

MELVIN J. FIALKEWICZ	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CLARK MARYLAND TERMINALS,	)	
INCORPORATED	)	DATE ISSUED: _____
	)	
and	)	
	)	
SIGNAL MUTUAL INSURANCE	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION AND ORDER

Appeal of the Decision and Order of Robert J. Feldman, Administrative Law Judge, United States Department of Labor.

Bernard J. Sevel (Sevel & Sevel, P.A.), Baltimore, Maryland, for claimant.

Andrew M. Battista (Young & Battista, P.A.), Baltimore, Maryland, for employer/carrier.

Before: SMITH and BROWN, Administrative Appeals Judges, and LAWRENCE, Administrative Law Judge.\*

PER CURIAM:

Claimant appeals the Decision and Order (90-LHC-1412) of Administrative Law Judge Robert J. Feldman, 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 the conclusions of law of the administrative law judge that are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); O'Keefe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

Claimant, on September 25, 1988, sustained an injury to his right knee and ankle while working for employer as a longshoreman. Employer voluntarily paid claimant temporary total disability compensation for the periods of September 26, 1988 to November 6, 1988, and November 14, 1988 to April 16, 1989. 33 U.S.C. §908(b). Claimant subsequently filed a claim for benefits under the Act.

\*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (1988).

In his Decision and Order, the administrative law judge, after crediting the opinion of Dr. Becker over the opinion of Dr. Novin, concluded that claimant sustained a 30 percent permanent partial disability to his right leg and that claimant failed to establish the existence of a permanent partial disability to his left leg; accordingly, the administrative law judge, pursuant to Sections 8(c)(2), (19) of the Act, 33 U.S.C. §908(c)(2), (19), awarded claimant permanent partial disability compensation for the impairment to his right leg.

On appeal, claimant challenges the administrative law judge's finding that he has a 30 percent permanent partial disability to his right leg, and no permanent partial disability to his left leg. Employer responds, urging affirmance of the administrative law judge's Decision and Order.

Claimant initially contends that the administrative law judge erred by accepting and crediting the opinion of Dr. Becker over the opinion of Dr. Novin. We disagree. The burden of establishing the nature and extent of any disability sustained as a result of a work-related injury rests with claimant. Trask v. Lockheed Ship-building and Construction Co., 17 BRBS 56 (1985). In the instant case, the administrative law judge found that Dr. Becker is Board-certified in orthopedic surgery, treated claimant for a period of over two years, and offered a well-reasoned opinion. He therefore credited the opinion of Dr. Becker, who concluded that claimant had a 30 percent permanent partial disability and no disability related to his September 1988 injury to his left leg. See EX-3; Dr. Becker's deposition at 20. As the administrative law judge's decision to credit Dr. Becker's testimony is neither inherently incredible nor patently unreasonable, we affirm his decision to credit it rather than that of Dr. Novin. See Cordero v. Triple A Machine Shop, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), cert. denied, 440 U.S. 911 (1979); Todd Shipyards Corp. v. Donovan, 300 F.2d 741 (5th Cir 1962).

Claimant additionally contends that, in crediting Dr. Becker's disability rating of 30 percent, the administrative law judge ignored the American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides), which mandate a higher disability rating for claimant's right leg. The administrative law judge, however, noted that Dr. Becker's finding that claimant had a 30 percent permanent partial disability to his right leg was based on the AMA Guides, as well as the pain, weakness, atrophy, loss of function, and loss of endurance experienced by claimant. See Decision and Order at 4. It is well-established that the AMA Guides are not generally controlling in determining disability under the Act. See Ortega v. Bethlehem Steel Corp., 7 BRBS 639 (1978); Tangorra v. National Steel and Shipbuilding Co., 6 BRBS 427 (1977), aff'd in part and vacated in part on other grounds, 607 F.2d 1009 (9th Cir. 1979). Thus, an administrative law judge evaluating disability due to a leg injury

is not required to follow any particular standard, guide or formula when evaluating a disability.<sup>1</sup> See Mazze v. Frank J. Holleran, Inc., 9 BRBS 1053 (1978). A variety of medical opinions and observations may be relied upon in addition to claimant's own description of symptoms and physical effects of his injury. Bachich v. Seatrain Terminals of California, 9 BRBS 184 (1978). Thus, as the AMA Guides are not a mandatory measure of disability in this case, we reject claimant's contention and affirm the administrative law judge's decision to rely upon the disability rating of 30 percent rendered by Dr. Becker.

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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JAMES F. BROWN  
Administrative Appeals Judge

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LEONARD N. LAWRENCE  
Administrative Law Judge

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<sup>1</sup>The statute requires use of the AMA Guides when evaluating claims for hearing loss, 33 U.S.C. §908(c)(13), and claims filed by retirees, 33 U.S.C. §902(10).