

BRB No. 97-0449

GUADALUPE BERNAL)	
)	
Claimant-Petitioner)	DATE ISSUED:
)	
v.)	
)	
CONTAINER STEVEDORING)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Paul A. Mapes, Administrative Law Judge, United States Department of Labor.

Steven M. Birnbaum, San Francisco, California, for claimant.

Katherine F. Theofel (Finnegan, Marks & Hampton), San Francisco, California, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (96-LHC-413) of Administrative Law Judge Paul A. Mapes 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).

Claimant, on April 13, 1994, sustained an injury to his right shoulder while working as a linesman for employer. Claimant was initially treated by Dr. Ross who diagnosed a chronic right shoulder strain which he opined precludes claimant from returning to his usual work as a linesman. Claimant was subsequently examined by Drs. Tse, Wood and Pang, each of whom found evidence of bursitis and/or tendinitis of the right shoulder and recommended that claimant not return to his usual work. Dr. Charles also examined claimant and offered a divergent opinion that there is no orthopedic reason why claimant cannot return to his full duties as a linesman. Employer voluntarily paid temporary total disability benefits from the date of injury, April 13, 1994, until July 4, 1995, when it deemed

claimant capable of returning to his position as a linesman.

In his Decision and Order Denying Benefits, the administrative law judge determined that claimant has failed to establish that he is incapable of returning to his usual work as a linesman. Accordingly, benefits were denied. On appeal, claimant challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance.

After consideration of the administrative law judge's decision, the arguments raised on appeal, and the evidence of record, we hold that the administrative law judge's Decision and Order Denying Benefits is supported by substantial evidence and contains no reversible error. In addressing the relevant evidence, the administrative law judge initially rejected claimant's testimony regarding the extent of his alleged physical restrictions as unreliable, based on the *sub rosa* video tape which showed claimant performing numerous activities in May and July 1995 which were beyond his supposed restrictions.¹ The administrative law judge next discredited the opinions of Drs. Ross, Wood, Pang and Tse, that claimant should not engage in the type of work performed by a linesman, as their opinions were based primarily upon claimant's own dubious representations regarding his alleged symptoms and thus, were not premised on any objective evidence. In support of his finding, the administrative law judge noted that none of the truly objective evidence, *i.e.*, the x-rays and MRIs, suggests that claimant has any form of disability. The administrative law judge further found Dr. Tse's assessment that the activities shown on the video tape are not comparable to the work of a linesman questionable in view of the fact that the tape shows claimant performing tasks which seemingly went beyond the restrictions imposed by Dr. Tse. In contrast, the administrative law judge credited the opinion of Dr. Charles, that claimant is capable of returning to his work as a linesman, as it is consistent with the objective medical evidence and with the video tape.

¹ In addition, the administrative law judge found that even claimant's own physicians acknowledged that claimant's descriptions of his alleged shoulder and neck impairments are unreliable. Specifically, the administrative law judge noted that Dr. Tse admitted that there was "no organic basis" for any restriction on claimant's ability to turn his head. The administrative law judge also observed that both Drs. Ross and Tse admitted that the video tape shows claimant turning his head in a full range of motion. Moreover, the administrative law judge noted that Dr. Wood observed that claimant had a full range of motion in the shoulder when tested in the prone position.

As the administrative law judge is entitled to evaluate the credibility of all witnesses, and may draw his own inferences and conclusions from the evidence, see, e.g., *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963), and as his credibility determinations in the instant case are rational and within his authority as factfinder, see generally *Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988), the administrative law judge's determination that claimant has failed to meet his burden of showing that he is physically incapable of returning to work as a linesman and consequent denial of benefits are affirmed. See *Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd mem. sub nom. Chong v. Director, OWCP*, 909 F.2d 1488 (9th Cir. 1990).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge