**U.S. Department of Labor**

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 16-0399

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| HENRY M. KERR | ) | |
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| Claimant-Petitioner | ) | |
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| v. | ) | |
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| STEVEDORING SERVICES OF AMERICA | ) | DATE ISSUED: May 25, 2017 |
| | ) | |
| and | ) | |
| | ) | |
| HOMEPORT INSURANCE COMPANY | ) | |
| | ) | |
| Employer/Carrier-<br>Respondents | )<br>) | DECISION and ORDER |

Appeal of the Decision and Order of Paul C. Johnson Jr., Administrative Law Judge, United States Department of Labor.

Lara D. Merrigan (Merrigan Legal), San Rafael, California, and E. Paul Gibson and Allison S. Leard (E. Paul Gibson, P.C.), North Charleston, South Carolina, for claimant.

Vincent C. Northcutt and Kate K. Hemingway (Lueder, Larkin & Hunter, LLC), Mount Pleasant, South Carolina, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2015-LHC-00610) of Administrative Law Judge Paul C. Johnson, 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 administrative law judge's findings of fact and

conclusions of law if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant worked for employer and its subsidiaries for approximately 33 years. He started working on the waterfront in November 1981 as a gear shop operations manager. In 1993, he began to manage a warehouse for employer's subsidiary, Trans-Hold. Tr. at 28-29; CX 21 at 21. Claimant managed the warehouse until 2010, when he moved into the corporate office to work in sales and business development for employer's subsidiaries, Trans-Hold and Container Freight Station. Tr. at 28-29. In June 2013, when employer was short-handed and the port was busy, employer asked claimant to fill in as a longshoreman for three days, despite the fact that claimant had not worked on a ship for 15 years and was employed as a "Sales Director." *Id*. at 30, 39. On June 12, 2013, the first day of claimant's assignment, claimant was struck to the ground by 12 tons of cargo swinging on a crane arm as it was unloaded from a ship. *Id*. at 30. Claimant alleged he suffered injuries to his upper and lower back and both knees in this accident.

After the accident, claimant returned to work at his sales job and continued to work "with restrictions." Tr. at 33. Claimant testified that the duties of his sales position did not change following the accident, but, with the consent of his supervisors, he self-modified his duties to cut back on his workload/hours, eliminate "outside" sales calls, and reduce association appointments due to mobility issues, doctors' appointments, and restrictions limiting the number of hours claimant could sit in the office. *Id*. at 34-35, 41. Employer continued to pay claimant his pre-injury salary. *Id*. at 35-36. With the exception of two weeks' medical leave in October 2013, claimant performed his sales work for 18 months post-injury until his sales position was eliminated on November 30, 2014, by Premier Logistics, which had acquired Trans-Hold in mid-September 2014. *Id*. at 36-39; CX 20 at 24. Claimant has not worked since his position was eliminated. He filed a claim under the Act for total disability benefits commencing December 1, 2014.

The parties agreed that claimant suffered compensable injuries to both knees and to his thoracic spine as a result of the June 2013 accident, and that he is entitled to reasonable and necessary medical treatment for these conditions. Decision and Order at 43, 55. Based on the opinion of Dr. McIntosh, who treated claimant's knee injuries, the administrative law judge found claimant's knee condition reached maximum medical improvement on June 17, 2014, and that claimant is entitled to an award under the schedule for a ten percent permanent impairment to his right knee and a five percent permanent impairment to his left knee. 33 U.S.C. §908(c)(2); Decision and Order at 23, 59; CX 2.

The administrative law judge found claimant entitled to the Section 20(a), 33 U.S.C. §920(a), presumption that his pre-existing lumbar back condition was aggravated by the June 2013 accident, but that employer rebutted the presumption with circumstantial evidence that the condition is due to claimant's pre-existing lumbar condition. On the record as a whole, the administrative law judge found that claimant failed to establish that the June 2013 accident aggravated his lumbar condition. Thus, the

administrative law judge found this condition is not compensable. Decision and Order at 47.

In addressing whether claimant established a work-related disability, the administrative law judge found that claimant's short-term longshore work was not a regular duty of his usual employment with employer, which was in sales. The administrative law judge further found that claimant did not establish a prima facie case of total disability because he adequately performed his usual sales position for 18 months following the accident until his position was eliminated for reasons unrelated to his injury. Decision and Order at 50-52. Although claimant testified that his physical condition worsened after his termination, the administrative law judge found that claimant failed to establish that any deterioration in his condition was related to his compensable knee and thoracic injuries. Thus, the administrative law judge found any loss in claimant's wage-earning capacity after his position was eliminated is not work-related and he denied the claim for total disability compensation.[1] *Id.* at 54.

On appeal, claimant asserts the administrative law judge erred in finding his lumbar condition is not work-related, in failing to find he is totally disabled from his usual work, and, alternatively, in failing to enter a nominal award based upon an expectation of future disability to his knees. Employer responds, urging affirmance. Claimant filed a reply brief.

## The Lumbar Injury

Claimant asserts the administrative law judge erred in finding that employer presented substantial evidence to rebut his prima facie showing of a work-related lumbar aggravation of his pre-existing lumbar condition. Claimant additionally asserts the administrative law judge erred in failing to find, based on the record as a whole, that Dr. Folk's opinion establishes that claimant's lumbar condition was aggravated by the work accident.

A claimant bears the burden of proving the existence of an injury or harm and that a work-related accident occurred or that working conditions existed which could have caused the harm or aggravated a pre-existing condition, in order to establish a prima facie case. *Universal Maritime Corp. v. Moore,* 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *Bolden v. G.A.T.X. Terminals Corp.,* 30 BRBS 71 (1996); *see U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP,* 455 U.S. 608, 14 BRBS 631 (1982). If these elements are established, the Section 20(a) presumption applies to link

[1] The administrative law judge also found that claimant did not establish that he was discriminated against in violation of Section 49 of the Act, 33 U.S.C. §948a. Decision and Order at 57-59. This finding is not challenged on appeal.

the claimant's injury or harm to the accident or working conditions. *Moore*, 126 F.3d at 262-263, 31 BRBS at 122-123(CRT).

Upon invocation of the Section 20(a) presumption, the burden shifts to the employer to rebut it with substantial evidence that the claimant's condition was not caused or aggravated by his employment. *Newport News Shipbuilding & Dry Dock Co. v. Holiday,* 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009). In a case such as this one where claimant asserts that the work accident aggravated a prior condition, it is incumbent upon the employer to introduce substantial evidence that the work accident did not aggravate the preexisting condition in order to rebut the Section 20(a) presumption. *Holiday,* 591 F.3d at, 226, 43 BRBS at 69(CRT); *see also Moore*, 126 F.3d at 262, 31 BRBS at 123(CRT). The employer may rebut the Section 20(a) presumption with substantial evidence "demonstrating that the claimant's symptoms are a natural outgrowth of, or complication from, an existing predicate condition." *Holiday*, 591 F.3d at 226, 43 BRBS at 69(CRT). If the administrative law judge finds the Section 20(a) presumption rebutted, it no longer controls, and the issue of causation must be resolved on the evidence of record as a whole, with the claimant bearing the burden of persuasion. *Moore,* 126 F.3d at 262, 31 BRBS at 124(CRT); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

In this case, the administrative law judge invoked the Section 20(a) presumption linking claimant's lumbar condition to the June 2013 work accident as claimant treated for a lumbar condition post-injury and his treating physician, Dr. Folk, opined that claimant's lower back was substantially worse after the accident. Decision and Order at 44; CX 6 at 6, 16-18; CX 20 at 32, 40-41. The administrative law judge found that employer rebutted the presumption with medical evidence showing that: claimant has a preexisting lumbar condition that he has continuously treated since 2002; claimant's lumbar symptoms progressively increased in the years prior to the work accident; and there was no immediate post-accident impact on claimant's lumbar condition as the treatment records, dated two weeks after the accident, describe only a thoracic injury, claimant did not treat his lumbar condition for over three months post-accident, and all of claimant's post-injury lumbar injections followed the same pattern of treatment as that in the two years prior to the accident.[2] The administrative law judge found this evidence

[2] The administrative law judge observed that Dr. Folk's treatment records show claimant underwent lumbar injections several times between 2002-2005, once in 2006, three times in 2008, twice in 2009, twice in 2010, four times in 2011, three times in 2012, and twice in 2013 prior to the accident. Decision and Order at 45; EX 9 at 251-289. Claimant underwent a lumbar decompressive surgery on February 7, 2003, and February 22, 2006. EX 13 at 361-362, 366. Dr. Cuddy proposed additional surgery in January 2012, which claimant declined. *Id.* at 344. One month before the work accident, Dr. Folk wrote in his notes that "fusion only option." EX 9 at 289.

sufficient to rebut the Section 20(a) presumption as it tends to support employer's theory that claimant's lumbar condition was not aggravated in the June 2013 accident. Decision and Order at 45.

We reject claimant's contention that the administrative law judge erred in finding the Section 20(a) presumption rebutted. Contrary to claimant's assertion, the administrative law judge addressed claimant's aggravation claim under the proper standard. Specifically, the administrative law judge invoked the presumption based on an aggravation theory of recovery, i.e., based on Dr. Folk's opinion that claimant's pre-existing lumbar condition was substantially worse after the June 2013 accident. Decision and Order at 44; CX 20 at 40-41. In addressing rebuttal, the administrative law judge cited applicable law and specifically stated that employer may rebut a prima facie showing of a work-related aggravation with substantial evidence that claimant's disability is the natural outgrowth of a pre-existing condition. Decision and Order at 44-45 (citing *Holiday,* 591 F.3d at 226, 43 BRBS at 69(CRT)). The administrative law judge also correctly stated that employer's evidence need not affirmatively rule out a causal connection, and that evidence that tends to support the theory contrary to the claimant's prima facie case may be sufficient to rebut it. Decision and Order at 45; *Moore*, 126 F.3d at 263, 31 BRBS at 123(CRT). In *Moore*, the United States Court of Appeals for the Fourth Circuit, in whose jurisdiction this case arises, held the following evidence sufficient to rebut the Section 20(a) presumption as a matter of law as it "cast doubt" on the claimant's prima facie case: medical evidence that did not contain a complaint of back pain until at least six months after the work injury; a medical report two months after the work injury that noted no complaints of back pain; and medical evidence that the claimant experienced back pain before the work injury to which any later back pain could have been attributed. *Id.*

The administrative law judge found that claimant's treatment records establish he had a pre-existing lumbar condition with progressively worsening symptoms, note that additional surgery had been claimant's "only option" before the injury, and record no change in symptoms immediately following the accident or in post-accident treatment. The administrative law judge rationally found that this evidence tends to support the theory that any increase in claimant's lumbar symptoms is due to the natural progression of claimant's pre-existing lumbar condition, and not the June 2013 accident. *Holiday*, 591 F.3d at 226, 43 BRBS at 69-70(CRT); *Moore*, 126 F.3d at 262, 31 BRBS at 123(CRT). Thus, on the facts of this case, we affirm the administrative law judge's

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After the 2013 accident, claimant received one lumbar injection on September 27, 2013, and four lumbar injections in 2014. CX 6 at 6, 16-17, 19-20.

finding that employer presented substantial evidence sufficient to rebut the Section 20(a) presumption. *Id.*

In weighing the evidence as a whole, the administrative law judge observed that the evidence linking claimant's lumbar condition to the work accident is claimant's testimony, a state workers' compensation form completed by Dr. Folk which indicates that claimant's lumbar spine was affected in the work accident, and Dr. Folk's deposition testimony that the accident substantially aggravated or worsened claimant's lumbar condition. Decision and Order at 46; CX 6 at 23; CX 20 at 32, 40-41. The administrative law judge found claimant generally credible; however, he found claimant's testimony regarding causation to be equivocal because his statement that his low back "could have some issues" was vague and claimant did not explain how his low back condition worsened after the accident. Decision and Order at 47; CX 21 at 26; Tr. at 62. Further, the administrative law judge found Dr. Folk's causation opinion unpersuasive as Dr. Folk admitted that his opinion was based solely on claimant's subjective complaints and that there were no objective findings to support his conclusions. Decision and Order at 46; CX 20 at 42-43. Thus, the administrative law judge found claimant did not carry his burden to establish on the record as a whole that his low back condition was aggravated by the work accident. Decision and Order at 47.

We reject claimant's assertion that the administrative law judge erred in failing to assign controlling weight to the opinion of Dr. Folk. Although an administrative law judge may give special weight to a treating physician's opinion, *see Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir. 1998), *amended*, 164 F.3d 480, 32 BRBS 144(CRT) (9th Cir. 1999), *cert. denied*, 528 U.S. 809 (1999), he is entitled to evaluate the sufficiency of a medical opinion in view of other evidence of record. *See Director, OWCP v. Newport News Shipbuilding & Dry Dock Co. [Carmines]*, 138 F.3d 134, 32 BRBS 48(CRT) (4th Cir. 1998). The administrative law judge is tasked with weighing the evidence and drawing inferences and reaching conclusions based on that evidence. *Pittman Mech. Contractors, Inc. v. Director, OWCP [Simonds],* 35 F.3d 122, 28 BRBS 89(CRT) (4th Cir. 1994). The Board may not reweigh the evidence, *Miffleton v. Briggs Ice Cream Co.*, 12 BRBS 445 (1980), *aff'd*, 659 F.2d 252 (D.C. Cir. 1981), or disregard an administrative law judge's finding merely because other inferences could have been drawn from the evidence. *Simonds,* 35 F.3d 122, 28 BRBS 89(CRT); *see also Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994).

In this case, the administrative law judge addressed the record in its entirety, and he assessed claimant's credibility and the weight to be accorded to Dr. Folk's medical opinion in light of its underlying reasoning. Claimant does not challenge the administrative law judge's finding that his testimony regarding whether the June 2013 accident worsened his lumbar condition is equivocal and unexplained. *See generally Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007). Moreover, as Dr. Folk

conceded that his opinion was based solely on claimant's subjective complaints and is not supported by objective medical evidence, the administrative law judge rationally found Dr. Folk's opinion unpersuasive.[3] Decision and Order at 46; CX 20 at 42-43; *see Simonds,* 35 F.3d 122, 28 BRBS 89(CRT); *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied,* 440 U.S. 911 (1979). As the administrative law judge reasonably found the only evidence of record linking claimant's current lumbar condition to his work injury to be unpersuasive, we affirm his finding that claimant failed to carry his burden of establishing, based on the record as a whole, that his lumbar condition was aggravated in the work accident.[4] *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Hice v. Director, OWCP*, 48 F. Supp. 2d 501 (D. Md. 1999).

**Total Disability**

Claimant contends the administrative law judge erred in failing to award him continuing total disability benefits commencing December 1, 2014, after his job was eliminated. Disability is defined as the "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." 33 U.S.C. §902(10). To establish a prima facie case of total disability, claimant must show that he cannot return to his regular or usual employment due to his work-related injury. *Marine Repair Services, Inc. v. Fifer*, 717 F.3d 327, 47 BRBS 25(CRT) (4th Cir. 2013); *Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 21 BRBS 10(CRT) (4th Cir. 1988).

The administrative law judge found that claimant's "usual duties" were the duties related to his sales job and did not include the longshore work that he was performing at

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[3] Dr. Folk conceded he did not have MRIs or x-rays to compare claimant's lumbar spine from its condition before the accident to its condition after the accident. CX 20 at 43.

[4] We decline to address claimant's alternate theory of recovery, that his work-related knee condition altered his gait and caused a secondary injury to his lumbar spine. Although Dr. Folk testified that an altered gait can result in lumbar pain, claimant alleged before the administrative law judge that the June 2013 accident caused injury to his back and knees. CX 20 at 40; EX 1. Claimant did not make claim for a secondary back injury. As claimant did not raise this contention before the administrative law judge, we decline to address it in the first instance. *See generally Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27(CRT) (9th Cir. 1988); *Hite v. Dresser Guiberson Pumping*, 22 BRBS 87 (1989).

the time of injury.[5] Decision and Order at 50. In so finding, the administrative law judge explained that claimant had not worked on the waterfront for 15 years prior to the injury, he had been employed as a Sales Director for three years prior to the injury and for 18 months immediately following the injury, and claimant's longshore duties were to last for only three days while employer was shorthanded. *Id.*; Tr. at 30, 50-51.

We reject claimant's contention that this finding is erroneous. A claimant's regular duties at the time of injury constitute his usual employment. *See, e.g., Manigault v. Stevens Shipping Co.,* 22 BRBS 332 (1989); *Ramirez v. Vessel Jeanne Lou, Inc.*, 14 BRBS 689 (1982). Although the facts in this case are unusual, the administrative law judge was entitled to conclude, for the reasons he gave, that the longshore work was not claimant's usual employment.[6] Therefore, on the facts of this case, we affirm the administrative law judge's finding that claimant's usual employment did not include his longshore work.

The administrative law judge also found that claimant did not establish he was unable to perform his sales director job due to his work-related injuries. Shortly after claimant's position was terminated, Dr. Folk issued work restrictions and opined that claimant was unable to return to work.[7] The administrative law judge found this evidence

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[5] Based on claimant's testimony that he worked in an office setting in the three years prior to the accident and had not worked on a ship for at least 15 years, the administrative law judge found that claimant's regular duties at the time of injury were administrative in nature. Decision and Order at 50; Tr. at 29-30. Claimant testified his job duties required building, developing, and maintaining relationships with potential customers that needed warehouse or stripping and stuffing services. Tr. at 34, 60; CX 21 at 35-36. Claimant testified his position was mostly a "desk job;" however, he also engaged in activities such as taking clients and potential clients to meals and events. EX 11 at 312; EX 18 at 35-36, 496, 503; EX 19 at 532-533, 543.

[6] This case is factually distinguishable from *Ramirez*, 14 BRBS 589, in which the Board held that the job in which the claimant sustained his injury was his usual employment, as he had worked in the position for four and one-half months prior to the injury.

[7] For claimant's back (thoracic and lumbar) condition, Dr. Folk limited claimant to four hours per day of sitting, walking and standing. CX 6 at 22. He prohibited general reaching, reaching above shoulder level, twisting, bending, stooping, pushing, pulling, lifting, squatting, kneeling, or climbing. He limited driving to 30 minutes per event, and to no more than four to six hours per day. *Id.* Dr. Folk testified that these restrictions are not mutually exclusive, and that claimant could be in one position for a certain period of

insufficient to establish that claimant's work-related injuries disabled him. The administrative law judge found that the medical evidence does not support a finding that claimant's compensable knee and thoracic injuries deteriorated to a degree that claimant was unable to work at his sales position. Decision and Order at 51, 53. The administrative law judge also observed that the 2014 and 2015 treatment records documented only complaints of lumbar pain, a condition which the administrative law judge found was not work-related. *Id.*

The administrative law judge found Dr. Folk's opinion belied by claimant's adequately performing his job for 18 months after the injury, notwithstanding that claimant "self-modified" his duties and cut back on sales calls and meetings. The administrative law judge credited claimant's testimony that he adequately performed his job, that his work was profitable to employer, and that he enjoyed his job and would have continued to work but for the termination. Decision and Order at 50-52; Tr. at 34-35; EX 32 at 28-30. The administrative law judge additionally credited the testimony of Mr. Barber, one of employer's customers who worked with claimant post-injury, that claimant performed his job duties and there was no decline in claimant's work product after the accident. Decision and Order at 51; CX 19 at 10, 22. Thus, the administrative law judge found claimant's post-injury work was not sheltered employment and that claimant was not disabled by his work injuries at the time his position was terminated. Decision and Order at 50

We reject claimant's assertion that the administrative law judge erred in finding claimant was not disabled at the time his position was terminated. Substantial evidence supports the administrative law judge's findings that claimant was adequately performing his usual job with no loss of wage-earning capacity due to his thoracic spine and knee injuries, and that he would have continued to work had his job not been terminated for reasons unrelated to his injuries.[8] Decision and Order at 51-53. Moreover, although claimant stated that his condition worsened after his termination, substantial evidence supports the administrative law judge's finding that claimant's medical treatment records

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time. CX 20 at 35-36. On December 17, 2014, Dr. Folk stated claimant was unable to return to work. CX 6 at 23.

[8] Contrary to claimant's assertion, as his work injury did not prevent him from performing his usual work at the time his position was terminated, employer did not have a burden to establish suitable alternate employment at that time. *See Norfolk Shipbuilding & Drydock Corp. v. Hord*, 193 F.3d 797, 33 BRBS 170(CRT) (4th Cir. 1999).

do not document deteriorating knee or thoracic conditions.[9] Decision and Order at 53; CX 2 at 22-23; EX 8 at 92; EX 13 at 336, 338, 344. As the administrative law judge rationally found that claimant's loss of wage-earning capacity as of December 1, 2014 was not caused by his work-related injuries, we affirm the denial of total disability benefits. 33 U.S.C. §902(10); *see generally Brooks v. Newport News Shipbuilding & Dry Dock Co.,* 26 BRBS 1 (1992), *aff'd sub nom. Brooks v. Director, OWCP,* 2 F.3d 64, 27 BRBS 100(CRT) (4th Cir. 1993); *Christie v. Georgia-Pacific Co.*, __ BRBS __, BRB No. 16-0321 (Mar. 7, 2017); *Moody v. Huntington Ingalls, Inc.*, 50 BRBS 9 (2016).

**Entitlement to Nominal Award for Knee Injury**

Lastly, claimant urges the Board to remand the case for consideration of a nominal award. Claimant argues that, even if he is not now entitled to total disability benefits, he is entitled to a nominal award as he anticipates future bilateral knee replacement surgery which will result in a period of disability.

Nominal or *de minimis* awards are benefits to which an injured employee may be entitled if he has no current loss of wage-earning capacity as a result of his injury but has established the significant possibility that the injury will cause future economic harm. *Metropolitan Stevedore Co. v. Rambo [Rambo II]*, 521 U.S. 121, 31 BRBS 54(CRT) (1997). Nominal awards are predicated on Section 8(h) of the Act, 33 U.S.C. §908(h), *see Rambo,* 521 U.S. at 135, 31 BRBS at 60(CRT), which is wholly inapplicable to scheduled injuries that are permanent in nature. *See Potomac Electric Power Co. v. Director, OWCP,* 449 U.S. 268, 14 BRBS 363 (1980); *Rowe v. Newport News Shipbuilding & Dry Dock Co.*, 193 F.3d 836, 33 BRBS 160(CRT) (4th Cir. 1999); *Gilchrist v. Newport News Shipbuilding & Dry Dock Co.*, 135 F.3d 915, 32 BRBS 15(CRT) (4th Cir. 1998); *Gillus v. Newport News Shipbuilding & Dry Dock Co.*, 37 BRBS 93 (2003), *aff'd mem.*, 84 F. App'x 333, 37 BRBS 120(CRT) (4th Cir. 2004); *Porter v. Newport News Shipbuilding & Dry Dock Co.*, 36 BRBS 113 (2002). Neither party appeals the administrative law judge's award of permanent partial disability benefits under the schedule for claimant's work-related knee injuries. We therefore affirm the award and hold that claimant is precluded from receiving any benefits pursuant to Section 8(c)(21), including a nominal award, for his knee condition. *See Porter*, 36

[9] Claimant asserts that Dr. Folk testified that he injected claimant's knees in May 2015, and injected claimant's thoracic spine in June 2015. Cl. Br. at 40-41. However, Dr. Folk's treatment records for those dates are not in the record. Further, the significance of claimant's assertion is unclear as claimant also received six thoracic spine injections and three knee injections in 2013 after the date of injury, and three thoracic spine injections and two knee injections in 2014. *Id*. at 34.

BRBS at 118; *see generally* 33 U.S.C. §922; *Huntington Ingalls Ind., Inc. v. Eason*, 788 F.3d 118, 49 BRBS 33(CRT) (4th Cir. 2015), *cert. denied*, 136 S.Ct. 1376 (2016).

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

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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RYAN GILLIGAN
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge