BRB No. 92-0511

JIMMIE FOSTER CLARK	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
WILMINGTON SHIPPING COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
HARTFORD ACCIDENT & INDEMNITY COMPANY	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Henry B. Lasky, Administrative Law Judge, United States Department of Labor.

Jimmie Foster Clark, Wilmington, North Carolina, *pro se*.

P. Scott Hedrick, Wilmington, North Carolina, for employer/carrier.

Before: SMITH, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Benefits (91-LHC-1069) of Administrative Law Judge Henry B. Lasky 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). The Board will review the administrative law judge's findings of fact and conclusions of law under its statutory standard of review to determine whether they are supported by substantial evidence, are rational, and are in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3); 20 C.F.R. §§802.211(e), 802.220.

Claimant was working for employer when, on August 23, 1988, he slipped and fell on his back. He was diagnosed by Dr. Robert M. Moore, an orthopedist, as suffering from a thoracic and lumbar strain and advised not do any heavy lifting or bending for one week. Claimant, who has not returned to work, continues to complain of back pain. After undergoing several examinations, the objective findings show that claimant's back is essentially normal, except for minimal bulging at the

L4-5 space with no herniation. In a July 31, 1989 report, Dr. Dorman, an orthopedist who treated claimant after a 1983 back injury, opined that claimant can return to work and suffers from no permanent impairment. Employer voluntarily paid claimant temporary total disability compensation from August 23, 1988 through July 31, 1989. 33 U.S.C. §908(b). Claimant filed a claim under the Act seeking continuing temporary total disability benefits.

In his Decision and Order, the administrative law judge accepted the parties' stipulation that a work-related accident occurred on August 23, 1988. The administrative law judge concluded, however, that claimant failed to establish that he suffers from any disability subsequent to July 31, 1989 as a result of the August 23, 1988 accident; accordingly, the administrative law judge denied the claim for compensation.

On appeal, claimant, representing himself, challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance.

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 & Construction Co.*, 17 BRBS 56 (1985). In the instant case, the administrative law judge, relying on the opinion of Dr. Dorman, found that claimant was able to return to his former employment as of July 31, 1989. Dr. Dorman stated in his July 31, 1989 report that he found "nothing objective on this man," that claimant suffers from no permanent impairment, and that he is capable of employment. Emp. Ex. A at 15. The administrative law judge found that Dr. Dorman's opinion was supported by the objective evidence, inasmuch as numerous CT scans and myelograms performed on claimant between August 1988 and the hearing date showed no abnormalities. Emp. Ex. E. Moreover, in crediting Dr. Dorman's opinion, the administrative law judge noted that Dr. Dorman had treated claimant since a 1983 back injury,[1] and that his opinion was corroborated by other reasonable medical reports. Specifically, Dr. Robert A. Moore, a neurosurgeon who examined claimant in 1990, stated in a June 27, 1990 letter that he agreed with Dr. Dorman's evaluation. Emp. Ex. E at 49. At his deposition, Dr. Moore stated that claimant is capable of returning to his employment from a neurological viewpoint. Cl. Ex. S at 18. In rendering these credibility determinations, the administrative law judge accorded less weight to the opinion of Dr. Maultsby, who found that claimant was unable to return to work in October 1990, since that opinion was based on an incomplete medical history. Additionally, the administrative law judge cited Dr. Maultsby's equivocation at his deposition regarding claimant's ability to return to work.[2] Lastly, the administrative law judge discredited claimant's contention that he could not bend, stoop or perform manual work as being thoroughly impeached by videotape evidence showing claimant performing activities such as automobile repair with no apparent

[1]Claimant suffered a work-related back injury in 1983 while working for another employer.

[2]Dr. Maultsby testified that if in fact claimant was performing auto-mechanic work, it would color his opinion as to claimant's disability. Cl. Ex. Q at 51. He further stated that if claimant had suffered the same complaints in 1983, and still returned to work, it would suggest that claimant was capable of returning to work after his 1988 injury. *Id*. at 56.

difficulty.[3] Emp. Exs. AA, AB, AC, AD.

We hold that the administrative law judge committed no error in crediting the opinion of Dr. Dorman and in concluding that claimant sustained no disability subsequent to July 31, 1989. In adjudicating a claim, it is well-established that an administrative law judge is entitled to evaluate the credibility of witnesses, including doctors, and is not bound to accept the opinion or theory of any particular medical examiner; rather, the administrative law judge may draw his own inferences and conclusions from the evidence. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). In the instant case, the administrative law judge's decision to credit the opinion of Dr. Dorman, as supported by the opinion of Dr. Moore, over the contrary opinion of Dr. Maultsby, is rational and within his authority as factfinder. *See generally Wheeler v. Interocean Stevedoring Co.*, 21 BRBS 33 (1988). Furthermore, as the opinions of Drs. Dorman and Robert A. Moore constitute substantial evidence to support the administrative law judge's finding that claimant had no disability subsequent to July 31, 1989, we affirm the administrative law judge's determination that claimant was not disabled subsequent to July 31, 1989, as a result of his August 23, 1988 work accident. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Therefore, the administrative law judge's denial of compensation subsequent to July 31, 1989, is affirmed.

[3]In discrediting claimant's complaints of pain, the administrative law judge also cited claimant's admission of being convicted on 11 counts of under reporting income to the North Carolina Employment Security Commission. *See* Decision and Order at 7; Emp. Ex. X.

Lastly, as we affirm the administrative law judge's finding that claimant's physical condition had resolved by July 31, 1989, we hold that the administrative law judge committed no reversible error in failing to award claimant medical expenses subsequent to that date.[4] *See Wheeler*, 21 BRBS at 33.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

[4]Claimant's contentions on appeal that he was not reimbursed for certain medical expenses, and that he suffered a work-related injury to his finger, are rejected. At the hearing, where claimant was represented by counsel, claimant and employer stipulated that employer had paid all medical bills and there was no claim for reimbursement of medical expenses. *See* Decision and Order at 2. With regard to claimant's alleged injury to his finger, claimant failed to raise this contention before the administrative law judge. Thus, we will not address this contention since it is raised for the first time on appeal. *See Bullock v. Ingalls Shipbuilding, Inc.*, 27 BRBS 90 (1993), *modified on other grounds on recon. en banc*, 28 BRBS 102 (1994), *aff'd mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995); *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, No. 93-4367 (5th Cir. Dec. 9, 1993); *Clophus v. Amoco Production Co.*, 21 BRBS 261 (1988).