BRB No. 09-0576

JAMES K. EZELL, JR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
EG & G TECHNICAL SERVICE	)	DATE ISSUED: 12/22/2009
	)	
and	)	
	)	
AIG WORLDSOURCE	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

James K. Ezell, Jr., Eros, Louisiana, *pro se*.

Richard L. Garelick (Flicker, Garelick & Associates, LLP), New York, New York, for employer/carrier.

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

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order (2008-LDA-00326) of Administrative Law Judge Patrick M. Rosenow 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.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). In an appeal by a claimant without legal representation, we will review the findings of fact and conclusions of law of the administrative law judge to determine if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). If they are, they must be affirmed.

Claimant, a diesel mechanic, suffered internal and external wounds when struck by mortar fire in Kirkuk, Iraq, on March 18, 2005. Following treatment and several surgeries, claimant returned to the United States to recuperate. After being medically cleared to work, claimant returned to his regular duties in Iraq in early August 2005. CX 1 at 107, 113. Almost immediately upon returning, claimant began experiencing physical and psychological difficulties and returned home. Claimant alleges he suffers damage to his neurological and gastrointestinal systems as well as post-traumatic stress disorder (PTSD) arising from his 2005 injury; as a result he claims he is totally disabled from any work.

In his Decision and Order, the administrative law judge found that claimant was totally disabled by his work injuries through August 3, 2005, and that although claimant may have some residual effects from the 2005 injury, they do not prevent him from returning to his usual job duties. Consequently, the administrative law judge denied disability benefits after August 3, 2005, but found employer liable for reasonable and necessary medical treatment.

Claimant, representing himself, appeals the administrative law judge's denial of compensation.[1] Employer responds, urging affirmance.

Claimant bears the burden of establishing that his work injury has resulted in disability. *Gacki v. Sea-Land Service, Inc.*, 33 BRBS 127 (1998); *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56 (1980). Specifically, claimant initially must establish that he cannot return to his regular or usual employment due to his work-related injury. *Roger's Terminal & Shipping Corp. v. Director, OWCP*, 784 F.2d 687, 18 BRBS 79(CRT) (5th Cir.), *cert. denied*, 479 U.S. 826 (1986).

After claimant's recuperation from his March 18, 2005, injury, his physicians released him to return to his usual job duties in Iraq in August 2005. CX 1 at 107, 113. Upon his return to Iraq, claimant alleged he began experiencing severe pain on his left side and gastrointestinal and psychological problems resulting from the March mortar attack. The administrative law judge found that the credible medical opinions of record establish that claimant has no physical or psychological disorders which prevent claimant from returning to work in Iraq and that his subjective symptoms have no objective basis.

[1] Claimant attached some medical documentation to his letters to the Board. These documents were admitted into the record by the administrative law judge.

In reaching the conclusion that claimant did not establish his inability to perform his usual job duties, the administrative law judge relied upon the opinions of Drs. Barrash, Griffith, Drazner, Liles, and Twomey. Dr. Barrash, Board-certified in neurosurgery, opined that, based on the objective testing he performed, claimant is exaggerating and amplifying complaints for which there are no medical bases. He found claimant had reached maximum medical improvement, has no neurological problems, and is capable of returning to his usual employment. EXs 1; 5 at 13-16. Dr. Liles noted that claimant has unusual complaints with no physiologic basis. He found claimant capable of performing mechanic-like work from an orthopedic perspective. CX 1 at 98. Dr. Twomey, who is Board-certified in internal medicine and specializes in occupational medicine, examined claimant and reviewed his medical records. Claimant's entire intestine was examined with an upper GI series, colonoscopy, and barium small bowel series. Dr. Twomey found nothing that would support claimant's gastrointestinal complaints. He found claimant's behavior bizarre and suspected symptom magnification. Dr. Twomey opined that claimant was at maximum medical improvement and could return to work. EXs 4; 7 at 26-27.

The administrative law judge found the opinion of Dr. Drazner, a specialist in physical medicine and rehabilitation, to be the "most credible, probative, and persuasive evidence" because he conducted the most thorough and detailed review of claimant's medical records and examination. Decision and Order at 35. Dr. Drazner observed suboptimal efforts and "wholly disproportionate" complaints of pain. He stated that claimant is unlimited in his ability to return to work and is engaged in malingering. EX 2. Dr. Griffith, Board-certified in psychiatry, examined claimant on January 24, 2008, and found claimant's subjective complaints to be bizarre at times and silly at other times. EXs 3, 9-10. The testing he administered gave an invalid profile indicating that claimant was not truthful. If claimant were being truthful, the test indicated claimant suffered every psychological illness except manic-depressive psychosis. Dr. Griffith stated the test results are consistent with malingering or symptom magnification. EXs 3, 9. He stated claimant is able to work, but perhaps unfit to return to work in Iraq.[2]

In contrast, Dr. Woods, also a treating physician, opined that claimant is disabled and unable to do gainful work due to left leg pain associated with the work injury. CX 1 at 17-18. The administrative law judge addressed the opinion of Mr. Gomila, a licensed psychologist, who assessed claimant as suffering from disabling PTSD. CX 1 at 97. The administrative law judge found this opinion outweighed by that of Dr. Griffith due to the latter's better credentials and his more fully developed rationale. The administrative law

[2] Dr. Griffith stated that claimant may be inventing symptoms to avoid having to go back to Iraq and essentially, therefore, is not in the right frame of mind for this employment. EX 9 at 12.

judge discussed the testimony of claimant and his mother, with whom he lives, regarding his symptoms and limitations. He found claimant's demeanor and appearance did not create an impression of reliability, and that the testimony of claimant's mother was based on claimant's subjective complaints and reports, which were of questionable credibility and not corroborated by medical testing. He further found that the evidence submitted by claimant was substantially impeached by the experts' medical evidence submitted by employer. Consequently, he determined that claimant failed to carry his burden of proof. Decision and Order at 34, 36.

We affirm the administrative law judge's finding that claimant failed to establish that he is unable to return to his usual job duties. The administrative law judge acted well within his discretion in giving less weight to the testimony of claimant and his mother regarding claimant's symptomatology due to impeaching medical opinion evidence and the absence of corroborating objective medical test results. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Moreover, as the administrative law judge permissibly found the bases for their opinions undermined by those of employer's physicians, his decision to accord less weight to the opinions of Dr. Woods and Mr. Gomila, that claimant is incapable of any employment, is rational. *See generally Hice v. Director, OWCP*, 48 F.Supp. 2d 501 (D. Md. 1999). It is well-established that the administrative law judge is entitled to determine the weight to be accorded to the evidence of record and that the Board cannot reweigh that evidence. *See Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). The opinions of Drs. Barrash, Griffith, Drazner, Liles, and Twomey constitute substantial evidence supporting the conclusion that claimant was not disabled by his work injuries after August 3, 2005. As claimant failed to establish that he is unable to perform his usual job duties due to his work injury, we affirm the administrative law judge's denial of additional disability compensation. *Peterson v. Washington Metropolitan Area Transit Authority*, 13 BRBS 891 (1981).

Accordingly, the administrative law judge's Decision and Order 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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JUDITH S. BOGGS
Administrative Appeals Judge