

BRB No. 01-0756

PAUL S. BRUCE )  
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 Claimant-Petitioner )  
 )  
 v. )  
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 I.T.O. CORPORATION ) DATE ISSUED: June 10, 2002  
 OF BALTIMORE )  
 )  
 Self-Insured )  
 Employer-Respondent ) DECISION and ORDER

Appeal of the Decision and Order on Remand of Jeffrey Turek, Administrative Law Judge, United States Department of Labor.

Myles R. Eisenstein, Baltimore, Maryland, for claimant.

Michael Propopik (Franklin & Propopik), Baltimore, Maryland, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand (92-LHC-1052) of Administrative Law Judge Jeffrey Turek 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). This is the third time this case is before the Board.

Claimant was injured during the course of his employment on April 19, 1990, when his right foot became trapped between two shipping containers. Claimant underwent surgery for a right tarsal tunnel release, and was paid temporary total disability benefits from April 20, 1990, to July 8, 1990, and from September 4, 1990 until January 9, 1991, when he returned to his usual job duties.

Claimant's claim for permanent partial disability compensation was initially heard by Administrative Law Judge Joel R. Williams, who awarded claimant permanent partial disability benefits for a 7 percent loss of use of the right leg pursuant to Section 8(c)(2) of the Act, 33 U.S.C. §908(c)(2). Claimant appealed to the Board, which vacated the award, agreeing with claimant that

his impairment is to his foot rather than to his leg. The case was therefore remanded for the administrative law judge to determine the extent of claimant's foot impairment. *Bruce v. I.T.O. Corp.*, BRB No. 93-0692 (Feb. 28, 1996)(unpublished).

On remand, Judge Turek (the administrative law judge) denied claimant's motion to submit additional medical evidence into the record and, in a Decision and Order based upon the evidence of record, found claimant to have sustained a two percent permanent partial disability to his right foot; accordingly, the administrative law judge awarded claimant permanent partial disability compensation for a two percent impairment to his right foot pursuant to Section 8(c)(4) of the Act, 33 U.S.C. §908(c)(4). Claimant again appealed to the Board, arguing that the administrative law judge erred in denying his motion to submit additional medical evidence into the record. The Board agreed with claimant's assertion, since a new hearing was scheduled following remand due to the retirement of the former administrative law judge and claimant's motion was timely with regard to that hearing, and the Board remanded the claim to allow the parties to submit additional evidence on the extent of claimant's foot impairment. *Bruce v. I.T.O. Corp.*, BRB No. 99-0138 (Oct. 18, 1999)(unpublished).

In his Decision and Order on Remand, the administrative law judge addressed the medical evidence of record and, relying upon the disability rating of Dr. Hunt, concluded that claimant is entitled to a permanent partial disability award for a two percent impairment to his right foot.

On appeal, claimant challenges the administrative law judge's determination that claimant is entitled to permanent partial disability compensation for a two percent impairment to his right foot. Specifically, claimant contends that the administrative law judge erred in relying upon the opinion of Dr. Hunt rather than the opinion of Dr. Russell. In support of his contention that Dr. Hunt's opinion is not competent, claimant points out that the doctor did not perform a Tinel sign test when examining claimant; moreover, claimant avers that Dr. Hunt's disability assessment does not conform to the American Medical Association's *Guides to Evaluation of Permanent Impairment*. Employer responds, urging affirmance of the administrative law judge's decision.

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 Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56 (1985). In the instant case, Dr. Hunt examined claimant on October 14, 1991, May 28, 1992, and February 29, 2000, and he reviewed the records of the medical providers who had treated claimant for his foot condition. Based upon his findings of intact function in claimant's motor nerves and muscles controlling his lower extremities, no definite loss of function of the motor component of claimant's nerve, claimant's ability to function and claimant's subjective complaints, Dr. Hunt concluded that claimant sustained a two percent impairment to his right foot. In rendering this opinion, Dr. Hunt stated that the performance of a Tinel test on claimant was not necessary since claimant's nerve was not severed. In contrast, Dr. Russell, who examined claimant on October 21, 1997, opined that claimant sustained a 38 percent impairment of the right lower extremity based upon his findings of a

positive Tinel test and limitation of plantar flexion, dorsiflexion, and ankle inversion and eversion.<sup>1</sup>

The administrative law judge relied upon the opinion of Dr. Hunt, which he found to be the better explained and more credible opinion. Specifically, in rendering this determination, the administrative law judge found that Dr. Hunt reviewed all of the relevant medical records and reports regarding claimant's condition and that he saw claimant three times over the nine year period of claimant's disability and thus was afforded the opportunity to follow claimant's progress. Regarding Dr. Russell, the administrative law judge found that this physician did not review the operative report following claimant's surgery, that he was unfamiliar with the extent of claimant's physical abilities,<sup>2</sup> and that he did not compare claimant's right and left feet, thus calling into question the positive Tinel test documented by Dr. Russell. Based upon the foregoing, the administrative law judge determined that the opinion and impairment rating of Dr. Hunt are the better explained and more credible evidence in this case, hence, he relied upon that opinion in determining that claimant is entitled to permanent partial disability compensation for a two percent impairment to his right foot.

Determinations regarding the weight accorded to medical evidence are the province of the administrative law judge. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5<sup>th</sup> Cir. 1962), *cert. denied*, 372 U.S. 954 (1963). Thus, in adjudicating a claim, it is well-established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences from

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<sup>1</sup>Both Dr. Hunt and Dr. Russell cited the *AMA Guides* in rendering their respective opinions. In any event, the administrative law judge is not bound by any particular standard or formula but may consider a variety of medical opinions and observations in addition to claimant's description of symptoms and physical effects of his injury in assessing the extent of claimant's disability. *Pimpinella v. Universal Maritime Service, Inc.*, 27 BRBS 154 (1993).

<sup>2</sup>Claimant has apparently not sought medical treatment for his foot condition in over nine years; additionally, claimant continues to work on a full-time basis for employer and is employed in a tree pruning business.

it, *see Brown v. National Steel & Shipbuilding Co.*, 34 BRBS 195 (2001), and he is not bound to accept the opinion or theory of any particular witness. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5<sup>th</sup> Cir. 1062). In this regard, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has emphasized that an administrative law judge, in considering the medical testimony of record, must examine the logic of a physician's conclusions and evaluate the evidence upon which those conclusions are based. *See Director, OWCP v. Newport News Shipbuilding & Dry Dock Co. [Carmines]*, 138 F.3d 134, 32 BRBS 48(CRT) (4<sup>th</sup> Cir. 1998). The court's holding in *Carmines* requires the administrative law judge to determine whether there is a reasoned and documented basis for a medical opinion, and to evaluate such an opinion in light of the evidence in the record considered as a whole. *See Carmines*, 138 F.3d at 140-141, 32 BRBS at 52(CRT). In the instant case, the administrative law judge fully evaluated the respective medical opinions relied upon by the parties, declined to rely upon the opinion of Dr. Russell based upon the deficiencies which he found to exist in that physician's opinion, and thus relied upon the disability rating of Dr. Hunt, in concluding that claimant sustained a two percent impairment to his right foot. As the administrative law judge's finding is both supported by substantial evidence and is in accordance with law, we affirm the administrative law judge's determination that claimant suffers from a two percent impairment to his right foot, and his consequent award of permanent partial disability compensation for that impairment pursuant to Section 8(c)(4) of the Act.

Accordingly, the administrative law judge's Decision and Order on Remand is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge