

LINDSIE ELAM	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING	)	DATE ISSUED: <u>Aug. 6, 2004</u>
AND DRY DOCK COMPANY	)	
	)	
Self-Insured	)	
Employer-Petitioner	)	DECISION and ORDER

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

John H. Klein (Montagna Breit Klein Camden L.L.P.), Norfolk, Virginia, for claimant.

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

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

PER CURIAM:

Employer appeals the Decision and Order and the Decision and Order Denying Motion for Reconsideration (2002-LHC-0897) 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant injured his right knee on July 25, 2000, while working for employer. He began treatment with Dr. Stiles and underwent surgery on October 26, 2000. Dr. Stiles opined that claimant reached maximum medical improvement on July 30, 2001, and he

assigned permanent restrictions. Claimant sought permanent partial disability benefits under the Act.

In his decision, the administrative law judge awarded claimant permanent partial disability compensation under the schedule for a nine percent loss of use of his right lower extremity. 33 U.S.C. §908(c)(2), (19). In response to employer's motion for reconsideration, the administrative law judge reaffirmed his finding that claimant suffered a nine percent impairment of his right lower extremity, based on claimant's current restrictions, level of pain, and probability of future deterioration.

On appeal, employer contends that the administrative law judge erred in rejecting Dr. Luck's opinion that claimant's impairment should be rated at a seven percent loss of use of his right lower extremity based only on the arthritic changes measured by the narrowing of the medical compartment. Claimant responds, urging affirmance of the administrative law judge's decision.

The Act does not require that permanent partial disability awards under the schedule to be based on impairments rated under the criteria of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (*AMA Guides*), except in cases involving hearing loss. See 33 U.S.C. §908(c)(13); see also 33 U.S.C. §§902(10), 908(c)(23) (permanent partial disability awards for voluntary retirees must be based on *AMA Guides*). Generally, therefore, the administrative law judge is not bound by any particular standard or formula but may consider a variety of medical opinions and observations in addition to claimant's description of symptoms and physical effects of his injury in assessing the extent of claimant's partial disability to a scheduled member. *Pimpinella v. Universal Maritime Serv., Inc.*, 27 BRBS 154 (1993); *Mazze v. Frank J. Holleran, Inc.*, 9 BRBS 184 (1978).

In the present case, the record contains the opinions of Drs. Luck and Stiles. Dr. Stiles, claimant's treating physician, reported on July 30, 2001, that claimant had reached maximum medical improvement and that he has a 15 percent impairment of the right lower extremity based on the post-traumatic arthritis in his right knee, the cartilaginous loss, and the fact that he had a partial meniscectomy.<sup>1</sup> Cl. Ex. 3k. Dr. Luck reviewed claimant's x-ray and MRI and opined that under the *AMA Guides* claimant is entitled to a seven percent impairment rating for arthritis evidenced by a 3mm cartilage interval, as well as a two percent rating for his partial meniscectomy. Emp. Ex. 1. However, Dr. Luck reported that the ratings for the medial compartment and meniscus surgery are not intended to be combined under the *AMA Guides*; rather, the patient is entitled only to the greater of the ratings. *Id.* Therefore, Dr. Luck opined that claimant is entitled to a seven percent impairment rating of the lower extremity. *Id.*

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<sup>1</sup> The administrative law judge found that Dr. Stiles's opinion is entitled to little weight as he provided no explanation for assessing claimant's impairment of the right lower extremity at 15 percent. This finding is unchallenged on appeal.

After reviewing the evidence and the *AMA Guides*, the administrative law judge concluded that, in this case, combining the disability ratings for claimant's partial meniscectomy and arthritis results in a fair and warranted impairment rating of nine percent. The administrative law judge based this conclusion on the *AMA Guides* which state that degenerative arthritis and diagnosis-based assessments, such as meniscectomies, can be combined, as well as on claimant's current restrictions, level of pain, and the probability of future deterioration. *See AMA Guides* at 525-526, 545-546; Tables 17-1, 17-2, 17-33. Contrary to employer's contention, the administrative law judge rationally interpreted the *AMA Guides* as permitting the combination of impairment ratings. In addition, the administrative law judge rejected Dr. Luck's opinion that the ratings for the narrowing of the medial compartment and meniscus surgery were not intended to be combined as he found that this opinion was offered as a general statement and does not specifically address claimant's condition in the instant case.

We reject employer's contention that the administrative law judge misinterpreted Dr. Luck's opinion. As the administrative law judge correctly found, Dr. Luck's November 3, 2000, letter is a general response to employer's inquiry regarding a patient with multiple degenerative changes in his knee involving more than one compartment. Dr. Luck continued with an explanation of his opinion concerning patients with meniscal pathology who have had partial or total meniscectomies as well as narrowing of the joint space of the knee and he stated that he believed that the intent of the *AMA Guides* was to rate the patient with one or the other, but not both. Dr. Luck did not relate this opinion to this particular claimant. Moreover, although Dr. Luck reported his opinion in a letter dated April 17, 2002, regarding the degree of narrowing seen on claimant's x-rays and MRI, his following opinion that impairment ratings should not be combined does not address the facts of claimant's condition but rather reiterates his opinion against such combinations in general.

Determinations regarding the weight accorded to medical evidence are the province of the administrative law judge. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5<sup>th</sup> Cir. 1962), *cert. denied*, 373 U.S. 954 (1963). Thus, in adjudicating a claim, it is well-established that an administrative law judge is entitled to weigh the medical evidence and to draw his own inferences from it, *see Brown v. Nat'l Steel & Shipbuilding Co.*, 34 BRBS 195 (2001), and he is not bound to accept the opinion or theory of any particular witness. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5<sup>th</sup> Cir. 1962). In the instant case, the administrative law judge fully evaluated the opinion of Dr. Luck, and ultimately relied in part on the medical assessments of claimant's impairment, the *AMA Guides*, and claimant's restrictions and level of pain, to conclude that claimant sustained a nine percent impairment to his right lower extremity. As the administrative law judge's finding is supported by substantial evidence, is rational and is in accordance with law, it is affirmed. *See generally Cotton v. Army & Air Force Exch. Services*, 34 BRBS 88 (2000).

Accordingly, the Decision and Order and the Decision and Order Denying Motion for Reconsideration of the administrative law judge awarding benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge