

M.M. )  
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 Claimant-Petitioner )  
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 v. )  
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 NEW YORK CONTAINER ) DATE ISSUED: 12/19/2007  
 TERMINAL )  
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 and )  
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 SIGNAL MUTUAL INDEMNITY )  
 ASSOCIATION, LIMITED )  
 )  
 Employer/Carrier- )  
 Respondents ) DECISION and ORDER

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

Robert J. Helbock (Helbock Nappa & Gallucci, LLP), Staten Island, New York, for claimant.

Robert N. Dengler (Flicker, Garelick & Associates, LLP), New York, New York, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order and the Erratum (2006-LHC-00598) 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, on July 25, 2005, sustained an injury to his back during the course of his employment for employer. Claimant returned to work for a few days in early October 2005. He sought disability benefits for the periods of July 25 to October 7, 2005, and from October 14, 2005, to August 6, 2006, as well as medical expenses allegedly related to his work-injury.

In his Decision and Order, the administrative law judge found that claimant sustained no work-related disability subsequent to August 4, 2005. Accordingly, the administrative law judge awarded claimant temporary total disability and medical benefits from July 25, 2005, to August 4, 2005.

On appeal, claimant challenges the administrative law judge's finding that he is not entitled to disability compensation subsequent to August 4, 2005. Employer responds, urging affirmance of the administrative law judge's decision in its entirety.

It is well-established that claimant bears the burden of establishing the nature and extent of any disability sustained as a result of a work-related injury. See *Marinelli v. American Stevedoring, Ltd.*, 34 BRBS 112 (2000), *aff'd*, 248 F.3d 54, 35 BRBS 41(CRT) (2<sup>nd</sup> Cir. 2001); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56 (1980). In order to establish a *prima facie* case of total disability, claimant must establish that he is unable to perform his usual work due to the injury. See *Wheeler v. Newport News Shipbuilding & Dry Dock Co.*, 39 BRBS 49 (2005); *Delay v. Jones Washington Stevedoring Co.*, 31 BRBS 197 (1998). In the instant case, the administrative law judge credited the opinions of Drs. Miller, Julewicz and Dennis over the opinion of Dr. Piazza and the testimony of claimant in concluding that claimant did not sustain a compensable impairment subsequent to August 4, 2005.

We affirm the administrative law judge's decision as he committed no error in weighing the medical evidence and concluding that claimant sustained no compensable impairment subsequent to August 4, 2005. In making this finding, the administrative law judge initially credited the testimony of Dr. Miller, a Board-certified orthopedic surgeon. Based upon his August 4, 2005, examination of claimant which revealed normal results and no positive objective findings, Dr. Miller diagnosed claimant with a resolved lumbosacral strain/sprain and concluded that claimant did not require orthopedic care and was capable of resuming his pre-injury employment with employer on a full-time basis. EX 3 at 17-20. The administrative law judge found Dr. Miller's opinion to be supported by Dr. Julewicz, who stated that his testing of claimant on August 22, 2005, did not reveal any weakness of muscle strength. *Id.* at 25-27. Additionally, the administrative law judge credited the testimony of Dr. Dennis, a Board-certified orthopedic surgeon who examined claimant on April 6, 2006; Dr. Dennis found claimant's complaints to be inconsistent, magnified, and unsupported by clinical findings, and he opined that claimant's lumbosacral back strain had resolved and that claimant was capable of full-time employment with employer without restrictions. *Id.* at 44-60. In contrast, in declining to rely upon the opinion of Dr. Piazza, the administrative law judge found that Dr. Piazza's

records were unreliable, and that no objective evidence supported that physician's diagnosis of claimant's condition and his opinion regarding the level of claimant's disability. Lastly, the administrative law judge found that claimant's testimony was not credible based in part on his inconsistent version of events surrounding his claim. In adjudicating a claim, it is well-established that an administrative law judge is entitled to weigh the medical evidence, 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 this case, the administrative law judge's credibility determinations are rational and within his authority as a factfinder. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9<sup>th</sup> Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). As the administrative law judge acted within his discretion in crediting the opinions of Drs. Miller, Julewicz and Dennis, over the contrary opinion of Dr. Piazza and the testimony of claimant, and as these credited opinions constitute substantial evidence to support the administrative law judge's ultimate findings, we affirm the administrative law judge's determination that claimant sustained no impairment subsequent to August 4, 2005.<sup>1</sup> *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5<sup>th</sup> Cir. 1962); *Donovan*, 300 F.2d 741.

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge

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<sup>1</sup> As the Board is precluded from conducting a *de novo* review of the evidence, *see* 33 U.S.C. §921(b)(3), we must decline claimant's request that the Board examine the trial record in the case at bar, rescind the administrative law judge's decision, and issue a new decision which directs employer to pay disability and medical benefits to claimant through August 6, 2006. *See generally Nelson v. American Dredging Co.*, 30 BRBS 205 (1996); *Shoemaker v. Schiavone & Sons, Inc.*, 20 BRBS 214 (1988).