BRB No. 12-0464

LABONNIE McALLISTER-NEWSOME	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NORTHROP GRUMMAN SHIPBUILDING, INCORPORATED	)	DATE ISSUED: 04/15/2013
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

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

Charlene A. Morring (Montagna Klein Camden, LLP), Norfolk, Virginia, for claimant.

Jonathan H. Walker (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (2010-LHC-02156) of Administrative Law Judge Kenneth A. Krantz 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 sustained a work-related injury to her right knee on April 23, 1990, while working for employer. Employer paid claimant temporary disability benefits for various periods between 1992 and 2000, as well as medical benefits. The district director issued a stipulated compensation order in 2000 in which the parties agreed employer would pay permanent partial disability benefits under Section 8(c)(2) of the Act, 33

U.S.C. §908(c)(2), for a 33 percent permanent impairment of the right leg. Emp. Ex. 1. In June 2009, an administrative law judge awarded claimant additional temporary total disability pursuant to the parties' stipulation. Emp. Ex. 3. Claimant has not worked for any employer since her 1990 work accident.

On September 23, 2009, Dr. Dowd performed a total right knee replacement on claimant. Cl. Ex. 2. On June 2, 2010, her physical therapist, Mr. MacMasters, assigned a permanent impairment rating of 50 percent to her right leg, based on a "fair" result from her surgery, according to the Fifth Edition of the American Medical Association *Guides to the Evaluation of Permanent Impairment* (AMA *Guides*). On June 10, 2010, Dr. Dowd considered claimant's right knee condition to be at maximum medical improvement, and he assigned permanent work restrictions. On June 28, 2010, Dr. Dowd adopted the impairment rating assigned by Mr. MacMasters. Cl. Exs. 5-6. Thereafter, on January 31, 2011, employer's expert, Dr. Cavazos, evaluated claimant. Dr. Cavazos opined that claimant's surgical result was "good" rather than "fair" and assigned an impairment rating of 25 percent using the Sixth Edition of the AMA *Guides*. Emp. Ex. 22. Employer voluntarily paid claimant additional temporary partial and permanent partial disability benefits. Claimant asserted entitlement to additional benefits, and employer argued that claimant had no further disability as a result of her right knee replacement surgery.

The administrative law judge credited the opinion of Dr. Cavazos over that of Dr. Dowd. He concluded that Dr. Cavazos personally examined claimant for the purposes of assigning an impairment rating and thus gave a more reasoned opinion, and based his rating on the most recent version of the AMA *Guides*. Accordingly, the administrative law judge found that claimant suffers from a permanent impairment to her right knee of 25 percent and is not entitled to any additional permanent partial disability benefits under Section 8(c)(2). Claimant appeals, contending the administrative law judge erred in denying benefits. Employer responds, urging affirmance of the administrative law judge's decision.

In support of her claim for additional benefits, claimant submitted the opinion of Dr. Dowd, her treating physician, that she has a 50 percent impairment of the right leg. Dr. Dowd adopted the opinion of Mr. MacMasters, who used the Fifth Edition of the AMA *Guides* to reach his conclusion. Employer submitted the opinion of Dr. Cavazos, who used the Sixth Edition of the AMA *Guides* to conclude that claimant's knee has a permanent impairment of 25 percent. Claimant contends the administrative law judge erred in crediting employer's expert merely because Dr. Cavazos used the more recent edition. Claimant also contends Dr. Dowd is qualified to assign an impairment rating and that, as her treating physician, his opinion is entitled to greater weight.

It is well established that an administrative law judge is entitled to evaluate the credibility of all witnesses and has considerable discretion in evaluating and weighing the evidence of record, including the medical evidence. *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 (2d Cir. 1961). The Board may not reweigh the evidence, but must affirm rational findings and inferences. *Newport News Shipbuilding & Dry Dock Co. v. Cherry*, 326 F.2d 449, 37 BRBS 6(CRT) (4th Cir. 2003). In the event of an injury to a scheduled member, recovery for permanent partial disability is confined to that provided in the schedule at Section 8(c)(1)-(19) of the Act, 33 U.S.C. §908(c)(1)-(19), and is based on the degree of physical impairment. *Potomac Electric Power Co. v. Director, OWCP*, 449 U.S. 268, 14 BRBS 363 (1980). The Act does not require an impairment rating to be based on the criteria in the AMA *Guides* except in cases involving hearing loss and voluntary retirees. *See* 33 U.S.C. §§902(10), 908(c)(13), (23). Rather, the administrative law judge is not bound by any particular formula but may rely on a variety of medical opinions and observations in assessing the extent of a claimant's permanent impairment. *See Pimpinella v. Universal Maritime Service, Inc.*, 27 BRBS 154, 159-160 (1993). The administrative law judge may rely on a medical opinion based on the AMA *Guides*, as it is a standard medical reference. *See, e.g., Jones v. I.T.O. Corp. of Baltimore*, 9 BRBS 583, 585 (1979).

We reject claimant's assertion that the administrative law judge erred in relying on the opinion of Dr. Cavazos, rather than on that of Dr. Dowd. The administrative law judge found both doctors are board-certified orthopedists and are qualified to perform evaluations and assign impairment ratings. Decision and Order at 12. He then found that Dr. Dowd did not perform an impairment rating evaluation himself, but instead adopted the conclusion reached by Mr. MacMasters, who holds a Master's degree in Physical Therapy but is not a licensed physician. *Id.* Because Dr. Cavazos conducted his own evaluation, the administrative law judge found his impairment rating better reasoned and therefore entitled to greater weight. Further, the administrative law judge considered the impairment rating based on the more recent edition of the AMA *Guides* to be more accurate, and, as Dr. Cavazos utilized the Sixth Edition in rendering his decision, the administrative law judge found that Dr. Cavazos's opinion is entitled to more weight.[1]

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[1]We reject claimant's assertion that the administrative law judge erred in relying on *Green-Brown v. Sealand Services, Inc.*, 586 F.3d 299, 43 BRBS 57(CRT) (4th Cir. 2009), because use of the AMA *Guides* is not mandated in non-hearing loss cases. The administrative law judge cited *Green-Brown* for the purpose of showing that it is rational to utilize the most recent edition of the AMA *Guides.* He acknowledged that they need not be used in a case involving a knee injury; however, both doctors who provided the impairment ratings in this case used a version of the AMA *Guides* and the administrative

Claimant's assertion that Dr. Dowd's opinion is entitled to greater weight because he is claimant's treating physician is without merit. While the courts have recognized that a treating physician's opinion may be entitled to special weight if it is not contradicted, *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 84(CRT) (2d Cir. 1997), the opinions of treating physicians need not be accorded automatic deference. The Fourth Circuit, within whose jurisdiction this case arises, has emphasized that an administrative law judge should evaluate the opinion of the treating physician in light of other evidence of record. *See Director, OWCP v. Newport News Shipbuilding & Dry Dock Co. [Carmines]*, 138 F.3d 134, 140 n.5, 32 BRBS 48, 52 n.5(CRT) (4th Cir. 1998). In this case, the administrative law judge provided a rational basis for crediting the opinion of Dr. Cavazos over that of Dr. Dowd. *See generally Stiltner v. Island Creek Coal Co.,* 86 F.3d 337 (4th Cir. 1996). Thus, as substantial evidence supports the administrative law judge's finding, we affirm his determination that claimant has a 25 percent impairment to the right leg and is not entitled to additional permanent partial disability benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

law judge noted that Dr. Dowd did not use the Sixth Edition even though it was available at the time he utilized Mr. MacMasters's rating.