

BRB No. 90-1615

MICHAEL MARSEGLIA )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 ATLANTIC CONTAINER LINES ) Date issued:  
 )  
 and )  
 )  
 NEW JERSEY MANUFACTURERS INSURANCE )  
 COMPANY )  
 )  
 Employer/Carrier- )  
 Respondents ) DECISION AND ORDER

Appeal of the Decision and Order and the Decision and Order upon Claimant's Request for Reconsideration of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Philip J. Rooney (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

Leonard J. Linden (Linden & Gallagher), New York, New York, for employer/carrier.

Before: SMITH and DOLDER, Administrative Appeals Judges, and CLARKE, Administrative Law Judge.\*

PER CURIAM:

Claimant appeals the Decision and Order and the Decision and Order upon Claimant's Motion for Reconsideration (89-LHCA-312) of Administrative Law Judge Robert D. Kaplan denying benefits 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

\* Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Worker's Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(Supp. V 1987).

of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

Claimant sustained injuries to his head, back, right leg and right arm in a slip and fall accident of March 6, 1986, while working as a checker for employer. The parties stipulated that claimant was totally disabled due to said injuries from March 7, 1986, through August 17, 1986, and from September 25, 1986, through October 27, 1986, for which employer voluntarily paid temporary total disability compensation to claimant.

The administrative law judge determined that claimant's work-related injuries, which were superimposed upon a pre-existing degenerative low back condition, rendered claimant totally disabled for a period of approximately six months, but had healed completely by October 27, 1986. [The alj thus found that although claimant established invocation of the presumption at §20(a) of the Act, 33 U.S.C. §920(a), that claimant's continuing pain and stiffness was caused by the injuries he sustained on March 6, 1986, employer established rebuttal thereof, and that the weight of the medical evidence of record showed that claimant's current condition was due solely

to his pre-existing degenerative back condition.] The administrative law thus found that on and after October 27, 1986, claimant suffered from pain and stiffness due solely to his pre-existing degenerative low back condition, and that any resulting disability was not caused in whole or in part, directly or indirectly, by the accident of March 6, 1986. The administrative law judge further found that claimant's condition was neither totally nor partially disabling. On appeal, claimant

Accordingly, the Decision and Order and the Decision and Order upon Claimant's Request for Reconsideration of the administrative law judge denying benefits are affirmed.

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge

DAVID A. CLARKE, JR.  
Administrative Law Judge