

BRB No. 98-0985

GUISEPPE MANENTE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SEA-LAND SERVICE,	)	DATE ISSUED: <u>April 14, 1999</u>
INCORPORATED	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Michael E. Glazer (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

Keith L. Flicker (Flicker, Garelick & Associates), New York, New York, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (96-LHC-2117) of Administrative Law Judge Paul H. Teitler 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 findings of fact and conclusions of law of the administrative law judge which 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).

On November 24, 1995, claimant, a hustler driver, fell out of the cab onto the chassis of the hustler, hitting his back and right shoulder as he fell. Claimant was paid medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907, and temporary total disability pursuant to Section 8(b) of the Act, 33 U.S.C. §908(b), from November 25, 1995 through January 29, 1996. Thereafter, claimant filed his claim

seeking total disability benefits.

In his Decision and Order, the administrative law judge found that claimant presented insufficient evidence to establish that he is unable to perform his usual work due to either his back or shoulder injury after November 1, 1996. The administrative law judge thus awarded claimant additional temporary total disability benefits until November 1, 1996, the date of maximum medical improvement, but denied continuing benefits thereafter. On appeal, claimant challenges the denial of disability benefits. Employer responds, urging affirmance.

Claimant has the burden of establishing the nature and extent of his disability. *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56 (1985). To establish a *prima facie* case of total disability, claimant must show that he is unable to perform his usual employment due to his work-related injury. See *Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988); *Williams v. Halter Marine Service, Inc.*, 19 BRBS 248 (1987). A claimant's credible complaints of pain alone may be enough to meet his burden of establishing disability. See *Richardson v. Safeway Stores, Inc.*, 14 BRBS 855 (1982); *Miranda v. Excavation Construction, Inc.*, 13 BRBS 882 (1981).

We affirm the administrative law judge's denial of benefits after November 1, 1996, as he rationally concluded that claimant could perform his usual employment as he fully recovered from the contusions to his right shoulder and lumbosacral sprain sustained in the 1995 work-related accident. With respect to claimant's back, the administrative law judge credited the opinion of Dr. Gallick that claimant could return to work without restrictions over the conflicting opinion of claimant's treating physician, Dr. Stein, that claimant was totally disabled because a pre-existing back condition became symptomatic from the 1995 accident. The administrative law judge credited the opinion of Dr. Gallick over that of Dr. Stein based on Dr. Gallick's superior credentials,<sup>1</sup> and he noted that Dr. Gallick's examinations of claimant were objectively normal. See EX A. The fact that the administrative law judge credited Dr. Stein's opinion with regard to the date of maximum medical improvement does not negate his reliance on Dr. Gallick, as the inquiries into the nature and extent of claimant's disability are separate, and it is within the administrative law judge's discretion to accept or reject all or any part of any testimony according to his judgement.<sup>2</sup> *Perini Corp. v. Heyde*, 306 F. Supp. 1321 (D.R.I. 1969); see also

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<sup>1</sup>Dr. Gallick is Board-certified in orthopedic surgery. Dr. Stein is Board-certified in rehabilitative medicine.

<sup>2</sup>Claimant does not challenge, on appeal, the administrative law judge's finding that claimant reached maximum medical improvement on November 1, 1996.

*Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963). As the Board may not reweigh the evidence, and as the administrative law judge's crediting of Dr. Gallick's opinion and consequent finding that claimant does not have an ongoing disability to his back are rational and supported by substantial evidence, the administrative law judge's denial of benefits after November 1, 1996 is affirmed.

Similarly, the administrative law judge found that claimant fully recovered from his shoulder contusion and is able to return to his usual employment. In so finding, the administrative law judge relied primarily on the opinion of Dr. Gallick, and he rejected the opinion of Dr. Stein, who was the only doctor to state that claimant's injury to his right shoulder resulted in a continuing disability. See EX A; CX 2, 3. Dr. Gallick stated that claimant had nothing wrong with his shoulder and could return to work without restrictions. Moreover, the administrative law judge found that claimant's testimony with respect to his right shoulder is not credible. In discrediting claimant's testimony, the administrative law judge specifically stated that claimant's inability to raise his shoulder more than forty-five degrees at the hearing was in sharp contrast to all of the doctors' reports, including that of his treating physician, Dr. Stein.<sup>3</sup> As the Board may not interfere with an administrative law judge's credibility determinations unless they are inherently incredible or patently unreasonable, we reject claimant's argument on this point. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978); *cert. denied*, 440 U.S. 911 (1979). Consequently, as the administrative law judge's finding that claimant does not have a continuing work-related disability to his right shoulder is supported by substantial evidence, we affirm the administrative law judge's denial of ongoing disability benefits for this injury. See generally *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1964).

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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JAMES F. BROWN

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<sup>3</sup>In his various medical reports, Dr. Stein indicated at a minimum that claimant could raise his right arm ninety degrees. Dr. Gallick opined that claimant's shoulder had a full range of motion.

Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge