



BRB No. 16-0100

MIGUEL ORDONEZ

## Claimant-Petitioner

V.

UNIVERSAL MARITIME SERVICE  
CORPORATION

and

SIGNAL MUTUAL INDEMNITY  
ASSOCIATION, LIMITED

## Employer/Carrier- Respondents

DATE ISSUED: July 28, 2016

## DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Theresa C. Timlin,  
Administrative Law Judge, United States Department of Labor.

Robert J. DeGroot and Oleg Nekritin, Newark, New Jersey, for claimant.

Christopher J. Field (Field & Kawczynski, LLC), South Amboy, New Jersey, for employer/carrier.

Before: BUZZARD, GILLIGAN and ROLFE, Administrative Appeals  
Judges.

PER CURIAM:

Claimant appeals the Decision and Order Awarding Benefits (2012-LHC-01682) of Administrative Law Judge Theresa C. Timlin 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 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 longshoreman, was injured on May 1, 2011, during the course of his employment when the steering wheel of the truck he was driving moved erratically and lacerated the web space between his right thumb and index finger. As a result of this incident, claimant received stitches in his hand and underwent surgery on September 19, 2011. Employer voluntarily paid claimant temporary total disability benefits from May 2 through November 17, 2011. *See* 33 U.S.C. §908(b). Claimant sought permanent partial disability benefits under the Act.

In her Decision and Order, the administrative law judge credited the opinion of Dr. Bercik in determining that claimant is entitled to permanent partial disability compensation pursuant to Section 8(c)(3) of the Act, 33 U.S.C. §908(c)(3), for a five percent impairment to his right hand. On appeal, claimant challenges the administrative law judge's reliance on Dr. Bercik's opinion. Employer responds, urging affirmance of the administrative law judge's decision.

Dr. Bercik, a Board-certified orthopedic surgeon, examined claimant on November 15, 2011, September 17, 2012, and February 19, 2013, and reviewed reports from claimant's other providers. *See* Decision and Order at 14-16, 25-26. Following his September 17, 2012 and February 19, 2013, examinations, Dr. Bercik opined that claimant sustained a five percent permanent impairment to his right hand. EXs 9 at 4; 17 at 3. Dr. Bercik subsequently deposed that he based this impairment rating on the nature of claimant's injury, his experience, and the American Medical Association *Guides to the Evaluation of Permanent Impairment*, Sixth Edition. EX 18 at 19, 36-39. The administrative law judge noted that Dr. Bercik found during each of his examinations that claimant exhibited a full range of motion in his wrist and hand, that claimant does not have reflex sympathetic dystrophy, and that as of November 11, 2011, claimant was capable of resuming regular daily living activities and work without restrictions. Decision and Order at 14. The administrative law judge further concluded that Dr. Bercik's opinion regarding the extent of claimant's impairment was consistent with Dr. Brady's finding on November 1, 2011, that claimant's hand exhibited good function, *see* EX 13, and Dr. Shamash's December 14, 2011 statement that claimant's hand demonstrated "excellent function." *Id.* The administrative law judge declined to rely on the opinion of Dr. Di Lorenzo, that claimant has a 65 percent impairment to his right hand, in part because that physician's diagnosis of reflex sympathetic dystrophy is not well-supported or reasoned. The administrative law judge also noted that Dr. Di Lorenzo did not consider range of motion testing to be an important part of an impairment evaluation, whereas Drs. Shamash, Brady and Bercik did. *See* Decision and Order at 25-26.

We reject claimant's contention that the administrative law judge erred in relying on Dr. Bercik's opinion to determine the extent of claimant's right hand impairment. In adjudicating a claim it is well-established that an administrative law judge is entitled to

weigh the medical evidence and draw her own inferences from it, and is not bound to accept the opinion or theory of any particular witness; the Board is not empowered to reweigh the evidence. *See Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3d Cir. 2001); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). Moreover, the administrative law judge is not bound by any particular standard or formula but may consider a variety of medical opinions and observations, as well as claimant's testimony, in assessing the extent of claimant's disability in a scheduled injury case.<sup>1</sup> *See Cotton v. Army & Air Force Exch. Services*, 34 BRBS 88 (2000); *Pimpinella v. Universal Mar. Serv., Inc.*, 27 BRBS 154 (1993). The administrative law judge discussed at length, and exercised her discretion in weighing, the medical evidence of record. *See* Decision and Order at 7-19, 21-26.<sup>2</sup> Accordingly, as the administrative law judge's weighing of the medical evidence is rational and her conclusion is supported by Dr. Bercik's opinion, we affirm the administrative law judge's finding that claimant sustained a five percent permanent impairment to his right hand. *Brown v. Nat'l Steel & Shipbuilding Co.*, 34 BRBS 195 (2001); *Wright v. Superior Boat Works*, 16 BRBS 17 (1983).

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<sup>1</sup> In this respect, we reject claimant's reliance on *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), and Federal Rule of Evidence 702, in support of his contention that Dr. Bercik's opinion cannot be credited because he did not explain how he used the AMA Guides, and thus did not set forth his impairment rating with reference to "scientific evidence." In this case, claimant has not challenged the admissibility of Dr. Bercik's opinion but, rather, the weight given to that opinion by the administrative law judge. *See Casey v. Georgetown Univ. Medical Center*, 31 BRBS 147 (1997). Moreover, it is well-established that, except in a hearing loss case, an award under the schedule need not be predicated on a rating made pursuant to the AMA Guides. *Pimpinella v. Universal Maritime Service, Inc.*, 27 BRBS 154, 159 n.4 (1993); *Mazze v. Frank J. Holleran, Inc.*, 9 BRBS 1053 (1978); *Bachich v. Seatrains Terminals of California*, 9 BRBS 184 (1978).

<sup>2</sup> Contrary to claimant's argument on appeal, the administrative law judge did not base her determination regarding the extent of claimant's right hand impairment on the reliability of claimant's subjective complaints. Rather, the administrative law judge addressed the conflicting medical opinions and credited the one she found best reasoned and supported by the objective findings. *See generally John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961).

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

SO ORDERED.

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GREG J. BUZZARD  
Administrative Appeals Judge

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RYAN GILLIGAN  
Administrative Appeals Judge

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JONATHAN ROLFE  
Administrative Appeals Judge