr. Lubahn did not equate this with a disability rating. Decision and Order on Recon. at 4.

This finding is supported by substantial evidence, and is affirmed. Dr. Lubahn specifically stated that “on the standard Greenleaf computer profile for percent disability we were unable to demonstrate such. This is comparable to and based on other disability rating scales such as that of the AMA, the American Society for Surgery of the Hand and The State of New York, all with which I am familiar.” JX 7-2. In view of this evidence, the administrative law judge rationally rejected Dr. Lubahn’s findings of reduced grip and pinch strength as evidence of impairment. *See generally Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963). Furthermore, in crediting Dr. Cosgrove’s opinion, *see* discussion, *infra*, the administrative law judge relied on Dr. Cosgrove’s discussion of the lack of significance of reduced grip strength in patients with carpal tunnel syndrome. Finally, contrary to claimant’s contention, there is no evidence of record that Dr. Lubahn does not assess disability ratings pursuant to the AMA Guides.

Claimant also contends that the administrative law judge erred in discounting the opinion of Dr. Hartwig that claimant sustained a 10 percent impairment of the left upper extremity and 20 percent impairment of the right upper extremity, in favor of the opinion of Dr. Cosgrove, that claimant has a zero percent impairment under the AMA Guides. The administrative law judge credited Dr. Cosgrove’s opinion because he found it fully

documented and explained, and supported by objective findings, including a nerve conduction study, which Dr. Hartwig agreed was necessary for a rating based on objective criteria and which Dr. Hartwig did not perform. Inasmuch as the administrative law judge fully weighed the relevant evidence of record, and his decision is rational and supported by substantial evidence, we affirm the administrative law judge's denial of permanent partial disability benefits. *Cotton v. Army & Air Force Exchange Services*, 34 BRBS 88 (2000); *Pimpinella v. Universal Maritime Service, Inc.*, 27 BRBS 154 (1993).

Claimant has filed a petition for an attorney's fee for work performed before the Board. As claimant's appeal was unsuccessful, his petition for an attorney's fee is denied.

33 U.S.C. §928; 20 C.F.R. §802.203.

Accordingly, we affirm the administrative law judge's Decision and Order on Reconsideration.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge