BRB No. 04-0317

WILL L. BIAS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TRANSOCEAN TERMINAL OPERATORS (D/B/A P&O PORTS LOUISIANA, INCORPORATED)	)	DATE ISSUED: 12/20/04
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

William S. Vincent, Jr. (Law Offices of William S. Vincent, Jr.), New Orleans, Louisiana, for claimant.

William C. Cruse (Blue Williams, L.L.P.), Metairie, Louisiana, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (2002-LHC-1194) of Administrative Law Judge Lee J. Romero, 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 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 crane operator, injured his neck, back, and right side at work on February 25, 2001, and subsequently developed psychological problems. Employer voluntarily paid claimant total disability benefits from February 26 through March 25, 2001. Claimant unsuccessfully attempted to return to work in July and August 2001. The administrative law judge found that claimant was not totally disabled after October 9, 2002, and not disabled at

all after February 24, 2003. Thus, the administrative law judge awarded claimant total disability benefits from February 25 through October 9, 2002, and partial disability benefits from October 10, 2002, to February 23, 2003. The administrative law judge denied claimant's request that employer pay for his treatment at a pain clinic.

On appeal, claimant challenges the administrative law judge's weighing of the evidence in finding that claimant is not totally disabled from a physical standpoint after October 9, 1992, and that claimant is not psychologically disabled. Employer responds in support of the administrative law judge's findings.

Upon consideration of the administrative law judge's decision, the parties' briefs, and the evidence of record, we affirm the administrative law judge's denial of total disability benefits after October 9, 1992, and of all benefits after February 24, 2003. The administrative law judge thoroughly discussed and weighed all relevant medical evidence, and credited the opinions of Drs. Applebaum, Glynn, and Katz, that claimant can work, at least in a lighter duty capacity, over the contrary opinions of Drs. Kewalramani, Phillips, Vogel, and Watermeier, that claimant cannot return to work. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); Decision and Order at 62-68; Emp. Exs. 7 at 8; 8; 9 at 8; 14 at 24, 28, 59; 23 at 3; Cl. Exs. 5; 6 at 6; 7 at 4; 21 at 1; Tr. at 486-487, 533. The administrative law judge provided a rational basis for crediting the opinions stating claimant could return to work. Claimant has not identified any error in the administrative law judge's weighing of the evidence, and the Board is not empowered to reweigh it. *Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994). Therefore, in conjunction with the administrative law judge's unchallenged finding that employer established suitable alternate employment based on a labor market survey dated October 10, 2002, we affirm the administrative law judge's finding that claimant was partially disabled from October 10, 2002 to February 23, 2003.[1] 33 U.S.C. §908(c)(21).

[1] The administrative law judge found that claimant had a loss of wage-earning capacity of $523.36 during this period. 33 U.S.C. §908(h).

Moreover, we affirm the administrative law judge's denial of any additional disability benefits after February 24, 2003, based on Dr. Applebaum's report of that date that claimant has no neurological impairment preventing him from returning to work. The administrative law judge rationally interpreted Dr. Applebaum's opinion of February 24, 2003, as lifting his 2001 restrictions in view of the lack of validity of claimant's functional capacities evaluation due to non-organic illness behavior, and his deference to Dr. Bianchini's opinion that claimant may return to work. *See generally Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT)(5th Cir. 1991); Decision and Order at 67; Emp. Ex. 9 at 9-10. Moreover, Drs. Katz, Glynn and Culver had earlier stated that claimant could return to his usual work without restrictions. Thus, as it is supported by substantial evidence, we affirm the administrative law judge's finding that claimant could return to his usual work, from a physical standpoint, as of February 24, 2003.[2] *See Gacki v. Sea-Land Serv., Inc.*, 33 BRBS 127 (1998).

We also reject claimant's contention that the administrative law judge erred in denying disability benefits for claimant's psychological injury. The administrative law judge acted within his discretion in crediting the opinions of Drs. Bianchini and Culver that claimant can return to work from a psychological perspective over the contrary opinions of Drs. Koy, Kronberger, and Morse. *Calbeck*, 306 F.2d 693; *John W. McGrath Corp.*, 289 F.2d 403; Decision and Order at 68-71; Emp. Exs. 15 at 21; 19 at 21; Cl. Exs. 9; 10; 15. The administrative law judge found the opinions of Drs. Bianchini and Culver better reasoned and more persuasive because they took into account that claimant did not suffer a severe physical injury. Decision and Order at 69; Emp. Exs. 15; 19. Moreover, the administrative law judge found Dr. Bianchini's opinion that a return to work would be therapeutic for claimant was consistent with Dr. Morse's testimony that protracted litigation delays the recovery process. Decision and Order at 69; Emp. Ex. 15 at 21; Cl. Ex. 15 at 32-35. The administrative law judge also found that Dr. Culver's opinion that claimant's psychological condition was due to malingering was supported by Dr. Katz's similar findings. Decision and Order at 69; Emp. Exs. 7; 14 at 68; 19. Therefore, as it is rational and supported by substantial evidence, we affirm the administrative law judge's finding that claimant is not disabled from a psychological perspective.

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

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[2] Based on our affirmance of the administrative law judge's crediting of the opinions of Drs. Applebaum, Glynn, and Katz, we also affirm the administrative law judge's denial of reimbursement for claimant's treatment at a pain clinic. *See generally Schoen v. United States Chamber of Commerce*, 30 BRBS 112 (1996); 33 U.S.C. §907(a); Decision and Order at 80-82; Emp. Exs. 7 at 21; 13 at 29; 23 at 3; Cl. Exs. 5 at 2; 6; 7 at 2; Tr. at 485. Drs. Glynn and Katz did not support a pain treatment program for claimant. Emp. Exs. 7 at 21; 13 at 29; 23 at 3; Cl. Ex. 6; Tr. at 485.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge