BRB No. 99-0504

PETER DAHLEN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
INDEPENDENT OIL SERVICES COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
LOUISIANA WORKERS' COMPENSATION CORPORATION	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

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

J.B. Jones, Jr. (Jones Law Firm), Cameron, Louisiana, for claimant.

J. Michael Stiltner, Baton Rouge, Louisiana, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order (97-LHC-2655) 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.*, as extended by the Outer Continental Shelf Lands Act , 43 U.S.C. §1331 *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, an offshore production operator, sustained an injury to his back on July 6, 1995, while unloading groceries weighing up to 150 pounds on a platform off the coast of Louisiana. Employer voluntarily paid claimant temporary total disability benefits from July 6, 1995 through

April 1, 1997, as well as temporary partial disability benefits from April 2, 1997, and continuing.

After claimant disagreed with employer's denial of authorization for Dr. Heilman to treat him, he filed a claim seeking payment of medical and temporary total disability benefits from April 23, 1997 and continuing. The administrative law judge found that claimant reached maximum medical improvement from his July 6, 1995 work-related injury on April 22, 1996, based on Dr. Gorin's opinion. The administrative law judge thus found that claimant is entitled to temporary total disability benefits from July 6, 1995, through April 22, 1996. The administrative law judge then found that claimant was entitled to permanent total disability benefits from April 22, 1996, until April 1, 1997, the date employer offered claimant suitable alternate employment, *i.e.*, a light duty position as an office clerk in employer's facility. Claimant was awarded permanent partial disability benefits for three weeks, after which Dr. Heilman issued additional restrictions which, the administrative law judge found, precluded claimant's employment in the job with employer. Thereafter, the administrative law judge awarded claimant continuing temporary total disability benefits, noting that claimant had back surgery in July 1997 that further limited his employability during the recovery period and that employer did not establish the availability of other suitable alternate employment. The administrative law judge found, however, that employer is not liable for the payment of the medical expenses claimant incurred in treating with Dr. Heilman, as this treatment was not authorized.[1]

On appeal, employer contends that the administrative law judge erred in relying on the opinion of Dr. Heilman in concluding that the job at its facility was not suitable for claimant. Claimant responds, urging affirmance.

Employer contends that it is irrational for the administrative law judge to rely on Dr. Heilman's opinion regarding claimant's employability since the administrative law judge also found that his treatment of claimant was not authorized. Employer argues that the administrative law judge should have credited the opinion of claimant's authorized physician, Dr. Gorin, who approved the job in employer's facility. We reject employer's contention.

On April 1, 1997, claimant was offered a light duty job in employer's office. *See generally Darby v. Ingalls Shipbuilding, Inc.*, 99 F.3d 685, 30 BRBS 93(CRT) (5th Cir. 1996). In order to reach the office, one has to climb 29 steps. A representative of employer's, Mr. Belaire, estimated that one would have to climb the stairs four times a day. Dr. Gorin, who last saw claimant on October 23, 1996, approved this job on March 31, 1997, as being within claimant's restrictions. EX 2 at 15. Claimant, however, did not accept the employment offer, and employer filled the job. Claimant returned to Dr. Heilman, who had

[1]This finding is not appealed.

been treating him since August 6, 1996. On April 22, 1997, Dr. Heilman stated that claimant cannot climb stairs due to his lumbar disc disease. CX 2.

The administrative law judge credited Dr. Heilman's stair climbing restriction, and thus concluded that the job offered to claimant did not constitute suitable alternate employment as of April 22, 1997. The administrative law judge noted that claimant was solely under Dr. Heilman's care at this time, *see* Decision and Order at 21, and he found that the lumbar fusion Dr. Heilman performed on claimant in July 1997 was reasonable given Dr. Heilman's qualifications in orthopedics and claimant's continuing complaints of pain, notwithstanding that he was unauthorized to treat claimant.[2]

We affirm the administrative law judge's decision. The Board may not reweigh the evidence, and the administrative law judge's crediting of Dr. Heilman's opinion is within his discretion as the trier-of-fact. The administrative law judge rationally explained his decision to credit Dr. Heilman despite finding that his treatment was unauthorized under Section 7. *See generally Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969); *see also Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963). In any event, whether treatment is authorized under Section 7 relates to employer's liability for medical expenses rather than the weight to be given the medical opinion of an examining or treating physician. An administrative law judge is not required to credit any particular physician, but must weigh the evidence rationally, reaching a decision supported by substantial evidence. *Id.* He did so in this case. Inasmuch as the administrative law judge's finding that employer did not establish the availability of alternate employment within claimant's restrictions after April 22, 1997, is supported by substantial evidence, *see generally Clophus v. Amoco Production Co.*, 21 BRBS 261 (1988), we affirm the administrative law judge's award of total disability benefits after that date.

[2]Following a recuperative period following surgery, Dr. Heilman recommended that claimant undergo rehabilitation. He restricted claimant from prolonged bending, stooping, crouching and crawling, and recommended that claimant not lift more than 25 pounds occasionally. CX 3 at 21-22. Employer did not offer any evidence of suitable alternate employment following claimant's recuperation.

Accordingly, we affirm the administrative law judge's Decision and Order.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge