BRB No. 99-0801

BRUCE E. MARTINSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ARMY & AIR FORCE EXCHANGE SERVICE	)	DATE ISSUED:
	)	
	)	
Self-insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Bruce E. Martinson, Deland, Florida, *pro se*.

Matthew R. Lavery (Army & Air Force Exchange Service, Office of the General Counsel), Dallas, Texas, for employer.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, without legal representation, appeals the Decision and Order (98-LHC-1720) of Administrative Law Judge Ralph A. Romano 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.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq*. (the Act). In an appeal by a claimant without representation, the Board will review the administrative law judge's findings of fact and conclusions of law to determine whether they 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); 20 C.F.R. §§802.211(e), 802.220. If they are, they must be affirmed

Claimant was injured on September 1990, when he was struck on the head by a lead pipe while taking down a large tent during the course of his employment as a warehouse worker at Rhein Main Air Force Base. Claimant sought treatment by a physician in Germany and was treated for a "pressure injury." Emp. Ex. 48. After a number of weeks, he returned

to the United States where he sought treatment for his pain at the Veteran's Administration Hospital in Albuquerque, New Mexico. Employer paid claimant temporary total disability benefits from September 3, 1990 to October 26, 1990. He has not returned to work since the accident and sought benefits under the Act.

In his Decision and Order, the administrative law judge found that the claim was timely filed pursuant to Section 13 of the Act, 33 U.S.C. §913, but that claimant failed to establish that he is entitled to further disability compensation. Thus, benefits were denied. Claimant, without legal representation, appeals this decision, contending that he continues to suffer symptoms from the work-related injury and is unable to return to his former employment. Employer responds, urging the Board to affirm the administrative law judge's decision as it is supported by substantial evidence.

The administrative law judge in the instant case found that claimant has failed "to establish . . . entitlement to disability compensation benefits beyond October 26, 1990." Decision and Order at 5. To establish a *prima facie* case of total disability, claimant must show that he cannot return to his regular or usual employment due to his work-related injury. *Manigault v. Stevens Shipping Co.*, 22 BRBS 332 (1989). We hold that the administrative law judge in the instant case rationally found that claimant failed to establish he was disabled after October 26, 1990, based on his weighing of the medical evidence. The medical evidence includes the reports of Drs. Schwartz, Pittrich-Fahl and Seelinger, from which the administrative law judge concluded that any disability from the September 3, 1990 head injury had resolved. Specifically, Dr. Schwartz, the initial treating physician, diagnosed a "pressure injury" that was not serious, and testified in a deposition dated December 8, 1998, that the injury would have resolved by October 27, 1990, when he would have released claimant for full duty with no restrictions.[1] Emp. Ex. 48. On September 29, 1990, Dr. Pittrick-Fahl, a neurologist consulted by Dr. Schwartz, reported normal EEG testing. Emp. Ex. 49. Dr. Seelinger originally read an MRI as showing an abnormality which could accompany trauma, Emp. Ex. 35, but after being given claimant's complete medical history, concluded that claimant's current symptoms could not reasonably be attributed to the accident. Emp.Ex. 50. The administrative law judge found that these opinions were well-reasoned and well-documented. The record also includes the reports of Drs. King and Foteio, Emp. Exs. 28, 30; Cl. Ex. 6, who characterize claimant as suffering from post-traumatic headaches since he suffered a head injury. However, the administrative law judge found that these reports fail to elaborate on the diagnosis, and that they do not support a finding of continuing disability.

[1]However, Dr. Schwartz noted that claimant stopped seeing him shortly before this date. Emp. Ex. 48 at 22.

Inasmuch as the physicians of record credited by the administrative law judge concluded that claimant did not suffer a lasting disability from the injury on September 3, 1990, and as claimant's physicians do not state claimant is disabled, we affirm the administrative law judge's denial of benefits, as it is rational, supported by substantial evidence and in accordance with law.[2] *See generally John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd mem*, 909 F.2d 1488 (9th Cir. 1990)(table).

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

[2]We reject claimant's contentions that employer engaged in fraud and misrepresentation as they are unsubstantiated and are raised for the first time on appeal. *See generally Hite v. Dresser Guiberson Pumping*, 22 BRBS 87 (1989).