BRB Nos. 98-1555
and 98-1555A

RHADAMES CHAVEZ	)	
	)	
Claimant-Respondent	)	
Cross-Petitioner	)	
	)	
v.	)	
	)	
UNIVERSAL MARITIME SERVICE CORPORATION	)	DATE ISSUED: 8/17/99
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION	)	
	)	
Employer/Carrier-Petitioners	)	
Cross-Respondents	)	DECISION and ORDER

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

Martin M. Glazer (Glazer, Kamel & Guberman), Elizabeth, New Jersey, for claimant.

Christopher J. Field (Weber Goldstein Greenberg & Gallagher), Jersey City, New Jersey, for employer/carrier.

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

PER CURIAM:

Employer appeals, and claimant cross-appeals, the Decision and Order and the Order Granting Motion for Reconsideration (97-LHC-1784) 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).

Claimant, a hatch checker, injured his neck and right shoulder at work on March 11, 1996, when a big chunk of ice fell from a crane and landed on him. Employer voluntarily paid claimant temporary total disability benefits from March 14, 1996, to April 1, 1996, and medical benefits. The administrative law judge awarded claimant temporary total disability benefits from March 14, 1996, to May 22, 1996, and medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907, until May 22, 1996.

On appeal, employer challenges the administrative law judge's award of temporary total disability benefits until May 22, 1996. Claimant cross-appeals the administrative law judge's denial of compensation and medical benefits after May 22, 1996. Both claimant and employer have filed response briefs.

We first address the challenges by both employer and claimant to the administrative law judge's award of temporary total disability benefits. Employer contends that the administrative law judge irrationally awarded claimant temporary total disability benefits until May 22, 1996, after finding Dr. Nehmer's opinion returning claimant to work on April 1, 1996, compelling and well reasoned. Claimant contends that the administrative law judge erred in terminating the temporary total disability benefits on May 22, 1996, after finding that employer was liable for benefits until claimant's condition had been fully investigated by Dr. Bradley, given that Dr. Bradley did not release claimant to return to his usual work until June 17, 1996. To establish his *prima facie* case of total disability, claimant must establish that he is unable to perform his usual employment due to his work-related injury. *Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988).

In determining that claimant was entitled to temporary total disability benefits until May 22, 1996, the administrative law judge stated that Dr. Nehmer and Dr. Koval "presented compelling and well reasoned evidence" in the form of their range of motion findings, that claimant was able to return to his usual work by April 1, 1996. Decision and Order at 17. Dr. Nehmer deposed that claimant was able to return to his usual work as of April 1, 1996, and that claimant was not in need of additional treatment. Dr. Koval first examined claimant on July 8, 1996, on behalf of the Department of Labor, and found tenderness in the shoulder area, but a full range of motion. He stated that claimant had no work-related injury, and noted that claimant had returned to work and should continue to do so. The administrative law judge noted that claimant was authorized to see Dr. Bradley, and the administrative law

judge concluded, in light of the aforementioned evidence, that it was reasonable for employer to pay disability benefits until Dr. Bradley had fully investigated claimant's complaints. Magnetic resonance imaging of claimant's shoulder and cervical spine did not reveal any significant problems. Dr. Bradley stated claimant could return to work on June 17, 1996. Decision and Order at 17; Cl. Exs. E-F.

We agree with the parties' contentions that this case must be remanded to the administrative law judge for further findings, as his conclusion is not consistent with the evidence he credited. Although the negative MRI evidence, combined with Dr. Nehmer's earlier opinion supports the administrative law judge's determination that claimant's disability ended on May 22, 1996, Dr. Koval's opinion does not support the termination of benefits at this date. He did not examine claimant until July 8, 1996, after claimant had returned to work. He found no work-related injury at that time, but does not state that claimant was never disabled by his work injury. Moreover, although the administrative law judge found it reasonable to award claimant benefits until he was examined by Dr. Bradley, he does not address Dr. Bradley's opinion that claimant could not return to work until June 17, 1996. Consequently, we vacate the administrative law judge's determination that claimant's entitlement to temporary total disability benefits ceased on May 22, 1996, and we remand this case to the administrative law judge for further consideration of the date claimant was able to return to work.

We next address claimant's contention that the administrative law judge erred in not awarding him partial disability benefits. Claimant contends his injury impeded his ability to perform his work, which in turn caused his transfer to another position. The administrative law judge did not explicitly determine whether claimant established his entitlement to partial disability benefits. Remand is not required, however, as the evidence which the administrative law judge credited establishes that claimant was capable of performing his usual work as a hatch checker, and that his removal from this position was not related to his work injury. Decision and Order at 15-17.

Post-injury, claimant worked as a hatch checker from June 1996 through November 1996. Tr. at 40. In his deposition, Stanley Lysick, employer's safety manager, explained that claimant was reassigned from his usual work as a hatch checker to a clerk position based on his poor performance pre-dating the injury. Emp. Ex. 12 at 28-29; *see also* Emp. Ex. 10. Mr. Lysick testified that claimant's reassignment resulted in a loss in hours, and thus a loss in income. Emp. Ex. 12 at 44-45. Mr. Lysick further testified that in claimant's union grievance, claimant took the position that he had the physical capacity to perform his job as a hatch checker. Emp. Ex. 12 at 30-31. Although claimant testified that he continued to have physical

problems stemming from the work injury, claimant's testimony is the only evidence of his inability to perform his usual work and the administrative law judge found his testimony not credible in view of the medical evidence of record.[1] *See generally Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); Decision and Order at 15-16; Tr. at 24-25, 32, 55. As claimant did not establish that the loss of his usual work was due to the work injury, he is not entitled to partial disability benefits.

Lastly, we address claimant's contention that the administrative law judge erred in failing to award him medical benefits after May 22, 1996, noting that Dr. Bradley, on May 21, 1996, recommended physical therapy, and continued to see claimant on several occasions. The Act does not require that an injury be economically disabling in order for a claimant to be entitled to medical expenses, but only that the injury be work-related. *Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988). In order for a medical expense to be assessed against employer, the expense must be both reasonable and necessary for the treatment of claimant's work-related injury. 33 U.S.C. §907; *Romeike v. Kaiser Shipyards*, 22 BRBS 57, 60 (1989).

In determining that claimant was entitled to medical benefits only until May 22, 1996, the administrative law judge found employer responsible for the payment of medical benefits until claimant's medical condition had been fully investigated by Dr. Bradley, and he was capable of returning to work. Decision and Order at 17. Claimant's ability to return to work is not determinative of his entitlement to medical benefits if he remained in need of treatment for his work injury. *Cotton v. Newport News Shipbuilding & Dry Dock Co.* 23 BRBS 380 (1990). Moreover, although finding Dr. Bradley's assessment of claimant's condition necessary, the administrative law judge did not address Dr. Bradley's recommendation that claimant undergo physical therapy and his judgment that such therapy was beneficial to claimant, or his subsequent treatment of claimant. We, therefore vacate the administrative law judge's denial of all medical benefits after May 22, 1996, and we remand the case for further consideration of claimant's entitlement to additional medical benefits.

Accordingly, the administrative law judge's denial of additional temporary total disability and medical benefits is vacated, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief

[1]As noted, Drs. Nehmer and Bradley returned claimant to his usual work.

Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge