U.S. Department of Labor

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

BRB Nos. 20-0249 and 20-0249A

TROY E. OWEN	)	
Claimant-Petitioner	)	
v.	)	
TEMCO, LLC	)	
and	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LIMITED	)	DATE ISSUED: 06/30/2021
Employer/Carrier-Respondents Cross-Petitioners	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Cross-Respondent	)	ORDER on RECONSIDERATION

Claimant has filed a timely motion for reconsideration of the Benefits Review Board's decision in this case, *Owen v. TEMCO, LLC*, BRB Nos. 20-0249 and 20-0249A (Nov. 24, 2020) (unpub.). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Employer filed a response in opposition to Claimant's motion.

Claimant sustained a work-related right shoulder injury on July 29, 2016. He underwent surgery on January 3, 2017 and reached maximum medical improvement on August 2, 2017. He retired from longshore employment as of November 1, 2018, on the belief that he could not obtain enough hours of work to keep his benefits.

The administrative law judge awarded Claimant ongoing permanent partial disability benefits from August 2, 2017, because he found Employer established suitable alternate employment through six different longshore positions Claimant was physically able to perform after his injury and the longshore positions could be considered as "available" following Claimant's voluntary retirement.[1] Claimant appealed, and the Board affirmed the findings that Employer established suitable alternate employment as well as the calculation of the number of post-injury work hours available to Claimant. *Owen*, slip op. at 6, 9.

In his motion for reconsideration, Claimant argues the Board erred by not addressing whether his retirement for financial reasons was "involuntary" such that he is totally disabled and in affirming the number of hours available in suitable alternate employment. After consideration of Claimant's contentions, no member of the panel has voted to vacate or modify the Board's decision.

The Board addressed at length Claimant's contention regarding the nature of his retirement. *Owen*, slip op. at 4-7. Claimant's retirement was "voluntary" because it was not due to his inability to work from the effects of his shoulder injury. *See Owen*, slip op. at 6; *Harmon v. Sea-Land Service, Inc.*, 31 BRBS 45 (1997). The Act compensates loss of wage-earning capacity "because of injury." 33 U.S.C. §902(2), (10); *see Christie v. Georgia-Pac. Co.*, 898 F.3d 952, 52 BRBS 23(CRT) (9th Cir. 2018). Claimant's decision to stop working because it was not monetarily advantageous to keep working does not entitle him to total disability benefits under the facts here. *Rhine v. Stevedoring Services of America*, 596 F.3d 1161, 44 BRBS 9(CRT) (9th Cir. 2010).

In addition, Claimant has not established error in the Board's affirmance of the administrative law judge's decision to discredit Mr. Strader's testimony as to the number of hours of work available for Claimant in mechanical hopper opener positions. *See Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 30 (CRT) (9th Cir. 1988).

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[1] Employer also requested Section 8(f) relief, 33 U.S.C. §908(f), which the administrative law judge denied. Employer filed a cross-appeal challenging the administrative law judge's denial of Section 8(f) relief, which the Board affirmed. *See Owen*, slip op. at 10.

Accordingly, we deny Claimant's motion for reconsideration and affirm the Board's decision. 20 C.F.R. §§801.301(c), 802.409.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge