

Benefits Review Board  
200 Constitution Ave. NW  
Washington, DC 20210-0001



BRB No. 21-0177

ARIEL DELACRUZ

## Claimant-Petitioner

V.

LOGISTEC CORPORATION

and

SIGNAL MUTUAL INDEMNITY  
ASSOCIATION, LTD.

Employer/Carrier-  
Respondents

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

DATE ISSUED: 12/14/2021

## DECISION and ORDER

Appeal of the Decision and Order Denying Additional Compensation of  
Carrie Bland, Administrative Law Judge, United States Department of  
Labor.

Bruce B. Eisenstein, Baltimore, Maryland, for Claimant.

Lawrence P. Postol and Sarah Kerrigan (Postol Law Firm, P.C.), McLean, Virginia, for Employer/Carrier.

Before: BOGGS, Chief Administrative Appeals Judge, GRESH, and JONES,  
Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Carrie Bland's Decision and Order Denying Additional Compensation (2018-LHC-01221, 2018-LHC-01340) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as

amended, 33 U.S.C. §901 *et seq.* (Act).<sup>1</sup> We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

While working as a warehouseman for Employer on March 7, 2017, Claimant tripped and fell into a concrete column, hitting his right hand upon impact. Hearing Transcript (HT) at 24. Based on x-rays, Dr. Ryan Katz diagnosed Claimant with a right small finger metacarpal neck fracture with a resulting flexion deformity of the distal fracture fragment. CX 10; EX 34. After conservative treatment proved unsuccessful, on April 25, 2017, Dr. Katz performed surgery on Claimant's right small finger.<sup>2</sup> *Id.* Claimant returned to his usual full-time work on July 16, 2017, but allegedly experienced difficulty with aspects of his job because of a post-surgical deformity of his right hand; specifically, his pinky finger sticks out at a 45-degree angle. HT at 30-31.

Claimant obtained impairment ratings on November 26, 2017, January 16, 2018, and April 4, 2018, from, respectively, Dr. Robert Macht, Dr. Neal Zimmerman, and Dr. Michael Franchetti. EXs 25, 35; CX 9. Dr. Macht opined Claimant had a 15 percent impairment of the right upper extremity, Dr. Zimmerman: a 15 percent impairment of the right small finger, and Dr. Franchetti: a 38 percent impairment of the right hand. *Id.* Employer countered with a May 9, 2018 report from Dr. Christopher Brigham, in which he rejected the disparate ratings of Drs. Macht, Zimmerman and Franchetti as "incorrect" and set Claimant's final impairment rating at 22 percent of his fourth finger pursuant to the Sixth Edition of the American Medical Association *Guides to the Evaluation of Permanent Impairment* (AMA Guides). EX 28.

---

<sup>1</sup> ALJ William T. Barto, who was originally assigned this case, issued an order consolidating Claimant's multiple claims for injuries to both of his shoulders and his hand/finger, and dismissed his shoulder claims on August 1, 2018. Judge Barto conducted the hearing on August 8, 2018, where the parties clarified that Claimant's single hand/finger injury claim was inadvertently given two case numbers. Hearing Transcript (HT) at 5-6. Prior to rendering a decision, Judge Barto left the Office of Administrative Law Judges and the case was reassigned to ALJ Brand. Only Claimant's hand/finger injury claim is before us.

<sup>2</sup> Dr. Katz performed an "open reduction and skeletal stabilization" of Claimant's right small finger metacarpal neck fracture. CX 9. The fracture was "stabilized with 2 Kirschner wires which were subsequently removed." *Id.*

Following the district director's recommendation, on June 21, 2018, Employer voluntarily paid Claimant temporary total disability benefits for the period from March 8 through July 16, 2017, as well as permanent partial disability benefits under the schedule for a 22 percent impairment to the fourth finger of his right hand. 33 U.S.C. §908(b), (c)(12); EXs 37-39. Claimant disputed the recommendation and sought additional compensation, alleging he sustained a 38 percent work-related permanent impairment to his right hand.

The ALJ gave greatest weight to Dr. Brigham's opinion and found Claimant has a 22 percent permanent partial impairment of his right fourth finger. She determined Claimant did not demonstrate any additional work-related impairment that extends to his hands or right upper extremity and awarded him 3.3 weeks of permanent partial disability (PPD) benefits at a weekly rate of \$527.33. 33 U.S.C. §§908(c)(12), (19). Because Employer had already paid this amount, she denied Claimant's claim for additional compensation. Decision and Order at 14-16.

On appeal, Claimant contends the ALJ erred in finding his permanent partial disability award is limited to a 22 percent impairment of his right fourth finger and, consequently, in denying his claim for additional compensation. Employer responds, urging affirmance of the ALJ's decision.

Claimant contends the ALJ did not adequately address and credibly weigh all of the relevant evidence or sufficiently explain her conclusion that he sustained a 22 percent permanent impairment to his right fourth finger.<sup>3</sup> He contends the ALJ's analysis "ignoring" Dr. Franchetti's opinion but accepting Dr. Brigham's opinion is without any sound reasoning and, therefore, is "erroneous and capricious in its nature." Cl. Br. at 16. He maintains because Dr. Franchetti's reports are "clear, logical and supported by the record," and Dr. Brigham's opinion is neither well-reasoned nor supported by medical evidence contained in the record, substantial evidence compels the conclusion, in contrast to the ALJ's findings, that he is entitled to a scheduled award for a 38 percent impairment of his right hand.

Awards under the schedule, the exclusive remedy for permanent partial disability for parts of the body enumerated therein, are based, in part, on medical ratings of the degree

---

<sup>3</sup> Claimant states the ALJ did not sufficiently consider his testimony that he injured his right hand due to his work fall (HT 25-26), Employer's first report of injury which denotes a right hand injury (EX 32), and contemporaneous photographs of his hands which constitute "crystal clear evidence of a hand deformity" with a resulting hand impairment, caused by his work-related right fourth finger fracture (CXs 10, 11). Cl. Br. at 9.

of permanent physical impairment. 33 U.S.C. §908(c)(12); *Potomac Electric Power Co. v. Director, OWCP*, 449 U.S. 268, 14 BRBS 363 (1980); *Gilchrist v. Newport News Shipbuilding & Dry Dock Co.*, 135 F.3d 915, 32 BRBS 15(CRT) (4th Cir. 1998). An ALJ is not bound by any particular standard or formula in arriving at an impairment rating in cases involving orthopedic injuries and may base her determination on credible medical opinions and observations, as well as on the claimant's symptoms and the physical effects of his injury. *White v. Newport News Shipbuilding & Dry Dock Co.*, 633 F.2d 1070, 12 BRBS 598 (4th Cir. 1980); *Cotton v. Army & Air Force Exch. Services*, 34 BRBS 88 (2000); *Pimpinella v. Universal Maritime Services, Inc.*, 27 BRBS 154 (1993). The ALJ may rely on medical opinions that rate a claimant's impairment under the AMA *Guides*' criteria, as it is a standard medical reference.<sup>4</sup> See *Pisaturo v. Logistec, Inc.*, 49 BRBS 77 (2015); *Brown v. National Steel & Shipbuilding Co.*, 34 BRBS 195 (2001).

After identifying the parties' dispute as involving "the percentage and extent" of Claimant's permanent partial disability under the schedule and their respective positions,<sup>5</sup> the ALJ reviewed all of the relevant medical reports addressing Claimant's impairment.<sup>6</sup> Decision and Order at 13-15. Nevertheless, as Claimant's impairment rating contentions

---

<sup>4</sup> The Act and regulations do not require impairment ratings to be based on medical opinions using the AMA *Guides* except in cases involving compensation for hearing loss and voluntary retirees. 33 U.S.C. §§908(c)(13), 902(10); see *Pierce v. Elec. Boat Corp.*, 54 BRBS 27 (2020); *Alexander v. Triple A Mach. Shop*, 34 BRBS 34 (2000), *rev'd on other grounds sub nom. Alexander v. Director, OWCP*, 297 F.3d 805, 36 BRBS 25(CRT) (9th Cir. 2002); 20 C.F.R. §§702.441, 702.601. However, if the *Guides* are used in other situations, it is reasonable, but not required, to use the most recent version.

<sup>5</sup> The ALJ stated, "Claimant relies on Dr. Franchetti to support a 38 percent disability to the hand, whereas Employer relies on Dr. Brigham to support a 22 percent disability to the fourth finger." Decision and Order at 12.

<sup>6</sup> Contrary to Claimant's contention, the ALJ discussed his testimony, including his statements that "his right hand was completely swollen" on the day after his work injury, and acknowledged that he showed ALJ Barto the scar on his hand and submitted pictures of his hands. Decision and Order at 5-6. Moreover, the ALJ stated her "findings and conclusions" are "based on a complete review of the entire record" and that "[a]lthough not every exhibit in the record" was discussed in her decision, "each was carefully considered in arriving at" her decision. *Id.* at 2. This would encompass her having considered the contents of Employer's first report of injury and any other evidence of record not specifically mentioned. Therefore, the ALJ adequately considered all relevant evidence of record.

revolve around the ALJ's decision to credit Dr. Brigham's opinion over Dr. Franchetti's, we focus on the ALJ's findings regarding those two reports. The ALJ accurately set out their respective impairment ratings and gave "full weight" to Dr. Brigham's "well-documented and well-reasoned" opinion and no probative weight to Dr. Franchetti's "poorly reasoned" opinion. *Id.* at 14-15. She additionally found that "unlike Dr. Brigham," Dr. Franchetti did not explain why his "methodologies were more accurate or more appropriate to apply in this case," nor did he "report multiple measurements as required by the Sixth Edition of the AMA." *Id.* at 15. Consequently, she credited Dr. Brigham's opinion and concluded the preponderance of the evidence establishes Claimant is entitled to a PPD award for a 22 percent work-related impairment to his right fourth finger pursuant to the schedule. 33 U.S.C. §§908(c)(12), (19).

Dr. Brigham's 14-page report lays out the relevant medical information pertaining to Claimant, discusses that information in the context of the criteria contained in the Sixth Edition of *AMA Guides*, explains how he arrived at his impairment rating, and provides the underlying bases for his conclusion. EX 28. He also sets out "several problems" with Dr. Franchetti's impairment rating and explains why Dr. Franchetti's rating should be disregarded.<sup>7</sup> *Id.* In contrast, Dr. Franchetti's 3-page report provides a diagnosis that Claimant sustained a "painful malunion right fifth metacarpal neck fracture" and then concludes, in accordance with the Fourth Edition of the *AMA Guides*, Claimant sustained a 38 percent "dominant right hand impairment due to his [work] injuries of March 3, 2017." CX 9. Dr. Franchetti determined "the combined values chart" established a 44 percent fourth finger impairment, which converted to a 4 percent hand impairment due to loss of motion, to which he added a 22 percent hand impairment due to weakness and a 12 percent hand impairment based on "persistent pain, loss of endurance, and once loss of function." *Id.* However, as Dr. Brigham stated and the ALJ found, Dr. Franchetti did not explain why he used the Fourth Edition rather than the current edition to assess Claimant's impairment rating or why his "methodologies" were more accurate or more appropriate to apply based on the circumstances of this case. Decision and Order at 15; EX 28.

We affirm the ALJ's award for a 22 percent permanent impairment of Claimant's right fourth finger. Contrary to Claimant's contentions, the ALJ acted within her discretion

---

<sup>7</sup> For instance, Dr. Brigham explained "the Maryland factors" on which Dr. Franchetti relies "are largely subjective and therefore likely to be unreliable," they "incorporate factors which are already considered in the ratings provided in the *Guides*," and "[t]here are no scientific studies to support their use." EX 28. He also explained those factors "are used in the State of Maryland in conjunction with the outdated Fourth Edition of the *AMA Guides*" which, he added, was "published in 1993." *Id.*

in rejecting Dr. Franchetti's opinion and accepting Dr. Brigham's opinion.<sup>8</sup> *See, e.g., Newport News Shipbuilding & Dry Dock Co. v. Cherry*, 326 F.3d 449, 37 BRBS 6(CRT) (4th Cir. 2003) (ALJ entitled to weigh the medical 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 or draw other inferences from the record, but must affirm the ALJ's findings that are supported by substantial evidence of record.); *White*, 633 F.2d at 1074, 12 BRBS at 606-607. The ALJ was fully aware Dr. Franchetti examined Claimant, whereas Dr. Brigham did not. Decision and Order at 8. However, she found Dr. Brigham reviewed all of the "objective" testing that Dr. Franchetti performed, as well as the evaluations of the other physicians who examined Claimant, and noted he found inconsistencies in Dr. Franchetti's data. Considering the underlying documentation, the ALJ found Dr. Brigham's conclusions were better supported and reasoned than Dr. Franchetti's. *Id.* Moreover, in light of the medical evidence as a whole, the ALJ rationally concluded Claimant did not produce any credible evidence that his injury extended beyond his right fourth finger.<sup>9</sup> CX 9; EXs 24, 26, 28, 34, 35. Claimant has not established error in the ALJ's decision to credit Dr. Brigham's opinion over Dr. Franchetti's, nor established his injury extends to his hand as opposed to only his right fourth finger.<sup>10</sup> Consequently, we reject Claimant's contentions and affirm the ALJ's determination that Claimant has a 22 percent permanent impairment to his right fourth finger, as it is rational, supported by substantial evidence, and in accordance with the law. *See Cotton*, 34 BRBS at 90.

---

<sup>8</sup> She permissibly concluded Dr. Franchetti's opinion is entitled to little weight because he did not explain his reliance on an older medical reference as opposed to the more recent updated versions, and he improperly provided additional impairment for grip strength, persistent pain, loss of endurance, and loss of function. Decision and Order at 14-15.

<sup>9</sup> All of the physicians of record, including Dr. Franchetti, diagnosed Claimant's injury as a right small finger metacarpal neck fracture, CX 9, EXs 24, 26, 28, 34, 35, and Dr. Brigham explicitly opined Claimant's "injury only involved the little finger; there was no involvement of other digits or the hand." EX 28.

<sup>10</sup> The ALJ also rationally rejected Claimant's contentions as "unconvincing" that the delay in his surgery resulted in an unsuccessful surgery or that his post-surgery dorsal scar over his right hand mandates an award for a permanent impairment of his entire right hand because each contention is unsupported by any evidence. Decision and Order at 15.

Accordingly, we affirm the ALJ's Decision and Order Denying Additional Compensation.

SO ORDERED.

JUDITH S. BOGGS, Chief  
Administrative Appeals Judge

DANIEL T. GRESH  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge