

ROSA ELSHARRAWY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
MWR BUSINESS SERVICE OFFICE,)	DATE ISSUED:
NAVAL MILITARY PERSONNEL)	
STATION)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order-Denying Benefits of Frank D. Marden, Administrative Law Judge, United States Department of Labor.

John D. D'Angelo (Bank, Minehart & D'Angelo), Philadelphia, Pennsylvania, for claimant.

Stephen J. Harlen (Swartz, Campbell & Detweiler), Philadelphia, Pennsylvania, for self-insured employer.

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

Claimant appeals the Decision and Order-Denying Benefits (91-LHC-1735) of Administrative Law Judge Frank D. Marden 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 Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant allegedly sustained various injuries on November 2, 1989, when she slipped and fell while attempting to exit a van while in the course of her employment as an accounting technician supervisor with employer. Tr. at 19. Employer voluntarily paid claimant temporary total disability benefits from November 2, 1989 to November 29, 1989, *see* 33 U.S.C. §908(b), at which time claimant returned to work. Claimant subsequently filed a claim for benefits under the Act. In his Decision and Order, the administrative law judge initially noted that although the record had been held open post-hearing for, *inter alia*, claimant to submit certain medical reports and the deposition of her treating physician, claimant submitted no further evidence. The administrative law judge then

set forth the testimony of Dr. Lee, a board-certified orthopedic surgeon, who examined claimant on January 25, 1991, and opined that further treatment was unnecessary and that claimant was able to return to work. EX 2. The administrative law judge subsequently determined that claimant presented no evidence of a work-related disability, a loss in wage-earning capacity, or an injury compensable under the schedule; thus, the administrative law judge denied the claim for compensation.

On appeal, claimant challenges the administrative law judge's denial of her claim for compensation. Employer responds, urging affirmance.

Claimant contends that the administrative law judge abused his discretionary authority by issuing his decision based solely upon the evidence of record without the benefit of claimant's medical evidence. Specifically, claimant contends that the administrative law judge erred in failing to provide notice to claimant's counsel that he intended to close the record and issue a decision. We disagree. Section 702.338 of the implementing regulations, 20 C.F.R. §702.338, provides that the administrative law judge has a duty to inquire fully into matters at issue and receive into evidence all relevant and material testimony and documents. Section 702.339, 20 C.F.R. §702.339, provides that administrative law judges are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, but should conduct the hearing in a manner which will best ascertain the rights of the parties. Thus, the administrative law judge possesses considerable discretion concerning the admission of evidence, *see Raimier v. Willamette Iron & Steel Co.*, 21 BRBS 98 (1988), and his actions regarding the admissibility of evidence are reversible only if they are arbitrary, capricious, or an abuse of discretion. *See Ramirez v. Southern Stevedores*, 25 BRBS 260 (1992). Similarly, it is well-established that an administrative law judge has broad discretion to direct and authorize discovery; a discovery ruling by an administrative law judge will constitute reversible error only if it is so prejudicial as to result in a denial of due process. *Olsen v. Triple A Machine Shops, Inc.*, 25 BRBS 40 (1991), *aff'd mem. sub nom. Olsen v. Director, OWCP*, Nos. 91-70642, 92-70444 (9th Cir. June 15, 1993).

In the instant case, the formal hearing before the administrative law judge was held on July 17, 1991. At that time, after a discussion between the parties' counsel and the administrative law judge, the administrative law judge left the record open for approximately 120 days, during which time the parties were to conduct their respective post-hearing depositions and submit closing arguments. *See Tr.* at 13-15. Both parties' counsel acknowledged this time period, *see Tr.* at 71-73, and the record indicates that employer subsequently deposed Dr. Lee on September 4, 1991, as scheduled, and timely submitted Dr. Lee's deposition to the administrative law judge. EX 2. In contrast, although claimant's counsel specifically acknowledged the time period during which he would be allowed to introduce the testimony of Dr. Maurer, claimant's orthopedist, *see Tr.* at 72, the record does not indicate that claimant filed any motions for an extension of time with the administrative law judge in which to procure this physician's testimony.¹ The administrative law judge thereafter issued his Decision and Order on July 15, 1992, approximately one year after the hearing and approximately seven months after the record was closed.

¹We note that claimant in her brief to the Board concedes that at the close of the hearing before the administrative law judge on July 17, 1991, she was given thirty days within which to submit a report from Dr. Maurer. *See Claimant's brief* at 1.

In the instant case, we hold that the administrative law judge did not abuse his discretion in issuing his July 15, 1992, decision without notifying claimant that the record would be closed. The transcript of the formal hearing held on July 17, 1991, clearly indicates that the parties were aware of the time period during which the record would be left open for the submission of additional evidence and closing briefs. The administrative law judge's issuance of his decision approximately one year after the hearing, and seven months after the parties were aware that the record would be closed, was not arbitrary, capricious, an abuse of discretion, or a violation of claimant's due process rights as claimant both acknowledged at the hearing and subsequently conceded that she was aware of the time period during which additional evidence would be accepted by the administrative law judge. We therefore affirm the administrative law judge's decision to issue his Decision and Order in this case, and his consequent denial of benefits.

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

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge