

BRB No. 97-0701

ELBERT BLOUNT	)	
	)	
Claimant	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING	)	DATE ISSUED:
AND DRY DOCK COMPANY	)	
	)	
Self-Insured	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS,	)	
UNITED STATES DEPARTMENT OF	)	
LABOR	)	
	)	
Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order Granting Permanent Total Disability Benefits and Section 8(f) Relief and Errata Order and Award of Temporary Total Disability of Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

Benjamin M. Mason (Mason & Mason, P.C.), Newport News, Virginia, for self-insured employer.

LuAnn Kressley (Marvin Krislov, Deputy Solicitor for National Operations; Carol DeDeo, Associate Solicitor; Janet R. Dunlop, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order Granting Permanent Total Disability Benefits and Section 8(f) Relief and Errata Order and Award of Temporary Total Disability (91-LHC-2718) of Administrative

Law Judge Daniel A. Sarno, 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).

On July 17, 1989, claimant sustained a work-related injury to his left arm and shoulder while attempting to lift a manhole cover with the assistance of a coworker; claimant's injury was subsequently diagnosed as thoracic outlet syndrome. Claimant had previously suffered numerous prior injuries to both of his hands, including, *inter alia*, bilateral carpal tunnel syndrome.<sup>1</sup> Employer voluntarily paid claimant permanent partial disability compensation under the schedule for a 20 percent permanent impairment of the left wrist, and various periods of temporary total disability compensation between 1989 and 1996. See Employer's Exhibit 8, 9. Claimant sought additional total disability benefits under the Act.

The administrative law judge found that claimant was unable to perform his usual work duties as fitter, and that employer failed to establish the availability of suitable alternate employment. Accordingly, he awarded claimant temporary total disability benefits from April 18, 1991 to January 23, 1996, and permanent total disability benefits thereafter. The administrative law judge also granted employer's request for relief under Section 8(f), 33 U.S.C. §908(f), based on claimant's numerous pre-existing hand injuries. On appeal, the Director challenges only the award of Section 8(f) relief, arguing that the administrative

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<sup>1</sup>On March 11, 1981, claimant sustained an injury to his left little finger; on October 26, 1982 and December 3, 1984, an injury to his left wrist; on October 28, 1995, an injury to his right forearm; on March 10, 1986, a contusion of his right hand; and on February 3, 1997, a sprain of his left wrist and right ring finger. On March 17, 1988, he began to experience numbness which was subsequently diagnosed as carpal tunnel syndrome for which he underwent surgery on September 8, 1988 and October 12, 1988. In addition, claimant underwent surgery for recurrent flexor tenosynovitis of the right wrist with tendon adhesions on December 6, 1988.

law judge erred in determining that employer established the contribution element necessary for such relief. Employer responds, urging affirmance.<sup>2</sup>

In a claim for permanent total disability benefits, Section 8(f) of the Act limits employer's liability to 104 weeks if employer establishes that claimant suffers from a manifest pre-existing permanent partial disability, and shows, by medical evidence or otherwise, that claimant's ultimate permanent total disability is not due solely to the work-related injury. *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP (Harcum II)*, \_\_\_ F.3d \_\_\_, No. 96-2546 (4th Cir. Sept. 12, 1997); *Ceres Marine Terminal v. Director, OWCP [Allred]*, 118 F.3d 307 (5th Cir. 1997).

On appeal, the Director does not dispute that claimant's numerous pre-existing hand and arm injuries constitute manifest pre-existing permanent partial disabilities under Section 8(f). Rather, the Director contends that the administrative law judge erred in finding that the employer satisfied the contribution requirement for Section 8(f) relief based on Dr. Reid's opinion because this evidence is insufficient to establish that claimant's work-related 1989 injury was not itself totally disabling.

After review of the administrative law judge's Decision and Order in light of the record evidence and the Director's arguments on appeal, we hold that the decision of the administrative law judge is rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keefe*, 380 U.S. at 359. In addressing the contribution element of Section 8(f), the administrative law judge rationally found based on Dr. Reid's testimony that claimant's permanent total disability is not due solely to his most recent injury. In this regard, Dr. Reid opined that claimant's disability was not caused by his 1989 left arm injury alone, but rather that claimant's disability was materially contributed to, and made materially and substantially worse by his pre-existing bilateral hand disability. Dr. Reid explained that if claimant had only the pre-existing bilateral hand disability, or only the disability resulting from his 1989 injury, he would have been able to continue working at the shipyard in a light duty capacity, but because of the combination of restrictions from these injuries, he was unable to perform shipyard work. Employer's Exhibit 7(c). Contrary to the Director's assertions, the fact that Dr. Reid did not substantiate his opinion by citing available jobs that claimant could do based on the 1989 shoulder injury alone does not preclude the administrative law judge from crediting his opinion as sufficient to establish this element of Section 8(f). As Dr. Reid's testimony provides substantial evidence to support the administrative law judge's finding that claimant's permanent total disability is not due solely to his 1989 work injury, and his crediting of this testimony was a rational credibility determination within his discretionary authority, we affirm his determination that the contribution element of Section 8(f) was satisfied in the present case, and

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<sup>2</sup>Claimant's cross-appeal, BRB No. 97-0701A, was dismissed by the Board at claimant's request by Order dated May 12, 1997.

consequently his award of Section 8(f) relief. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Dominey v. Arco Oil & Gas Co.*, 30 BRBS 134 (1996).

Accordingly, the administrative law judge's Decision and Order Granting Permanent Total Disability Benefits and Section 8(f) Relief and Errata Order and Award of Temporary Total Disability are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge