BRB No. 87-3527

MARCO D'ARRIGO	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED:_____
UNIVERSAL MARITIME SERVICE CORPORATION	)	
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order and the Decision and Order Denying Claimant's Motion for Reconsideration of Victor J. Chao, Administrative Law Judge, United States Department of Labor.

Angelo C. Gucciardo (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

Celestino Tesoriero (Grainger & Tesoriero), New York, New York, for self-insured employer.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order and the Decision and Order Denying Claimant's Motion for Reconsideration (86-LHC-1981) of Administrative Law Judge Victor J. Chao 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 administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

On January 28, 1985, claimant injured his left knee during the course of his employment as a longshoreman. While loading pepper in a truck, claimant slipped, twisted his knee, and then hit his knee against a pallet. Tr. at 5, 17-18. Employer voluntarily paid medical benefits and temporary total disability benefits from January 29 through February 19, 1985, when claimant returned to work. *Id.* at 5. Claimant filed a claim for permanent partial disability benefits. In his Decision and Order, the administrative law judge discussed the medical evidence of record, credited the opinion of

Dr. Schultze, and determined that claimant does not have a permanent disability as a result of his accident. Therefore, he denied the claim. Decision and Order at 2-3. The administrative law judge also denied claimant's motion for reconsideration. Claimant appeals the decisions to the Board, and employer responds, urging affirmance.

Claimant contends the administrative law judge erred in analyzing the medical evidence because he did not consider the opinions of Drs. Haziris and Koval and he gave great weight to the opinion of Dr. Schultze, a non-treating general practitioner. It is well-established under the Act that questions of witness credibility are for the administrative law judge as the trier-of-fact. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). Moreover, it is solely within his discretion to accept or reject all or any part of any testimony according to his judgment, *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969), and the Board may not interfere with an administrative law judge's credibility determinations unless they are inherently incredible or patently unreasonable, nor may it reweigh the evidence. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *Miffleton v. Briggs Ice Cream Co.*, 12 BRBS 445 (1980), *aff'd*, No. 80-1870 (D.C. Cir. 1981).

Contrary to claimant's assertions, there is substantial evidence of record to support the administrative law judge's finding that claimant does not have a permanent disability due to his 1985 work-related knee injury. Claimant testified that his knee bothers him after each day of work.[1] Tr. at 21-24. He also presents the opinions of Drs. Haziris and Koval who concluded that he has a permanent partial disability to the leg of 12 percent and seven percent, respectively. Cl. Exs. 1-2. On examination in September 1985, Dr. Haziris found that claimant's knee showed signs of tenderness and thickness, as well as loss of motion. Cl. Ex. 1. Dr. Koval, an independent examiner, also noted tenderness and loss of motion. Cl. Ex. 2. To the contrary, Dr. Schultze determined that there was no evidence of ligament instability as of February 14, 1985, and that any complaints claimant may have appear to be related to a previous knee injury; therefore, claimant can return to work. Emp. Ex. 2. In September 1985, Dr. Schultze re-evaluated claimant, stated his flexion was in the normal range, and concluded that he has no scheduled loss under the American Medical Association *Guides to the Evaluation of Permanent Impairment*. Emp. Ex. 3; Tr. at 80. The administrative law judge credited the opinion of Dr. Schultze over those of Drs. Haziris and Koval, and it constitutes substantial evidence which supports the administrative law judge's finding of no disability.[2] *See generally*

[1]According to claimant, he does not work every day because there is not always enough work on the docks to accommodate all of the laborers, and, even if there was sufficient work, he would not physically be able to work five days per week. Tr. at 21-24.

[2]We reject claimant's contention that the qualifications of Drs. Haziris and Koval require their opinions to take precedence over that of Dr. Schultze. Although the record indicates that Dr. Haziris is a specialist in general and traumatic surgery and that Dr. Koval is a Board-certified orthopedic surgeon, those qualifications, alone, do not warrant the Board's interference with the administrative law judge's rational decision to credit Dr. Schultze, a general practitioner with a specialty in internal medicine. The administrative law judge clearly stated that he viewed Dr. Schultze's opinion as "well-reasoned" and that "[q]ualifications are no substitute" for producing evidence establishing the nature and extent of disability. *See Cordero*, 580 F.2d at 1331, 8 BRBS at 744; *Perini Corp.*, 306

Pimpinella v. Universal Maritime Service Corp., 27 BRBS 154 (1993); *Cordero*, 580 F.2d at 1331, 8 BRBS at 744.

Claimant next contends the administrative law judge erred in finding that claimant did not carry his burden of proof. Specifically, claimant contends he is entitled to the Section 20(a), 33 U.S.C. §920(a), presumption and that Dr. Schultze's opinion does not rebut the presumption. Claimant's assertion is unpersuasive. The cause of claimant's injury is not a matter of dispute; rather, the issue in this case concerns the nature and extent of disability attributed to the work-related knee injury. It is well-established that a claimant bears the burden of proving the nature and extent of his work-related disability and that the Section 20(a) presumption does not aid the claimant in satisfying this burden.[3] *See Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56 (1985); *Holton v. Independent Stevedoring Co.*, 14 BRBS 441 (1981). As the administrative law judge credited Dr. Schultze's opinion that claimant has no residual disability, claimant did not carry his burden of proof.

Finally, claimant challenges the administrative law judge's decision to close the record without the submission of the deposition of Drs. Haziris. Claimant maintains that the delay in deposing the doctor was caused by employer and the doctor; therefore, it should not be held against claimant. The administrative law judge addressed this issue in his decision denying reconsideration of the claim. Therein he stated that he held the record open for 30 days after the hearing to admit the deposition of Dr. Haziris and/or Dr. Koval; however, four months later, he still had not received additional evidence in this case. He then ordered the record closed in another 30 days. Decision and Order on Recon. at 2. The administrative law judge has great latitude in admitting evidence and authorizing discovery, and his decisions on these matters are reversible only if proven to be arbitrary, capricious, or an abuse of discretion. *See generally Olsen v. Triple A Machine Shops, Inc.*, 25 BRBS 40 (1991), *aff'd mem. sub nom. Olsen v. Director, OWCP*, Nos. 91-70642, 92-70444 (9th Cir. June 15, 1993); *Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153, 155 n.1 (1985); *Bonner v. Ryan-Walsh Stevedoring Co., Inc.*, 15 BRBS 321 (1983). In this case, the administrative law judge afforded claimant adequate post-hearing time to submit the doctors' depositions, and claimant has not established an abuse of discretion in this regard. Consequently, we reject claimant's argument that the administrative law judge erred in closing the record.

Accordingly, the administrative law judge's decisions are affirmed.

SO ORDERED.

F.Supp. at 1321; Decision and Order on Recon. at 2.

[3]We also reject claimant's assertion that the administrative law judge's conclusion of no disability "negates the carrier's concession" of a one percent permanent defect. Employer herein did not concede permanent impairment or pay any permanent partial disability benefits. The exhibit claimant cites refers to a previous foot injury which occurred on another employer's premises. *See* Cl. Ex. 4.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge