U.S. Department of Labor

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

BRB No. 21-0285

DELORIS POSEY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: 01/31/2023
NEXCOM	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Christopher Larsen, Administrative Law Judge, United States Department of Labor.

Deloris Posey, San Diego, California, without representation.

David L. Doeling (Aleccia & Mitani), Long Beach, California, for Self-Insured Employer.

Before: BUZZARD, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant, without representation, appeals Administrative Law Judge (ALJ) Christopher Larsen's Decision and Order (2019-LHC-00520 and 2019-LHC-00521) rendered on claims filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (Act), as extended by the Non-appropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* On appeal, Claimant generally challenges the ALJ's decision;[1] therefore, the Benefits Review Board will review the findings adverse

[1] Employer responds, urging affirmance of the ALJ's decision.

to her and address whether substantial evidence supports the ALJ's decision. *See Pierce v. Elec. Boat Corp.*, 54 BRBS 27 (2020). We must affirm the ALJ's Decision and Order if it is 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).

Claimant began working for Employer in 1981 as an identification checker; by 1991, she had been promoted to a supervisory security guard position. She suffered two injuries to her left knee in the course of her employment, on June 26, 1991, and again on July 29, 1991.[2] She returned to work and continued with Employer until December 1993, when Employer contracted out the entire security division, resulting in the elimination of her position. Decision and Order (D&O) at 4.

On December 5, 1994, ALJ Alfred Lindeman found Claimant's compensable left knee injury became permanent in January 1993, but she was not entitled to any permanent partial disability (PPD) benefits due to the absence of a permanent impairment rating. Respondent's Exhibit (RX) 17 at 460. He also found Claimant entitled to temporary total disability (TTD) compensation from May 3 to June 23, 1993, due to work-related stress. However, he found Claimant's job loss eliminated that stress. As she was deemed capable of obtaining other employment without restriction, he found she was owed no additional compensation as a result of her workplace stress. ALJ Lindeman further ordered Employer to authorize the left knee surgery recommended by Claimant's chosen treating physician, Dr. Ernesto Fernandez. D&O at 2; RX 17 at 461-462.

On March 28, 1995, Dr. Fernandez performed the recommended left knee surgery. D&O at 2; Claimant's Exhibit (CX) 4 at 166-168. At that time, Claimant had obtained work as a security guard for a different employer, a position she held until she was terminated in December 1995. D&O at 4. She immediately obtained a job as a certified nurses' assistant at a nursing home, Castle Manor. However, on January 13, 1996, Claimant injured her back while working at Castle Manor and has not returned to that or any other work. *Id.*

Claimant subsequently filed another claim under the Act, seeking additional benefits related to her 1991 left knee injury, as well as benefits for psychological and gastrointestinal injuries she believed were related to her compensable left knee injury and employment with Employer. On February 25, 1998, ALJ Daniel Stewart denied the claims for psychological and gastrointestinal injuries as non-compensable because Clamant failed

[2] As Claimant's injury occurred in California, this case arises within the jurisdiction of the United States Court of Appeals for the Ninth Circuit. 33 U.S.C. §921(c); *Hon v. Director, OWCP*, 699 F.2d 441 (8th Cir. 1983).

to establish a relationship between either condition and her industrial left knee injuries. RX 18 at 509. However, he awarded a period of post-operative TTD benefits related to the left knee surgery, which he concluded reached maximum medical improvement (MMI) on August 11, 1995, with no permanent impairment. D&O at 2; RX 18 at 507-508.

Claimant appealed ALJ Stewart's Order to the Board. The Board vacated the finding of no permanent impairment to the left knee, as well as the denial of the psychological and gastrointestinal claims due to his failure to apply the Section 20(a) presumption. *Posey v. Navy Exchange*, BRB No. 98-1083 (May 3, 1999). The Board held Claimant submitted sufficient evidence to invoke the Section 20(a) presumption with respect to the gastrointestinal claim and remanded for evaluation of Employer's rebuttal evidence. *Id*., slip op. at 7. As for the psychological injury, the Board noted the claim involved two potential causes: the knee injury and workplace stressors; however, ALJ Stewart failed to consider the latter. *Id*. The Board remanded with instructions to reconsider Claimant's entitlement to benefits for the left knee, whether Employer rebutted the Section 20(a) presumption for the gastrointestinal injury, and application of Section 20(a) and the aggravation rule to both potential causes of the psychological claim. *Id*., slip op. at 4-5. On remand, ALJ Stewart re-opened the record for submission of new evidence, but on June 11, 1999, ALJ Stewart remanded the claim to the district director.[3] D&O at 3.

On November 14, 2006, Claimant filed additional claims for compensation arising out of her industrial left knee injury, to include a right knee injury and fibromyalgia ("my whole body").[4] RX 1 at 4-9. She submitted an amended claim on October 2, 2015, to

[3] The record does not contain ALJ Stewart's Order of Remand, and therefore we are unable to ascertain why he remanded the claim. Likewise, the record contains no evidence explaining why the claim was dormant for a long period of time following remand, and again following the filing of the 2006 claim. We do note that Claimant was without representation when she filed the 2006 claim for compensation but had retained new counsel when she amended her claim in 2015, after which the claim was actively pursued.

[4] Employer objected to the timeliness of the notice and claims of right knee injury and fibromyalgia. D&O at 6. ALJ Larsen found Claimant became aware the fibromyalgia diagnosis was potentially related to her industrial left knee injury on November 8, 2006, and she became aware of the potential relatedness of her right knee injury in August 2006 (as per Dr. James E. McSweeney's note). D&O at 7-9; RX 1. Consequently, he found the claim for compensation filed on November 14, 2006, provided timely notice and constituted a timely claim. D&O at 6-10.

include a psychological injury and a gastrointestinal injury, in addition to the right knee injury, and fibromyalgia.[5] RX 1 at 9.1, 9.3. The case was assigned to ALJ Larsen.

ALJ Larsen reviewed each issue "afresh."[6] D&O at 12. He found Claimant invoked the Section 20(a) presumption for all alleged injuries – orthopedic (left and right knees),[7] psychological, fibromyalgic, and gastrointestinal – and Employer had successfully rebutted the presumption. *Id.* at 14-15, 21, 24, 35-36, 40-41. Weighing the extensive evidence as a whole, ALJ Larsen concluded only the left knee injury was related to Claimant's employment with Employer. *Id.* at 15, 16, 27-32, 39, 42. He further found the medical evidence supported a 3% permanent impairment to the left lower extremity and thus awarded scheduled PPD benefits in accordance with that permanent impairment, as well as all reasonable and necessary medical benefits related to left knee treatment. *Id.* at 17-18, 42. We will consider in turn each of ALJ Larsen's findings that are adverse to Claimant.

[5] Although not addressed by ALJ Larsen, the 2015 claim for compensation was timely as it merely amended the prior claim and included injuries raised as part of the original claim which had not yet been fully adjudicated. *Jones v. Newport News Shipbuilding & Dry Dock Co.*, 36 BRBS 105 (2002).

[6] The Decision and Order, issued on June 22, 2020, was filed with the district director on June 23, 2020, after which Claimant had 30 days, or until July 23, 2020, to file her Notice of Appeal. On July 9, 2021, the Board dismissed Claimant's appeal as untimely because her Notice of Appeal was postmarked January 15, 2021; the Board did not receive it until February 17, 2021. On July 13, 2021, Claimant filed a Motion for Reconsideration of the Dismissal of her appeal, providing proof that she had timely filed her appeal on July 17, 2020, albeit to the Board's former post office box address. As a result, on August 19, 2021, the Board granted Claimant's Motion for Reconsideration and reinstated the appeal. Employer filed a Motion for Reconsideration, which the Board denied. In addition to the above, the Board's processing of this case was substantially delayed due to the COVID-19 pandemic, which impacted the Board's ability to obtain records from the Office of Administrative Law Judges and the Office of Workers' Compensation Programs.

[7] ALJ Larsen found Claimant failed to invoke the Section 20(a) presumption for an alleged back injury suffered while working at Castle Manor on January 13, 1996, as a direct result of her industrial left knee injury. D&O at 12, 14. However, there is no record evidence showing Claimant ever made a claim for a back injury as a natural progression of her industrial left knee injury. RX 1 at 9.1, 9.3; Cl. Pre-Hearing Statement; Cl. Post-H Br. Nevertheless, as the ALJ denied benefits under the Act for any back injury, any error in his finding that Claimant made a claim for this injury is harmless.

1. **Employment-related reprimands and Claimant's termination from employment constituted legitimate personnel actions, and therefore any portion of her psychiatric disability related to either of these actions is not compensable.**

ALJ Larsen found Claimant invoked the Section 20(a) presumption with respect to her claimed psychological injury. However, before evaluating whether Employer had successfully rebutted the presumption, he examined whether the claimed psychological injury was exempt from coverage due to being the result of a legitimate personnel action. D&O at 21-23.

A psychological injury resulting from a "legitimate personnel action" is not compensable under the Act, inasmuch as such an event is not a "working condition" which can form the basis for a compensable injury. *Pedroza v. Benefits Review Board*, 624 F.3d 926, 44 BRBS 67(CRT) (9th Cir. 2010); *Raiford v. Huntington Ingalls Industries, Inc.*, 49 BRBS 61 (2015); *Marino v. Navy Exchange*, 20 BRBS 166 (1988). Of the four alleged causes of her psychological injury – hostility from co-workers, unjustified reprimands, termination, and chronic left knee pain – ALJ Larsen found the termination and reprimands constituted legitimate personnel actions, and therefore any psychiatric disability arising from them is not compensable under the Act. D&O at 19, 23.

We reject Claimant's argument the ALJ erred. Employer contracted out its security division and every member of Claimant's department was laid off in the reduction in force. HT2 at 11, 15. Moreover, beginning in 1993 Claimant's employment record shows warnings and reprimands for: failing to follow direction (CX 22 at 1261-62); regularly being in an area outside of her designated workspace (CX 22 at 1268-1270); an inability to cooperate with co-workers and negative attitude (CX 22 at 1271-1274); and malicious/slanderous statements about a supervisor (CX 22 at 1288-1289). As ALJ Larsen's conclusion that Claimant's termination and reprimands constituted legitimate personnel actions is rational, supported by substantial evidence, and in accordance with law, we affirm his finding that any portion of the claimed psychological injury attributable to these legitimate personnel actions is not compensable under the Act.[8] *Pedroza*, 624 F.3d 926, 44 BRBS 67(CRT); *Raiford*, 49 BRBS 61.

[8] ALJ Larsen found any psychiatric disability arising from workplace hostility or chronic work-related pain could not fall under this exemption, and he addressed compensability accordingly. D&O at 23.

2. Employer successfully rebutted the Section 20(a) presumption with respect to the claims for right knee injury, psychological injury, fibromyalgia, and gastrointestinal injury.

ALJ Larsen found Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), as to the right knee, psychiatric disability arising from workplace hostility and/or chronic left knee pain, fibromyalgia, and gastrointestinal injury, but Employer successfully rebutted the presumption as to each of these claimed injuries. Where, as here, the Section 20(a) presumption is invoked, the burden shifts to the employer to rebut it by producing substantial evidence that the injury was not caused or aggravated by the claimant's working conditions. *Duhagon v. Metro. Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999), *aff'g* 31 BRBS 98 (1997). The ALJ's task at rebuttal "is to decide, as a legal matter, whether the employer submitted evidence that could satisfy a reasonable factfinder that the claimant's injury was not work-related." *See generally Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 650-651, 44 BRBS 47, 50(CRT) (9th Cir. 2010). The employer's burden is one of production; once the employer produces substantial evidence of the absence of a causal relationship, the Section 20(a) presumption is rebutted. *See, e.g., Rainey v. Director*, OWCP, 517 F.3d 632, 42 BRBS 11(CRT) (2d Cir. 2008); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); *Am. Grain Trimmers, Inc. v. Director, OWCP [Janich]*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999), *cert. denied*, 528 U.S. 1187 (2000). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *E.g.*, *Rainey*, 517 F.3d 632, 42 BRBS 11 (CRT) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)); *Janich*, 181 F.3d at 818, 33 BRBS at 76(CRT).

In order to rebut the Section 20(a) presumption, Employer put forth multiple medical opinions. For the right knee, Employer submitted the medical opinion of orthopedic surgeon Dr. James London, who was unable to find objective support for Claimant's subjective reports of pain and concluded the only orthopedic injury Claimant suffered was to the left knee. RX 3 at 20, 72.2. For the psychiatric disability arising from hostility and/or chronic knee pain, Employer pointed to the medical opinions of psychiatrist Dr. Eric H. Marcus, who opined there was no evidence that workplace hostility resulted in significant psychiatric disability (RX 8, p. 247), psychiatrist Dr. Mark A. Kalish, who attributed Claimant's psychiatric disability solely to her termination and opined her orthopedic injuries did not cause or aggravate her psychiatric condition (RX 9, p. 257), and psychiatrist Dr. Steven Ornish, who diagnosed Claimant with non-industrial late onset schizophrenia (RX 4 at 120-135). For the fibromyalgia, Employer relied upon the medical opinions of Dr. London, who questioned the appropriateness of the diagnosis and opined the delay in onset of symptoms rendered it "virtually impossible" that later complaints of widespread pain were related to the 1991 accident(s) (RX 3 at 72.2), and Dr. Ornish, who attributed any existing pain disorder to Claimant's pre-existing and non-industrial

psychiatric disorder (RX 4 at 144). Finally, for the gastrointestinal injury, Employer presented the medical opinions of internist Dr. Jonathan Greenberger, who opined Claimant suffered from simple gastric reflux unrelated to her use of anti-inflammatory medications (RX 7 at 185), and Dr. Daniel J. Bressler, who diagnosed probable gastroesophageal reflux disease unrelated to employment and/or temporary use of anti-inflammatory medications (RX 5 at 160). This evidence is sufficiently substantial to rebut the Section 20(a) presumption for Claimant's various conditions. *Conoco, Inc.*, 194 F.3d 684, 33 BRBS 187(CRT). Therefore, we affirm ALJ Larsen's conclusion that Employer successfully rebutted the Section 20(a) presumption as to the alleged right knee injury, psychiatric disability arising from workplace hostility and/or chronic left knee pain, fibromyalgia, and gastrointestinal injury.

3. Weighing the evidence as a whole, Claimant failed to prove the right knee injury, the psychiatric injury, fibromyalgia, and gastrointestinal injury were related to her employment with Employer, and these claims were denied.

If an employer succeeds in rebutting the presumption, it falls out of the case, and the claimant bears the burden of showing her injury was caused by working conditions based on the record as a whole by a preponderance of the evidence. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). The factfinder has the authority and discretion to weigh, credit, and draw his own inferences from the evidence of record; he is not bound to accept the opinion or theory of any particular expert. *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); *Perini Corp. v. Heyde*, 306 F. Supp. 1321 (D.R.I. 1969). In reviewing findings of fact, the Board may not reweigh the evidence, but may only inquire into the existence of substantial evidence to support the findings. *Sea-Land Services, Inc., v. Director, OWCP* [*Ceasar*], 949 F.3d 921, 54 BRBS 9(CRT) (5th Cir. 2020). Here, ALJ Larsen found Claimant failed to successfully carry her burden with respect to the right knee injury, psychological injury, fibromyalgia, and gastrointestinal condition. Consequently, he denied these claims. We will address each denied claim in turn.

a. Right Knee Injury

ALJ Larsen concluded Claimant did not establish by a preponderance of the evidence her alleged right knee injury was related to her employment. D&O at 15. He found unpersuasive the only record evidence affirmatively establishing a connection between Claimant's right knee symptoms and her employment – a note from Dr. James E. McSweeney, written on a prescription pad, with no corroborating medical reports or

evidence of treatment. D&O at 15; RX 1 at 3. Instead, he was persuaded by Dr. London, who, following two examinations, found no objective evidence to support Claimant's subjective complaints and concluded the delay in the onset of symptoms related to her right knee "make[s] any relationship to her left knee at work virtually impossible." D&O at 15; RX 3 at 20, 72.2, 72.37-38.

Having reviewed the record evidence, we affirm ALJ Larsen's finding that Claimant failed to prove, by a preponderance of the evidence, her right knee condition was related to the 1991 industrial accidents. ALJ Larsen adequately detailed the rationale behind his decision, specified which evidence he relied upon, and addressed all contradictory evidence. *Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988). His conclusions are supported by substantial evidence, rational, and in accordance with the law. *Duhagon*, 169 F.3d 615, 33 BRBS 1. We therefore affirm the denial of Claimant's claim for benefits for right knee injury.

b. Psychological Injury

In weighing Claimant's claim for a psychological injury, ALJ Larsen noted her extensive history of psychiatric episodes and treatment dating back to 1984 and focused on the conflicting medical reports of Dr. Dominick Addario and Dr. Ornish. D&O at 27. Dr. Addario diagnosed Claimant with a delusional disorder and opined 40% of her psychiatric disability arose from pre-existing mental conditions, 15% was due to her termination, 25% was from a hostile work environment, and 20% was from her work-related chronic pain. *Id*. Conversely, Employer's physician, Dr. Ornish, opined Claimant's psychiatric disability was due entirely to late-onset schizophrenia and was not work-related. *Id*. Describing the evidence as presenting a "chicken-and-egg scenario," ALJ Larsen "decipher[ed] whether hostility and pain at work worsened [Claimant]'s psychological condition, or whether she perceived more hostility and pain at work because she suffered from a naturally progressing mental health condition." *Id*.

ALJ Larsen ultimately found Dr. Ornish's diagnosis of late-onset schizophrenia more credible than Dr. Addario's assertion that a hostile work environment and industrial knee pain aggravated Claimant's delusion disorder. D&O at 27-29. He agreed her employment at some point became a "triggering event" for her pre-existing condition but concluded it returned to its naturally progressing base level once she was terminated and the perceived work stress was removed. *Id.* at 29. He credited Dr. Ornish's opinion that Claimant's deteriorating work performance and complaints about co-workers were manifestations of a natural non-industrial progression of her psychiatric condition and did not aggravate or cause it. Likewise, Dr. Ornish did not believe her psychiatric condition was caused or aggravated by her knee injury, and ALJ Larsen agreed. *Id.* at 31-32.

Questions of witness credibility are for the ALJ as the trier-of-fact, and the Board must respect his evaluation of all testimony, including that of medical witnesses. *Jones Stevedoring Co. v. Director, OWCP [Taylor]*, 133 F.3d 683, 31 BRBS 178(CRT) (9th Cir. 1997). The Board will not interfere with credibility determinations unless they are "inherently incredible or patently unreasonable." *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335, 8 BRBS 744, 747 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Consequently, it was within ALJ Larsen's discretion to credit Dr. Ornish's opinion over Dr. Addario's and give it greater weight. As his credibility determinations are not inherently incredible or patently unreasonable, *Cordero*, 580 F.2d at 1335, 8 BRBS at 747, and as his conclusions are supported by substantial evidence, rational, and in accordance with the law, *Duhagon*, 169 F.3d 615, 33 BRBS 1, we affirm the denial of Claimant's claim for a work-related psychiatric injury.

c. Fibromyalgia

As for her claimed fibromyalgia, in weighing the evidence, ALJ Larsen discussed the medical opinions of rheumatologist Dr. Stuart Silverman, Dr. David Smith, Dr. London, and Dr. Ornish. D&O at 37-38. He noted his analysis was "complicated by the lack of objective testing and the medical community's understanding of the disease." *Id.* at 38. He found Dr. Silverman's diagnosis of fibromyalgia more thorough and convincing than Dr. London's attempts to explain why Claimant does not have the condition. Nevertheless, he found Dr. Silverman's opinion on causation unconvincing, given the uncertainty of the diagnosis and the difficulty in ascertaining its cause. *Id.* at 38-39. He found it not credible that Dr. Silverman was able to differentiate between the industrial accidents in 1991 and other non-industrial accidents Claimant suffered before and after her industrial injuries as potential triggering events for the disease. *Id.* at 39. Weighing the evidence, ALJ Larsen found Claimant failed to establish, by a preponderance of the evidence, her fibromyalgia was caused or aggravated by her industrial knee injuries, and he denied this aspect of her claim. *Id.* at 39.

As ALJ Larsen's credibility determinations are not inherently incredible or patently unreasonable, *Cordero*, 580 F.2d at, 1335, 8 BRBS at 747, and his conclusions are supported by substantial evidence, rational, and in accordance with the law, *Duhagon*, 169 F.3d 615, 33 BRBS 1, we affirm the denial of Claimant's claim for fibromyalgia.

d. Gastrointestinal

Finally, ALJ Larsen addressed the claim for a gastrointestinal injury, which Claimant alleged was due to the medication she took for her work-related left knee injury. Weighing the evidence, ALJ Larsen was persuaded by Dr. Bressler's opinion that Claimant suffered a temporary exacerbation of pre-existing acid reflux when she took anti-

inflammatory drugs for her industrial knee injury, with no permanent effects. He found Dr. Steven Brozinsky's medical opinion that there was no damage as a result of her anti-inflammatory medication use further supported Dr. Bressler's opinion. As a result, he determined Claimant failed to show her employment caused or aggravated her gastrointestinal condition and denied this aspect of the claim. D&O at 42.

As ALJ Larsen adequately detailed the rationale behind his decision, specified which evidence he relied upon, and addressed all contradictory evidence, *Ballesteros*, 20 BRBS 184, as his credibility determinations are not inherently incredible or patently unreasonable, *Cordero*, 580 F.2d at 1335, 8 BRBS at 747, and as his conclusions are supported by substantial evidence, rational and in accordance with the law, *Duhagon*, 169 F.3d 615, 33 BRBS 1, we affirm the denial of Claimant's claim for benefits for a gastrointestinal injury.

4. Having deemed the left knee injury compensable, ALJ Larsen assigned a 3% permanent impairment rating.

The only injury ALJ Larsen found compensable was the left knee condition. Consequently, he determined its nature and extent. He agreed with ALJ Stewart that it reached MMI on August 11, 1995, as per Dr. Fernandez. D&O at 16; CX 4. ALJ Larsen noted both Dr. Larry Dodge and Dr. London assigned a 2% impairment to the left leg; Dr. Dodge also assigned permanent work restrictions of no prolonged squatting or kneeling. D&O at 17; CX 5; RX 3. As a result of these restrictions, ALJ Larsen found the 2% impairment to be too low. However, he found Dr. Fernandez's revised 7% impairment rating of the left leg too high, considering the lack of objective medical evidence to support Claimant's increased subjective complaints. D&O at 17-18. Instead, he found Claimant entitled to a 3% permanent impairment rating to the left leg, which was Dr. Fernandez's original rating before he modified it based on Claimant's subjective complaints. D&O at 18.

ALJ Larsen correctly stated he is not required to apply the AMA *Guides* in this case as it involves neither hearing loss nor a post-retirement occupational disease. 33 U.S.C. §§902(10), 908(c)(13)(E), (23); *see generally Pimpinella v. Universal Maritime Services, Inc.*, 27 BRBS 154 (1993). The ALJ is not bound by any particular standard but may consider a variety of medical opinions and observations, as well as Claimant's testimony regarding her symptoms and physical effects of the injury, in assessing the extent of her permanent impairment. *See id.; Bachich v. Seatrain Terminals of California*, 9 BRBS 184 (1978). Here, the ALJ interrelated the totality of the relevant evidence concerning the nature and extent of Claimant's left knee injury, D&O at 17-18, and rationally explained why he determined Dr. Fernandez's original impairment rating to be the most accurate. *Id.*, at 18. We thus affirm ALJ Larsen's determination that Claimant suffered a 3%

permanent impairment to the left lower extremity as it is rational and supported by substantial evidence.

Accordingly, we affirm ALJ Larsen's Decision and Order.[9]

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[9] There was some confusion between the parties as to whether Claimant had properly filed a motion for modification of ALJ Stewart's decision, however, ALJ Larsen ultimately determined she had. 33 U.S.C. §922; *Metropolitan Stevedore Co. v. Rambo [Rambo I]*, 515 U.S. 291, 30 BRBS 1(CRT) (1995). Although ALJ Larsen did not address the case before him in terms of Section 22 modification, he clearly conducted a full review of the compensability of all claimed injuries, considering all new and previously submitted evidence, and he awarded Claimant benefits for her left knee, modifying the prior award which found no impairment, so any error is harmless.