

AUGUSTO ZORILLA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEW YORK SHIPYARD	)	DATE ISSUED:
CORPORATION	)	
	)	
and	)	
	)	
STATE INSURANCE FUND	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Granting Additional Temporary Total Disability Benefits; Denying Permanent Total Disability Benefits of Julius A. Johnson, Administrative Law Judge, United States Department of Labor.

Philip J. Rooney (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

Leonard J. Linden (Linden & Gallagher), New York, New York, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Granting Additional Temporary Total Disability Benefits; Denying Permanent Total Disability Benefits (91-LHC-1499) of Administrative Law Judge Julius A. Johnson 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 working for employer as a welder when, on January 30, 1989, he fell off a scaffold and, according to claimant, was knocked unconscious. In addition, claimant alleges that he sustained injuries to his head, back and arm, and that the fall caused bleeding from his right ear. Claimant was treated at Long Island College Hospital and was later diagnosed by his attending

physicians, Drs. Parisi and Patel, as suffering from cerebral concussion by history, post-concussion syndrome, contusions of the right ear and rib cage, and cervical and lumbar sprain. Employer voluntarily paid temporary total disability compensation to claimant from January 30, 1989 until July 4, 1989. 33 U.S.C. §908(b). Claimant filed a claim for permanent total disability benefits under the Act, alleging that he has suffered physical and psychological injuries due to the January 1989 work-accident.

The administrative law judge accepted the parties' stipulation that an accident occurred at work on January 30, 1989, and thereafter found that claimant was entitled to continuing temporary total disability benefits until August 29, 1989. The administrative law judge subsequently concluded, however, that claimant failed to establish that he suffers from either a physical or psychological disability subsequent to August 29, 1989, as a result of the January 30, 1989, accident.

On appeal, claimant challenges the administrative law judge's denial of his claim for permanent total disability benefits subsequent to August 29, 1989. Employer responds, urging affirmance of the administrative law judge's decision.

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, Inc.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56 (1985).<sup>1</sup> In the instant case, the administrative law judge initially found, based upon the opinion of Dr. Patel, claimant's treating physician, that claimant was not able to return to his usual employment until August 29, 1989. Thereafter, in determining that claimant was able to return to his usual employment on August 29, 1989, and not September 20, 1989, as opined by Dr. Patel, the administrative law judge relied on the opinion of Dr. Koval, a board-certified orthopedist. Dr. Koval stated in his August 29, 1989, report that there were no objective findings of the musculo-skeletal system and opined that claimant could return to work as a welder. *See* Emp. Ex. 10; Emp. Ex. 16 at 7. The administrative law judge further relied on the opinion of Dr. Block, a board-certified neurologist, in concluding that claimant did not sustain a permanent total disability, from a physical standpoint, as a result of his work-related injury. Dr. Block stated that he discovered no signs of organic neurological disease and, based on the examination he administered, opined that claimant's described sensory loss was factitious. Emp. Ex. 9; Emp. Ex. 14 at 9-12, 59. In crediting Drs. Koval and Block, the administrative law judge specifically noted these physicians' greater expertise. Next, the administrative law judge, citing claimant's consistent lack of cooperation with medical examiners and the discrepancies between his complaints and the objective findings of the physicians, determined that claimant's subjective complaints were not credible. He thus accorded less weight to the opinion of Dr. Patel, who did not doubt the veracity of claimant's complaints.<sup>2</sup> Decision and

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<sup>1</sup>We note that, in determining the nature and extent of claimant's disability, the administrative law judge improperly applied the Section 20(a), 33 U.S.C. §920(a), presumption of causation. This error, however, is harmless, in view of the administrative law judge's weighing of the evidence.

<sup>2</sup>At her deposition, Dr. Patel opined that claimant was permanently totally disabled due to the

Order at 11.

Lastly, the administrative law judge found that claimant did not suffer from any psychological disability as a result of the January 30, 1989, work accident, crediting the opinion of Dr. Aldin over the contrary opinion of Dr. Mannucci. In his July 8, 1991 report, Dr. Mannucci stated that claimant "presents clear signs of a severe depressive syndrome resulting from post-traumatic stress disorder," confirming his previous diagnosis of August 31, 1990. Cl. Ex. 4. However, when Dr. Aldin first examined claimant on November 15, 1990, claimant was non-responsive to basic questions posed to him, despite the fact that in reports of other physicians, claimant was able to speak clearly about himself. It was Dr. Aldin's impression that claimant acted "in a manner in which he believes insane people act." Emp. Ex. 11. Thereafter, in his April 15, 1991, report, Dr. Aldin concluded that while claimant is angry, he suffers from no psychiatric disability. Emp. Ex. 12. At his deposition, Dr. Aldin specifically disagreed with Dr. Mannucci's opinion that claimant suffers from post-traumatic stress disorder as a result of his work accident, stating claimant's accident is not the kind that would produce such a disorder. Emp. Ex. 15 at 11-12, 17. The administrative law judge credited Dr. Aldin's opinion as comporting better with the facts of this case. He found Dr. Mannucci's conclusions unsupported, and rejected Dr. Mannucci's diagnosis of post-traumatic stress disorder, as the possibility that claimant was fabricating his symptoms was not accounted for. Decision and Order at 12.

We hold that the administrative law judge committed no error in crediting and relying upon the testimony of Drs. Koval, Block and Aldin in concluding that claimant sustained no physical or psychological impairment subsequent to August 29, 1989. In adjudicating a claim, it is well-established that an administrative law judge is entitled to evaluate the credibility of all witnesses, including doctors, and is not bound to accept the opinion or theory of any particular medical examiner; rather, the administrative law judge may draw his own inferences and conclusions from the evidence. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). In the instant case, the administrative law judge's decision to credit the opinions of Drs. Koval, Block and Aldin, over the opinions of Drs. Parisi, Patel and Mannucci, is rational and within his authority as factfinder.<sup>3</sup> *See generally Wheeler v. Interocean Stevedoring Co.*, 21 BRBS 33 (1988). Furthermore, as these credited opinions constitute substantial evidence to support the administrative law judge's finding that claimant had no physical or psychological impairment subsequent to August 29, 1989, we affirm the administrative

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combination of his physical and psychological injuries. Cl. Ex. 6, Patel Dep. at 19.

<sup>3</sup>Although claimant contends that the Act must be liberally construed and doubtful questions of law and fact must be resolved in his favor, the United States Supreme Court recently held that the "true doubt rule" does not apply to cases under the Longshore Act because it violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. §556(d), which requires that the party seeking the award bears the burden of persuasion. *Director, OWCP v. Greenwich Collieries*, U.S. , 114 S.Ct. 2251, 28 BRBS 43 (CRT)(1994).

law judge's determination that claimant was not disabled as a result of his January 30, 1989, work accident subsequent to August 29, 1989. *See 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 denial of compensation subsequent to August 29, 1989, is affirmed.

Accordingly, the administrative law judge's Decision and Order Granting Additional Temporary Total Disability Benefits; Denying Permanent Total Disability Benefits is affirmed.

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge