

BRB No. 92-2287

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| JOHN B. ROBERTSON |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| NEWPORT NEWS SHIPBUILDING |) | |
| AND DRY DOCK COMPANY |) | DATE ISSUED: |
| |) | |
| Self-Insured |) | |
| Employer-Respondent |) | DECISION and ORDER |

Appeal of the Decision and Order Denying Benefits of Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

Lee E. Wilder (Rutter & Montagna), Norfolk, Virginia, for claimant.

Benjamin M. Mason and Jacqueline R. Waymack (Mason & Mason), for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (90-LHC-3064) 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).

Claimant, a welder, suffered burns to his legs, arm, face and neck on January 14, 1985, during the course and scope of his employment with employer. Claimant was immediately transported to the hospital, where he came under the care of Dr. Schuler. On January 30, 1985, Dr. Schuler performed a debridement and skin graft on claimant. Claimant, who returned to work approximately one month later, continues to work for employer but is limited to duties performed inside ships. Claimant underwent additional debridement and skin grafting in September 1985, by Dr. Schuler, and in April 1989, by Dr. Grenga.

Employer voluntarily paid temporary total disability compensation to claimant for various periods of time between January 1985 and February 1992. In addition, employer voluntarily paid to

claimant \$3,000 for disfigurement pursuant to Section 8(c)(20) of the Act, 33 U.S.C. §908(c)(20)(1988). Claimant filed a claim under the Act seeking permanent partial disability compensation under Section 8(c)(2) of the Act, 33 U.S.C. §908(c)(2), for an alleged impairment to his legs.¹

In his Decision and Order, the administrative law judge initially determined that, under the Act, a permanent partial disability award under the schedule can run concurrently with an award for disfigurement. The administrative law judge next found, however, that since claimant did not advance any percentage of disability for the functional impairment to his legs alone, he failed to meet his burden of establishing the nature and extent of any work-related disability to his legs. Thus, the administrative law judge denied claimant's request for permanent partial disability benefits under Section 8(c)(2) of the Act.

On appeal, claimant contends that he does have functional limitations to his legs, as evidenced by the work restrictions he was placed under due to the recommendation of Dr. Grenga. Therefore, claimant argues, the administrative law judge erred by failing to award him permanent partial disability benefits pursuant to Section 8(c)(2) of the Act. Employer responds, urging affirmance of the administrative law judge's denial of benefits.

It is well-established that claimant bears the burden of establishing the nature and extent of any disability sustained as a result of a work-related injury. *See Anderson v. Todd Shipyards, Inc.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding and Construction Co.*, 17 BRBS 56 (1985). An award pursuant to the schedule, Section 8(c)(1) - (19), 33 U.S.C. §908(c)(1) - (19), runs for the proportional number of weeks attributable to the loss of use of the scheduled body part at the full compensation rate.² *See Byrd v. Toledo Overseas Terminal*, 18 BRBS 144 (1986). In the instant case, Drs. Schuler, St. Clair and Moore all agreed that claimant did not suffer any functional impairment to his legs as a result of his burn injuries. *See* Emp. Exs. 2j, 5c, 6b. In March 1990, Dr. Grenga opined that claimant had not developed a functional impairment from any of his burn scars, and assigned claimant a 20 percent whole man impairment due to claimant's skin disease. *See* Emp. Ex. 6f-g; Cl. Ex. 1 at 20-25. While Dr. Grenga advised claimant to avoid mechanical traumas to his affected skin areas, as well as extreme temperature, he did not assign an impairment rating to claimant's legs. *See* Cl. Ex. 1 at 23, 26-27. Dr. Ruffin, in a March 1986 report, stated that claimant has suffered a 4 percent loss of function to each lower extremity. Emp. Ex. 3a-b. However, in a July 1991 letter, Dr. Ruffin clarified his earlier assessment by stating that his previous impairment rating was given on the basis of residual burn scars with their sensory impairment and potential for reinjury, and that claimant suffered no loss of function due to his burns which would prevent him from performing any type of work for which he is qualified. *See* Emp. Ex. 3e.

¹The maximum permanent partial disability award available under Section 8(c)(2) for the loss of use of a leg is 288 weeks. 33 U.S.C. §908(c)(2).

²An award for disfigurement under Section 8(c)(20) of the Act can run concurrently with an additional permanent partial disability award under either the schedule or Section 8(c)(21) of the Act, 33 U.S.C. §908(c)(21). *See, e.g., Wright v. Superior Boat Works*, 16 BRBS 17 (1985).

In adjudicating a claim, an administrative law judge is entitled to weigh the medical evidence and draw his own inferences from it. *See Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988). In the instant case, Dr. Grenga did not set forth an impairment rating regarding claimant's legs; we therefore hold that the administrative law judge committed no error in failing to award claimant permanent partial disability compensation under Section 8(c)(2), based on the work restrictions placed on him by that physician. Moreover, since the record contains no evidence of a work-related functional impairment to claimant's legs, the administrative law judge properly found that claimant failed to advance any percentage of disability to his legs from which an award under Section 8(c)(2) could be fashioned. *See, e.g., Byrd*, 18 BRBS at 146. Therefore, we affirm the administrative law judge's determination that claimant is not entitled to an award of permanent partial disability benefits pursuant to Section 8(c)(2) of the Act.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge