BRB No. 86-1685

LAURON D. CHENOWETH	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CHICAGO GRAIN TRIMMERS	)	DATE ISSUED:
	)	
and	)	
	)	
BITUMINOUS CASUALTY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

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

Eugene F. Connell, Jr. (Eugene F. Connell, Jr. & Associates), Chicago, Illinois, for claimant.

John A. Strobel (Braun, Lynch, Smith & Strobel, Ltd.), Chicago, Illinois, for employer/carrier.

Before: SMITH, BROWN, and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (85-LHC-2114) of Administrative Law Judge Robert G. Mahony 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 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 was injured on October 21, 1976, during the course of his employment with employer, when he fell on the deck of a grain barge. The following day, after experiencing swelling in his knees, claimant sought treatment at employer's clinic and was thereafter sent to the hospital for further treatment. Claimant was diagnosed as suffering from an abrasion of his left knee and contusions of the right knee and right shoulder; x-rays revealed no fractures, but did detect cervical spondylosis. Claimant subsequently complained of headaches, pain in his lower back, neck, arms

and hands.[1] Employer voluntarily paid claimant temporary total disability compensation from October 22, 1976 through December 16, 1976, at which time Dr. Stamler opined that claimant could return to work. 33 U.S.C. §908(b). Claimant thereafter filed a claim under the Act seeking continuing total disability benefits. Claimant has not returned to work since the October 1976 incident.[2]

[1]Claimant testified that he has experienced pain in his lower back since 1950, when he fell down a flight of stairs while in the military. Tr. at 29. He stated that this incident aggravated a back condition he had suffered after a truck accident in 1947 while stationed on Guam. Tr. at 31-32.

[2]Claimant was subsequently diagnosed as suffering from degenerative disc disease and underwent a laminectomy for this condition in February 1982.

Claimant appeared at the formal hearing before the administrative law judge without the assistance of counsel. In his Decision and Order, the administrative law judge invoked the presumption contained in Section 20(a) of the Act, 33 U.S.C. §920(a), but found rebuttal of that presumption established based on the opinions of Drs. Stamler, Schafer, Weiner and Matz, who stated that claimant's various complaints are unrelated to the October 1976 work-incident. After reviewing the record as a whole, the administrative law judge credited the opinions of these physicians over those of Drs. Chuman and Fischer[3] to find that while claimant suffers from numerous ailments, none of these ailments is related to the October 1976 injury. Next, the administrative law judge found that claimant's work-related knee injury had resulted in no neurologic disability. Accordingly, the administrative law judge denied benefits.

On June 23, 1986, claimant filed a Notice of Appeal, *pro se*, with the Board. BRB No. 86-1685. Claimant thereafter filed a petition for modification with the administrative law judge. The Board issued an Order on March 30, 1988, wherein it dismissed claimant's appeal and remanded the case to the administrative law judge for modification proceedings. Pursuant to claimant's request for modification, the administrative law judge admitted additional documents into evidence, but in an Order dated July 5, 1988, found that claimant established neither a mistake in fact nor a change in conditions within the meaning of Section 22 of the Act, 33 U.S.C. §922. The administrative law judge thus denied claimant's petition for modification.

Thereafter, claimant, now with the benefit of counsel, filed an appeal of the administrative law judge's Order Denying Petition for Modification. BRB No. 89-1349. In an Order dated November 7, 1990, the Board acknowledged this appeal and granted claimant's request to reinstate his appeal of the administrative law judge's initial Decision and Order denying benefits. BRB No. 86-1685. By letter dated December 19, 1990, claimant requested that the Board dismiss his appeal of the administrative law judge's Order Denying Petition for Modification; the Board granted claimant's motion and dismissed this appeal on March 1, 1991.

On appeal of the original decision, claimant contends that the administrative law judge committed several prejudicial errors when conducting the formal hearing which denied claimant a fair and equitable hearing on the merits of his case; these errors, claimant asserts, mandate a reversal of the administrative law judge's Decision and Order denying benefits. Employer responds, urging affirmance of the administrative law judge's decision.

Claimant's initial allegation of prejudice by the administrative law judge concerns the following statement the administrative law judge made at the hearing: "Whether you cannot go back to work I really cannot decide that as far as the medical aspects of it go." *See* Tr. at 65. Claimant argues that this statement indicates that the administrative law judge pre-judged the merits of his case without any review of the medical evidence; thus, claimant asserts, had the administrative law judge not made this pre-judgment, the issue of claimant's ability to return to work would be central

[3]Dr. Fischer concluded in 1985 that there was a causal connection between claimant's state of ill being and the October 21, 1976 accident. Cl. Ex. 8.

to the final decision. We disagree with claimant's interpretation of this remark. Our review of the transcript of the formal hearing indicates that the administrative law judge's comment was made during a colloquy concerning the extent of claimant's disability, and was specifically made in response to claimant's assertion before the administrative law judge that "I am never going to go back to work again . . ." *See* Tr. at 65. Moreover, in his decision, the administrative law judge did set forth and discuss the various medical opinions of record prior to determining that claimant had sustained no neurologic disability to his knee and that claimant's numerous non-knee conditions were not causally related to his work-injury. Accordingly, as the administrative law judge subsequently addressed the evidence of record, the administrative law judge's comment does not indicate that he pre-judged claimant's case.

Next, claimant asserts that the administrative law judge accepted employer's mischaracterization of Dr. Chuman as an osteopath, and denied claimant the right to rebut this "misstatement."[4] This argument itself is a misstatement of the proceedings before the administrative law judge. Contrary to claimant's assertion on appeal, the record fails to indicate that he was "cut off" from "rebutting" employer's statement that Dr. Chuman was an osteopath. *See* Tr. at 51-52. Moreover, claimant appears to state that Dr. Chuman is an osteopath.[5] *Id*. at 26. Although employer's attorney objected to the admission of Dr. Chuman's 1985 report, the administrative law judge admitted that report into the record, *see* Cl. Ex. 5, and fully considered this report in his decision. Accordingly, as claimant has set forth no reversible error made by the administrative law judge in evaluating the medical evidence of record, this contention is rejected.[6]

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[4]Claimant attempted to attach Dr. Chuman's qualifications to his brief before the Board. Claimant cites to no evidence, nor does claimant contend on appeal, that the misstatement of Dr. Chuman's qualifications resulted in the administrative law judge's having committed reversible error when he declined to credit that physician.

[5]The legend which appears on Dr. Chuman's October 25, 1985 letter states: "Olympia Fields Osteopathic Medical Center." Cl. Ex. 5.

[6]The medical evidence can be summarized as follows. Dr. Stamler found no residual impairment of claimant's left knee. He stated in December 1976 that the degenerative changes in claimant's lower back existed "for some time," and there is no causal connection between claimant's shoulder pain, arm weakness and finger numbness, and his cervical spine changes. Cl. Ex. 4. The physician opined in 1978 that claimant's complaints arise from a functional disorder not brought about by the accident on October 21, 1976. *Id*. Dr. Schafer, who performed claimant's laminectomy, stated in 1981 that claimant's medical records consistently trace claimant's back problems to the 1940's when he injured himself in the service. Dr. Schafer was unable to find anything in his records "which correlates to something that may have occurred on October 21, 1976." He was therefore unable to verify whether the current problems related to such an incident. Emp. Ex. 7. Dr. Weiner stated in his November 1, 1979 report that claimant's headaches "on use of his hands are not in any way related to the injury sustained on October 21, 1976 . . . I do not believe there is any neurological disability related to his shoulder, arm, or leg." Emp. Ex. 2. In his review of claimant's medical records, dated November 20, 1985, Dr. Matz sharply criticized Dr. Chuman's finding that claimant is

Next, claimant asserts that the administrative law judge erred in allowing employer's counsel to examine Veteran's Administration medical records offered into evidence by claimant, in refusing to receive those documents into evidence, and in permitting employer's counsel to cross-examine claimant using those records. We disagree. A review of the hearing transcript reveals that claimant attempted to submit various Veteran's Administration records into evidence, some of which pre-dated the 1976 accident and some of which concerned treatment subsequent to the 1976 accident. After reviewing the documents, the administrative law judge did not deem them relevant. *See* Tr. at 19-20. The administrative law judge subsequently handed these documents to employer's counsel and stated "if there['s] anything you think is relevant in these records I will let you bring it out." *Id*. at 21. Thereafter, employer's counsel questioned claimant about psychiatric treatment claimant received by the Veteran's Administration between 1977 and 1980, and other treatment for other internal problems such as impotence. *Id*. at 44. Except for one Veteran's Administration document concerning claimant's discharge from the armed services due to a back injury, *see* Cl. Ex. 9, the above referenced Veteran's Administration documents were not admitted into evidence.

Section 702.338 of the regulations states that an administrative law judge has the duty to inquire fully into matters at issue and receive into evidence all relevant and material testimony and documents; the hearing may be reopened to hear such evidence. *See* 20 C.F.R. §702.338; *see generally Williams v. Marine Terminals Corp.*, 14 BRBS 728 (1981). The Board has interpreted these provisions as affording administrative law judges considerable discretion in determinations pertaining to the admissibility of evidence. *See Wayland v. Moore Dry Dock*, 21 BRBS 177 (1988). Such determinations may be overturned only if they are arbitrary, capricious or an abuse of discretion. *See generally Chavez v. Todd Shipyards Corp.*, 24 BRBS 71 (1990), *rev'd on other grounds sub nom. Chavez v. Director, OWCP*, 961 F.2d 1409, 25 BRBS 134 (CRT)(9th Cir. 1992). In the instant case, claimant makes no argument on appeal as to how these documents were supportive of his claim for ongoing disability compensation. In addition, the questions employer's counsel asked concerning these documents were not relevant to the case. Thus, we cannot say that the administrative law judge acted arbitrarily or abused his discretion in not admitting these documents into the record.

Claimant next contends that when he tried to explain the facts concerning his service- related injuries, he was cut off by the administrative law judge, who stated that he "had another case around 3:30." *See* Tr. at 33. We reject this argument, as claimant was not prejudiced, since, in fact, the administrative law judge did allow claimant to testify about his service injuries. *See* Tr. at 31-33.

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suffering from an extensive disease of the nervous system, and that by history and appearance, these changes have been present since 1976. *See* Cl. Ex. 5. Dr. Matz pointed out that Dr. Chuman never stated what the disease of the nervous system was, or presented documentation to show how it was present since 1976. Dr. Matz stated that it was conceivable that through natural progression claimant may end up with neurological involvement, either of his spinal cord or nerve roots, but that this did not imply that a causal connection existed between a 1976 work incident and any clinical manifestations in 1985. Emp. Ex. 9.

Lastly, contrary to claimant's assertion on appeal, there is no indication that the administrative law judge committed prejudicial error in the conduct of the hearing. In fact, a review of the transcript reveals that he did afford claimant an opportunity to present his claim. The administrative law judge admitted all of the documentation submitted by claimant which he deemed relevant, *see* Tr. at 53, and allowed claimant to testify fully about his 1976 accident and his subsequent physical condition. While claimant now states that by appearing *pro se* he could not get a fair hearing, thus placing the blame for claimant's *pro se* status on the administrative law judge, the transcript clearly reveals that the administrative law judge questioned claimant as to his efforts at securing counsel and whether claimant wished to proceed without the benefit of counsel, to which claimant replied that he would proceed without representation and that he "had very bad luck with attorneys . . . " *See* Tr. at 3. Thus, the administrative law judge showed concern that claimant was appearing without the assistance of counsel; claimant's *pro se* appearance was voluntary and well within his rights.

In the instant case, neither the record nor transcript of the hearing evidences any bias or prejudice on the part of the administrative law judge. Inasmuch as adverse rulings alone are insufficient to establish bias by an administrative law judge, *see Raimer v. Willamette Iron & Steel Co.*, 21 BRBS 98 (1988), we hold that the administrative law judge committed no prejudicial error in the conduct of the hearing below. *See also 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).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge