

| | | |
|-------------------------|---|-------------------------|
| EDWARD CONNORS |) | |
| |) | |
| Claimant-Respondent |) | |
| |) | |
| v. |) | |
| |) | |
| GLOBAL TERMINAL AND |) | DATE ISSUED: 04/08/2013 |
| CONTAINER SERVICES, |) | |
| INCORPORATED |) | |
| |) | |
| and |) | |
| |) | |
| SIGNAL MUTUAL INDEMNITY |) | |
| ASSOCIATION, LIMITED |) | |
| |) | |
| Employer/Carrier- |) | |
| Petitioners |) | DECISION and ORDER |

Appeal of the Decision and Order Awarding Benefits and the Order Denying Employer’s Motion for Reconsideration of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Andrew R. Topazio, Elizabeth, New Jersey, for claimant.

Francis M. Womack III (Field Womack & Kawczynski), South Amboy, New Jersey, for employer/carrier.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits and the Order Denying Employer’s Motion for Reconsideration (2011-LHC-01036) 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.* (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 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, a checker and fireman for employer, injured his left wrist and sustained a nasal laceration in a work accident on September 21, 2007, when his truck hit a large, unlit, concrete pillar, and the airbags deployed. JX 1 at 5. Employer provided medical as well as disability benefits for the period between September 25 and October 1, 2007. Claimant returned to work on October 2, 2007. He filed a claim for permanent partial disability benefits for his left wrist injury and for disfigurement of his face. 33 U.S.C. §908(c)(3), (20).

The administrative law judge accepted the parties' stipulation that claimant's conditions had reached maximum medical improvement. After summarizing the medical evidence, the administrative law judge gave greater weight to the opinion of Dr. Tiger in determining that claimant has a permanent impairment of 14 percent to his left hand. 33 U.S.C. §908(c)(3); Decision and Order at 6-7. He also found claimant's disfigurement serious enough to warrant an award of \$2,500. 33 U.S.C. §908(c)(20); Decision and Order at 7. The administrative law judge summarily denied employer's motion for reconsideration. Employer appeals the award of permanent partial disability benefits for claimant's wrist injury, and claimant responds, urging affirmance.¹

Employer challenges the administrative law judge's finding that claimant has an impairment of 14 percent to his left hand, arguing that the administrative law judge erred in failing to give weight to the opinion of the independent medical examiner, Dr. Seslowe. Specifically, employer asserts that the opinion of Dr. Seslowe is not uncertain and that his opinion that claimant has no permanent impairment, in conjunction with Dr. Dennis's comparable opinion, outweighs that of Dr. Tiger, who rated claimant's hand with an impairment of 14 percent. CX 10; EXs 3-5. It is well established that an administrative law judge has considerable discretion in evaluating and weighing the evidence of record, and may draw inferences therefrom. *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 (2^d Cir. 1961). It is solely within his discretion to accept or reject all or any part of any testimony according to his judgment. *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). The Board may not disregard the administrative law judge's findings on the ground that other inferences might have been more reasonable. *See, e.g., Bath Iron Works Corp. v. Director, OWCP*, 244 F.3d 222, 35 BRBS 35(CRT) (2001); *Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 21 BRBS 10(CRT) (4th Cir. 1988).

In this case, the administrative law judge found that the opinion of Dr. Tiger warranted greater weight than that of Dr. Dennis because Dr. Tiger took claimant's

¹Employer does not challenge the administrative law judge's \$2,500 disfigurement award. Therefore, that portion of the administrative law judge's award is affirmed as unchallenged on appeal. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007).

consistent subjective complaints of pain/discomfort into consideration, whereas Dr. Dennis did not.² Decision and Order at 6-7. With regard to Dr. Seslowe's opinion, the administrative law judge found it "unclear" and "confusing" in that Dr. Seslowe first acknowledged "permanency" to the left wrist and then stated there is a "0% of permanency." Decision and Order at 6 n.2; EXs 4-5. Employer asserts that Dr. Seslowe clearly indicated his opinion of an impairment of zero percent. The administrative law judge disagreed. As he permissibly found Dr. Seslowe's language so imprecise as to be unclear, it was not an abuse of discretion for the administrative law judge to give no weight to Dr. Seslowe's opinion. In doing so, the administrative law judge did not substitute his opinion for that of Dr. Seslowe; rather, he rationally eliminated that opinion from his analysis. Moreover, as Dr. Tiger opined that claimant has a permanent impairment to the left hand of 14 percent, the record contains substantial evidence supporting the administrative law judge's award of benefits, regardless of Dr. Seslowe's opinion. *Cotton v. Army & Air Force Exch. Services*, 34 BRBS 88 (2000); *Pimpinella v. Universal Maritime Service Inc.*, 27 BRBS 154 (1993). Therefore, we affirm the administrative law judge's award of permanent partial disability benefits for a 14 percent impairment to claimant's left hand.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits and his Order Denying Employer's Motion for Reconsideration are affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

²Claimant testified that he is left-hand dominant, and when he writes for any length of time, he experiences achiness in his left hand. He also testified that his duties as a checker and fireman require him to push things as well as to write reports. He stated he often has to modify how he works and that he often works in pain. JX 1 at 12, 14; Tr. at 28.