

BRB No. 09-0746

CLYDE STAUBLEY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
ELECTRIC BOAT CORPORATION)	DATE ISSUED: 06/23/2010
)	
Self-Insured)	ORDER on
Employer-Respondent)	RECONSIDERATION

Claimant has filed a timely motion for reconsideration of the Board's Decision and Order in *Staubley v. Electric Boat Corp.*, BRB No. 09-0746 (Mar. 24, 2010) (unpub.). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Employer responds, urging the Board to reject claimant's motion.

In its decision, the Board affirmed the administrative law judge's award of benefits for a 10 percent pulmonary impairment. Dr. Teiger opined in October 2007 that claimant does not have any impairment since claimant has no functional limitations due to his pulmonary condition. Dr. Matarese opined that claimant's pulmonary function test results in 2005, 2006, and 2008 equate to a 20 percent impairment. The Board held that the administrative law judge gave a rational reason for averaging the ratings, as she found that, taken together, the two opinions account for both claimant's reduced test results and his clinical presentation, whereas, separately, each opinion accounts for only one of these factors. *Staubley*, slip op. at 5. The Board also affirmed the administrative law judge's finding that claimant's pulmonary condition reached maximum medical improvement on January 31, 2008, as the finding is supported by the opinion of Dr. Matarese. *Id.* Thus, claimant's permanent partial disability benefits commenced on the date of maximum medical improvement. 33 U.S.C. §§902(10), 908(c)(23).

In his motion for reconsideration, claimant states that the Board correctly held that the administrative law judge erred by not taking administrative notice of the *AMA Guides to the Evaluation of Permanent Impairment* (*AMA Guides*), but claimant asserts that the Board then erred by not remanding the case for the administrative law judge to reconsider the extent of claimant's pulmonary impairment pursuant to the *AMA Guides*. In its decision, the Board held that the administrative law judge rationally rejected claimant's contention that his 1991 diffusing capacity results support a finding of impairment under the *AMA Guides* at the date of his voluntary retirement in 1996. The administrative law judge rationally rejected Dr. Cherniak's five percent impairment

rating, noting that Dr. Cherniak did not state that he had applied the *AMA Guides*. The administrative law judge credited the opinions of Drs. Teiger and Pulde that Dr. Cherniak's five percent impairment rating is not consistent with the *AMA Guides*. Thus, notwithstanding her error in requiring claimant to introduce the *AMA Guides* into the record, the administrative law judge gave a rational basis for rejecting Dr. Cherniak's opinion. Claimant has not made any persuasive argument that the Board was required to remand the case for the administrative law judge to further apply the *AMA Guides*. See *Staubley*, slip op. at 3-4.

Claimant also contends that the administrative law judge failed to properly determine the date of maximum medical improvement and that the Board did not address this issue on appeal. Claimant asserts he established that his pulmonary impairment commenced on the date of his retirement in 1996. The Board addressed and rejected claimant's contention that he established a five percent pulmonary impairment in 1996. *Staubley*, slip op. at 4. The Board also addressed maximum medical improvement in its decision, stating that "the administrative law judge's finding that claimant's condition became permanent on January 31, 2008, is supported by the opinion of Dr. Matarese," *Staubley*, slip op. at 5, and that claimant "has not demonstrated error in the administrative law judge's weighing of the evidence." *Id.* at 6. In his deposition testimony, Dr. Matarese opined that claimant's pulmonary impairment reached maximum medical improvement by the date of his last examination on January 31, 2008, because claimant's condition was not going to get much better and there had been some stability in claimant's diffusion capacity. CX 9 at 7. Therefore, we reject claimant's assertion that the Board did not address his contentions concerning the date his respiratory impairment became permanent. The administrative law judge's finding in this regard is supported by substantial evidence.

Accordingly, claimant's motion for reconsideration is denied. 20 C.F.R. §802.409. The Board's decision is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge