

TOK CHA BECKENDORF CHONG)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
TODD PACIFIC SHIPYARDS)	DATE ISSUED:
CORPORATION)	
)	
and)	
)	
AETNA CASUALTY AND SURETY)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Henry B. Lasky, Administrative Law Judge, United States Department of Labor.

James R. Walsh, Lynnwood, Washington, for claimant.

Russell A. Metz (Metz, Frol & Jorgensen, P.S.), Seattle, Washington, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand (85-LHC-1056) of Administrative Law Judge Henry B. Lasky 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 in accordance with applicable law. *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

This is the second time that this case has been before the Board. Claimant suffered three work-related back injuries on February 15, July 8 and December 22, 1980, while working for employer as a welder. Employer voluntarily paid claimant temporary total disability benefits for various periods. Claimant was diagnosed as having a herniated disc, and underwent a lumbar discectomy on September 18, 1981, for this condition. Thereafter, claimant filed a claim for reimbursement of medical expenses and compensation for additional temporary total disability. 33

U.S.C. §§907, 908(b). In his Decision and Order, the administrative law judge found that claimant had not filed a timely claim for her first two injuries as required by the provisions of Section 13(a) of the Act, 33 U.S.C. §913(a), and that a third injury had not occurred. He found in the alternative that even if the claim was timely filed, claimant failed to establish entitlement to any additional temporary total disability compensation from the date employer controverted the claim. The administrative law judge also found that claimant's acupuncture treatments constituted unauthorized medical care under Section 7 and therefore denied the claim for reimbursement of medical expenses.

Claimant appealed the denial of her claim to the Board. *Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989). The Board reversed the administrative law judge on the timeliness issue and held that, as a matter of law, the reports of Dr. Chambers filed with the carrier from March 31, 1980 to May 6, 1982, particularly those of May 13, 1981, and March 25 1981, indicating the existence of permanent disability resulting from claimant's work injury, constitute timely claims. *Id.* at 244. The Board, however, affirmed the administrative law judge's determination that claimant is not entitled to temporary total disability benefits in addition to those paid by employer. *Id.* at 245. Additionally, the Board stated in a footnote that inasmuch as claimant failed to present a specific argument in support of her claim for entitlement to medical expenses, the Board declined to consider the issue. *Id.* at 243 n.1.

Claimant appealed the Board's decision to the United States Court of Appeals for the Ninth Circuit. *Chong v. Director, OWCP*, 909 F.2d 1488 (9th Cir. 1990)(table). The court held that the Board correctly determined that substantial evidence supported the administrative law judge's finding that claimant could return to her usual employment despite a repetitive lifting restriction and that therefore she was not entitled to further disability compensation from employer. The court also held that the Board correctly refused to consider claimant's claim for reimbursement of past medical expenses. *Chong*, slip op. at 5-6.

The court held, however, that the Board incorrectly declined to address the issue of claimant's entitlement to future medical benefits as claimant had presented a specific argument on this issue. Specifically, the court remanded the case for consideration of claimant's entitlement to continued supervised medical treatment as recommended by Dr. Chambers until such time as she reaches medical stability. *Chong*, slip op. at 6. On July 15, 1991, the Board vacated in relevant part its May 31, 1989, Decision and Order and remanded the case to the administrative law judge for further proceedings consistent with the decision of the Court of Appeals.

In his Decision and Order on Remand, the administrative law judge found that there is no credible evidence that claimant is in need of future medical care and therefore denied benefits. On appeal, claimant contends that the administrative law judge erred in denying her continued supervised medical care as recommended by Dr. Chambers. Employer responds urging affirmance of the denial.

We affirm the administrative law judge's denial of medical benefits. On August 26, 1985, Dr. Chambers, a neurological surgeon, recommended that claimant's pain and hysterical overlay following her surgery could be overcome by managed treatment at a pain clinic. Cl. Ex. 1 at 23. A

claimant is entitled to medical treatment for work-related conditions, and she establishes a *prima facie* case for compensable medical treatment if a physician indicates treatment is necessary for a work-related condition. See *Turner v. The Chesapeake & Potomac Telephone Co.*, 16 BRBS 255 (1984) (Ramsey, C.J., dissenting on other grounds). In evaluating the evidence, however, the fact-finder is entitled to weigh the evidence and draw his own inferences from it and is not bound to accept the opinion or theory of any particular witness. *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). It is within the discretion of the administrative law judge to accept or reject all or part of any testimony according to his judgment. *Perini Corp. v. Heyde*, 306 F. Supp. 1321 (D.R.I. 1969); see also *Poole v. National Steel & Shipbuilding Co.*, 11 BRBS 390 (1979).

In the instant case, the administrative law judge concluded that there is no credible evidence that claimant is in need of medical care for a work-related psychological condition. The administrative law judge credited the opinions of Dr. Carter and the Orthopaedic Panel Consultants as the most reasonable and thorough evaluations of claimant on this issue. Dr. Carter stated that he did not believe claimant would benefit from treatment at a pain clinic. Tr. at 109. Dr. Carter did feel that claimant could benefit from "supportive therapy" for treatment of emotional problems, which he nevertheless did not believe were related to or causally connected in any way to claimant's 1980 industrial injury. *Id.* at 109, 111, 145; Emp. Ex. 22. The 1982 Orthopaedic Panel report concluded that claimant's personality disorders preceded her industrial injuries and did not interfere with her rehabilitation from the work-related injury. Dr. Hamm, the psychiatrist on the 1982 Panel, did not believe claimant was suffering from a psychiatric disorder and did not feel she would benefit from treatment at a pain clinic. Emp. Ex. 18. The 1985 Panel report concluded that claimant's psychiatric or emotional condition was an "hysterical-type" personality disorder which was not industrially related and preceded the injuries. Emp. Ex. 19.

The administrative law judge rejected Dr. Chambers' conflicting opinion that claimant required further treatment before she could return to work. In viewing the totality of the evidence, the administrative law judge concluded that claimant's testimony and that of her treating physician, Dr. Chambers, who relied on her subjective complaints of pain, are not credible in view of the conflicting evidence. As the administrative law judge's credibility determinations are rational and within his discretion as the fact-finder, and the administrative law judge's finding is supported by substantial evidence, we affirm the denial of medical benefits.¹ 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 administrative law judge's Decision and Order on Remand denying medical benefits is affirmed.

SO ORDERED.

¹Inasmuch as the administrative law judge's ultimate conclusion is rational and supported by substantial evidence, any error in application of the presumption contained in Section 20(a) if the Act, 33 U.S.C. §920(a), is harmless. See generally *Seaman v. Jacksonville Shipyards, Inc.*, 14 BRBS 148.9 (1981).

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge