

WILLIAM JOYNER, SR.)

Claimant-Respondent)

v.)

P & O PORTS OF VIRGINIA,)
INCORPORATED)

Self-Insured)
Employer-Petitioner)

CERES MARINE TERMINAL,)
INCORPORATED)

Self-Insured)
Employer-Respondent)

COOPER/T. SMITH STEVEDORING)

DATE ISSUED: APR 27, 2005

and)

ALMA C/O FARA SERVICES)

Employer/Carrier-)
Respondents)

UNIVERSAL MARITIME SERVICES)

and)

SIGNAL ADMINISTRATION C/O)
ABERCROMBIE, SIMMONS & GILLETTE)
OF VIRGINIA)

Employer/Carrier-)
Respondents)

DECISION and ORDER

Appeal of the Decision and Order of Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Montagna Klein Camden, LLP), Norfolk, Virginia, for claimant.

Christopher J. Field (Field Womack & Kawczynski, LLC), South Amboy, New Jersey, for P & O Ports of Virginia.

Donna White Kearney and Christopher J. Wiemken (Taylor & Walker, P.C.), Norfolk, Virginia, for Cooper/T. Smith Stevedoring and Alma c/o Fara Services.

Lawrence P. Postol (Seyfarth Shaw LLP), Washington, D.C., for Universal Maritime Services and Signal Administration.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

P & O Ports of Virginia (POP) appeals the Decision and Order (2003-LHC-1352 through 2003-LHC-1356, 2003-LHC-1753, and 2003-LHC-2002) of Administrative Law Judge Daniel A. Sarno, Jr., 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.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are 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 experienced a series of work-related injuries to his left ankle over the course of his twenty-six year career as a longshoreman. Claimant initially sustained a severe left ankle sprain while working for Virginia International Terminal (VIT) on August 22, 1995,¹ which disabled him for a period of somewhat less than one year. As a result of chronic left ankle pain, claimant treated with Dr. Morales every four to six weeks from 1995 until March 2001. Claimant was awarded permanent partial disability benefits for the 1995 left ankle injury. In February 2000, claimant suffered a left ankle sprain while working for Universal Maritime Services (Universal). He was again treated by Dr. Morales but did not miss any work as a result of that injury.

¹ The record indicates that at the time of this injury, claimant already had a several years history of left ankle treatments. Claimant's Exhibit 5.

While working for POP on March 1, 2001, claimant sustained a third left ankle injury. After self-treatment proved futile, claimant again visited Dr. Morales, who administered a cortisone shot, and provided claimant with pain medication and a portable ankle cast. Claimant did not miss any work at that time and continued to work as a longshoreman for various companies. However, claimant indicated that progressively worsening pain and swelling in his left ankle prompted him to stop working as of August 12, 2001. Claimant then filed claims seeking permanent total disability benefits under the Act against all employers for which he worked between March 1, 2001, and August 12, 2001, *i.e.*, Ceres Marine Terminals (Ceres), Cooper/T. Smith Stevedoring (CTS), POP, Universal, and VIT.

In his decision, the administrative law judge first determined that claimant's disability is due to the natural progression of the March 1, 2001, left ankle injury. He therefore concluded that POP is the responsible employer in this case. The administrative law judge next found that claimant is unable to perform his regular employment as a longshoreman, and that POP did not establish the availability of suitable alternate employment. Accordingly, he awarded claimant permanent total disability benefits from August 12, 2001. Lastly, the administrative law judge denied POP's application for Section 8(f) relief, 33 U.S.C. §908(f), with regard to the left ankle claim on the basis of the absolute defense of Section 8(f)(3), 33 U.S.C. §908(f)(3).

On appeal, POP challenges the administrative law judge's finding that it is the responsible employer in this case. Claimant, Universal,² and CTS each respond, urging affirmance of the administrative law judge's decision.

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we affirm the administrative law judge's Decision and Order, as it is supported by substantial evidence and contains no reversible error. First, there is no credible basis for POP's assertion that the administrative law judge did not grasp the concept of an aggravation of an injury and thus, applied an erroneous legal standard in resolving the responsible employer issue. The administrative law judge properly stated that "[t]he determination of responsible employer depends on whether a claimant's condition is the result of the natural progression or aggravation of a prior injury." Decision and Order at 14; *see, e.g., Foundation Constructors, Inc. v. Director, OWCP*, 950 F.2d 621, 25 BRBS 71(CRT) (9th Cir. 1991); *Siminski v. Ceres Marine Terminals*, 35 BRBS 136 (2001); *Buchanan v. Int'l Transportation Services*, 33 BRBS 32 (1999), *aff'd mem. sub nom. Int'l Transportation Services v. Kaiser Permanente Hospital, Inc.*, No. 99-70631 (9th Cir. Feb. 26, 2001);

² Universal's response is limited to urging affirmance of the finding that it is not the responsible employer in this case.

McKnight v. Carolina Shipping Co., 32 BRBS 165, *aff'd on recon. en banc*, 32 BRBS 251 (1998). He then systematically analyzed the medical evidence, including claimant's testimony and the reports and testimony of Drs. Morales, Mason, and Lidman, to discern whether claimant's present condition resulted from the natural progression of the March 1, 2001, injury which necessarily included consideration as to whether it was caused by a subsequent aggravation of that injury.

The administrative law judge found that Dr. Morales "was well aware of claimant's many other orthopedic complaints," and that "he specifically rejected the idea that claimant's other orthopedic problems somehow combined to cause his total disability." Decision and Order at 14. The administrative law judge similarly acknowledged claimant's testimony regarding his various orthopedic aches and pains during the period of his post-March 1, 2001, employment, but found that claimant steadfastly insisted that he stopped working because of the worsening pain associated with the March 1, 2001, left ankle injury. The administrative law judge also took into account the statements of Drs. Mason and Lidman that claimant's post-March 1, 2001, longshore duties may have adversely affected his left ankle. Decision and Order at 15.

Second, the administrative law judge's decision contains a thorough analysis and discussion of the evidence of record, Decision and Order at 6-11, 13-16, as well as the rationale for his responsible employer determination. Decision and Order at 13-16. While the administrative law judge did not specifically accept or reject each and every piece of evidence, as POP argues is required, he fully considered the relevant evidence in resolving the responsible employer issue. *See Siminski*, 35 BRBS at 139, n. 4; *see also Marinelli v. American Stevedoring, Ltd.*, 34 BRBS 112 (2000), *aff'd*, 248 F.3d 54 (2^d Cir. 2001). The administrative law judge's consideration of the evidence on the responsible employer issue is therefore in accordance with the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A). *Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988); *Williams v. Newport News Shipbuilding & Dry Dock Co.*, 17 BRBS 61 (1985).

Lastly, the administrative law judge's factual determinations in this case are, in contrast to POP's assertions, rational and supported by substantial evidence. It is solely within the administrative law judge's discretion to determine the weight to be accorded the evidence on this matter. *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). The Board may not reweigh the evidence, *Miffleton v. Briggs Ice Cream Co.*, 12 BRBS 445 (1980), *aff'd*, No. 80-1870 (D.C. Cir. 1981), and that is essentially what POP seeks in this case. The administrative law judge rationally accorded greatest weight to the opinion of Dr. Morales that claimant's totally disabling condition is due solely to the March 1, 2001, work injury, as bolstered by claimant's credible testimony and the report of Dr. Lidman, over the contrary opinion of Dr. Mason. *Id.* We therefore affirm the administrative law judge's finding that claimant's present disability

is related to the March 1, 2001, injury, and consequently affirm his determination that POP is liable for claimant's benefits. *See Siminski*, 35 BRBS 136.

Accordingly, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge