

BRB No. 92-0314

NORMAN A. CARTER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BETHLEHEM STEEL CORPORATION	)	DATE ISSUED:_____ )
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Stuart A. Levin, Administrative Law Judge, United States Department of Labor.

William O. Goldstein (Goldstein & Miller), Baltimore, Maryland, for claimant.

Richard W. Scheiner (Semmes, Bowen & Semmes), Baltimore, Maryland, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (90-LHC-1103) of Administrative Law Judge Stuart A. Levin 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 if they 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, who has been working as a welder for employer since 1967, sought benefits under the Act for a noise-induced hearing loss based on an audiogram administered on January 19, 1989, by Dr. Schwager, which revealed a 26.5 percent binaural impairment. Cl. Ex. 1. Claimant underwent a subsequent hearing evaluation by Dr. Baker on August 22,

\*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).

1990; this audiometric examination revealed a mild neurosensory high-tone impairment with no

ratable bilateral hearing loss pursuant to the American Medical Association *Guides to the Evaluation of Permanent Impairment* (3d ed. 1988) (*AMA Guides*). In his Decision and Order, the administrative law judge gave greater weight to Dr. Baker's opinion that claimant sustained no ratable hearing loss. Thus, the administrative law judge denied the claim for compensation.

On appeal, claimant challenges the administrative law judge's credibility determinations. 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 Shipbuilding and Construction Co.*, 17 BRBS 56 (1985). In the instant case, the administrative law judge, after setting forth the opinions of Drs. Schwager and Baker, relied upon Dr. Baker's opinion in concluding that claimant sustained no ratable bilateral impairment. In making this credibility determination, the administrative law judge specifically noted that Dr. Schwager, in his report dated January 20, 1989, observed that his examination of claimant revealed that "the tympanic membranes were obscured with large impactions bilaterally." *See* Cl. Ex. 1. The administrative law judge thereafter noted that, because of the presence of impacted ear wax as reflected by Dr. Schwager's report, it was important to determine whether Dr. Schwager performed claimant's audiometric evaluation before or after the wax was debrided. The administrative law judge subsequently found that the testimony elicited at the hearing from claimant is unequivocal concerning the sequence in which Dr. Schwager performed the audiogram and debridement, *i.e.*, that Dr. Schwager conducted the audiogram prior to removing the wax from claimant's ears; thus, the administrative law judge concluded that claimant had undergone the audiometric evaluation on January 19, 1989, with large impactions of wax bilaterally. *See* Decision and Order at 5; Transcript at 38-40, 42-44. Based upon this finding, the administrative law judge found Dr. Schwager's evaluation and report to be less reliable and less probative than the report and evaluation of Dr. Baker, who opined that claimant sustained no ratable bilateral impairment according to the *AMA Guides*. Emp. Ex. 1; Transcript at 101.

We hold that the administrative law judge rationally relied upon the testimony of Dr. Baker, over the testimony of Dr. Schwager, in concluding that claimant sustained no compensable impairment. In this regard, we note that claimant's testimony at the hearing unequivocally establishes that claimant underwent his January 19, 1989, audiometric evaluation prior to Dr. Schwager's actual examination and debridement of claimant's ears. *See* Transcript at 39-44. In adjudicating a claim, it is well-established that 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). Thus, as the administrative law judge's credibility determination is rational and within his authority as factfinder, and as this credited opinion constitutes substantial evidence to support the administrative law judge's ultimate findings, we affirm the administrative law judge's determination that claimant suffered no compensable impairment. *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).

Accordingly, the Decision and Order of the administrative law judge 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