

EDWARD A. ELLIOTT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SUDERMAN STEVEDORES,	)	DATE ISSUED:
____ INCORPORATED	)	
	)	
and	)	
	)	
TRAVELERS INSURANCE COMPANY	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Decision and Order-Denying Benefits of Quentin P. McColgin, Administrative Law Judge, United States Department of Labor.

William D. Bonilla (Bonilla & Berlanga, Inc.), Corpus Christi, Texas, for claimant.

Douglas W. Poole (McLeod, Alexander, Powel & Apffel, P.C.), Galveston, Texas for employer/carrier.

Before: DOLDER, Acting Chief Administrative Appeals Judge, McGRANERY, Administrative Appeals Judge, and SHEA, Administrative Law Judge.\*

PER CURIAM:

Claimant appeals the Decision and Order-Denying Benefits (90-LHC-202) of Administrative Law Judge Quentin P. McColgin 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 supported by substantial evidence, are rational, and are

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

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 injured his right shoulder while working for employer as a longshoreman on December 19, 1986. Emp. Ex. 6. As a result of this incident, employer voluntarily paid claimant temporary total disability benefits from December 20, 1986, through May 28, 1987. 33 U.S.C. §908(b). Claimant returned to work with another employer on September 14, 1987, and sustained an injury that day to his back and right shoulder which is not at issue in the present case.<sup>1</sup>

In his Decision and Order, the administrative law judge determined that claimant sustained no permanent disability as a result of his December 19, 1986 work incident after August 27, 1987, the date by which all of claimant's treating physicians had released him to full duty. The administrative law judge thus awarded claimant temporary total disability compensation for the period of December 20, 1986 to August 27, 1987. As employer had made additional payments of compensation to claimant during 1988, the administrative law judge determined that no additional compensation was due claimant; accordingly, the claim was denied.

On appeal, claimant challenges the denial of his claim for compensation based on the administrative law judge's crediting of the opinions of Drs. Whited, Carlson, and McKeever over that of Dr. Garcia. Employer responds, urging affirmance of the administrative law judge's Decision and Order.

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 Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed and Construction Co.*, 17 BRBS 56 (1985). In the instant case, the administrative law judge initially noted that claimant sustained a strained muscle in his right shoulder due to a work injury, received physical therapy, and was treated by Drs. Whited, Carlson and McKeever, none of whom found claimant's injury to be permanent or that he had sustained any residual problems. Decision and Order at 12. Thereafter, the administrative law judge credited and relied upon the opinions of Drs. Whited, Carlson and McKeever, over the opinion of Dr. Garcia, in concluding that claimant did not sustain a compensable impairment subsequent to August 27, 1987. Dr. Whited, on February 3, 1987 and April 1, 1987, respectively, stated that he did not anticipate any permanent or partial residual disability and that he assumed a complete recovery by claimant. *See* Emp. Ex. 3. On May 19, 1987, Dr. Carlson, after noting that claimant had obtained good results with physical therapy, released claimant to full duty. *Id.* Dr. McKeever, on August 27, 1987, found claimant's shoulders to be level with a full range of motion and released claimant to return to his full level of employment. *Id.* In contrast, Dr. Garcia, who did not examine claimant until after claimant's subsequent injury while working for another employer and who did not review claimant's prior medical records, released claimant to returned to work on August 31, 1988 and thereafter opined that claimant had sustained a 7 percent impairment to his shoulder. *See* CX 1; Garcia depo. at 18-20.

We hold that the administrative law judge committed no error in relying upon the opinions

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<sup>1</sup>Claimant testified that a claim against this subsequent employer was pending at the time of the formal hearing. *See* Transcript at 51.

of Drs. Whited, Carlson and McKeever, rather than the opinion of Dr. Garcia, in concluding that claimant sustained no compensable impairment subsequent to August 27, 1987. In declining to credit Dr. Garcia's opinion, the administrative law judge specifically noted that Dr. Garcia had not examined claimant until after claimant's injury with a subsequent employer, that Dr. Garcia had not reviewed claimant's prior medical records, and that Dr. Garcia had conceded that, had he known that claimant had been released to return to full duty prior to his September 1987 accident, his opinion on causation would have been affected. *See* Decision and Order at 12.

In adjudicating a claim, an administrative law judge is entitled to weigh the medical evidence and draw his own inferences from it, *see Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988), 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 (5th Cir. 1962). In the instant case, the administrative law judge's credibility determinations are rational and within his authority as factfinder, and the credited opinions constitute substantial evidence to support his ultimate findings. *See generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Therefore, the administrative law judge's determination that claimant sustained no compensable impairment subsequent to August 27, 1987, is affirmed.

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

SO ORDERED.

NANCY S. DOLDER, Acting Chief  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge

ROBERT J. SHEA  
Administrative Law Judge