BRB No. 92-2209

CLIFFORD BECKHAM	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
RESEARCH MANAGEMENT CORPORATION	)	DATE ISSUED:
	)	
and	)	
	)	
TRAVELERS INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

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

Brian R. Steiner (Steiner, Segal & Miller P.C.), Philadelphia, Pennsylvania, for claimant.

Andrew B. Klaber (Weber, Goldstein, Greenberg & Gallagher), Philadelphia, Pennsylvania, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (91-LHC-2839) of Administrative Law Judge Ralph A. Romano denying benefits 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).

On September 4, 1990, while working in his capacity as a fire watcher, claimant was struck in his mid-back by a metal plate. Immediately following this incident, employer sent claimant to

Healthmark, where Dr. Donze diagnosed a thoracic contusion; claimant's x-rays taken that day were read as normal. Claimant returned to work for employer in a light duty position a day or two after his injury, and continued to work full-time in that capacity through December 15, 1990, when he was laid off. Employer voluntarily paid claimant compensation for temporary total disability from December 15, 1990 through February 6, 1991, 33 U.S.C. §908(b); thereafter, employer controverted the claim.

In his Decision and Order, the administrative law judge, having credited the opinion of Dr. Lee, the independent medical examiner retained by the Department of Labor, over the opinion of Dr. Graham, claimant's treating physician, determined that claimant had fully recovered from his work injury by February 7, 1991. Accordingly, the administrative law judge denied benefits for any disability beyond February 6, 1991.

On appeal, claimant challenges the administrative law judge's denial of benefits for continued disability. Employer responds, urging affirmance.

It is well-established that claimant bears the burden of proving 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 & Construction Co.*, 17 BRBS 56 (1985). In the instant case, the administrative law judge, in concluding that claimant's physical condition did not preclude his return to work on February 7, 1991, credited the opinion of Dr. Lee over the opinion of Dr. Graham, on the basis of Dr. Lee's status as an independent medical examiner and the fact that Dr. Lee's opinion was consistent with the objective medical tests as well as with the opinions of Drs. Didizian and Donze. Dr. Lee, who examined claimant on May 28, 1991, reported that claimant had recovered from his September 4, 1990 work injury and was no longer disabled from this injury, that there are no significant orthopedic findings to reflect any present disorders of the lumbosacral spine, and that further medical treatment is not indicated.[1] Emp. Ex. 2. Dr. Lee's opinion is consistent with the opinion of Dr. Didizian, who previously reported on February 7, 1991, that claimant's soft tissue injury had healed, that claimant's subjective complaints could not be substantiated with any orthopedic or neurological findings, and that claimant is able to return to his regular employment on a full-time basis without restrictions. Emp. Exs. 1, 2.[2] Moreover, the x-ray taken on the date of

[1]We reject claimant's contention that Dr. Lee's notation of "no significant orthopedic findings" is tantamount to a showing that claimant's recovery was not complete. We note that Dr. Lee explicitly opined, without qualification, that claimant had recovered from his work injury. We further disagree that the use of the adjective "significant" by Dr. Lee constitutes an expression of doubt on the part of the doctor. Moreover, as claimant bears the burden of proving the nature and extent of his disability, *see Anderson*, 22 BRBS 20, claimant's contention that any factual doubts must be resolved in favor of claimant is rejected. *See Director, OWCP v. Greenwich Collieries*, ___ U.S. ___, 114 S.Ct. 2251, 28 BRBS 43 (CRT) (1994).

[2]Claimant assigns error to the administrative law judge's finding that Dr. Donze, as well as Drs. Didizian and Lee, found claimant to be recovered from his work injury. While Dr. Donze did not opine that claimant's recovery was complete, his report dated February 1, 1991, states that claimant's

claimant's accident, September 4, 1990, was normal and the MRI lumbar spine study conducted on January 18, 1991 demonstrated no disc pathology.[3] Emp. Ex. 1. In contrast, claimant's treating physician, Dr. Graham, as of March 1991, diagnosed severe lumbosacral sprain and resolving left sciatica, continued claimant's previous physical therapy and work hardening program, and limited claimant to light duty on a part-time basis. As of the date of his January 29, 1992 deposition, Dr. Graham indicated that claimant had neared full recovery from his non-sciatic low back pain syndrome and that he expected to release claimant to full-time heavy-duty work in the next two to three weeks.[4] Cl. Ex. 2, 7.

We hold that the administrative law judge committed no error in relying upon the opinion of Dr. Lee, as supported by the opinion of Dr. Dudizian and the objective tests, rather than the testimony of Dr. Graham, in concluding that claimant sustained no continued impairment subsequent to February 6, 1991. 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 determinations are rational and within his authority as factfinder, and as these credited opinions constitute substantial evidence to support the administrative law judge's ultimate findings, we affirm the administrative law judge's determination that claimant sustained no impairment subsequent to February 6, 1991.[5] *See generally*

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condition was improving and that he expected to release claimant to regular duty status in four weeks. Thus, any error by the administrative law judge in characterizing Dr. Donze's opinion to be that claimant had fully recovered is harmless inasmuch as the administrative law judge could reasonably draw an inference from Dr. Donze's statements that claimant's period of disability was abbreviated in duration. Decision and Order at 4. *See Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988).

[3]The MRI additionally noted degenerative joint changes, but indicated that there was no significant spinal stenosis. Emp. Ex. 1.

[4]We note that, contrary to claimant's assertion that the administrative law judge failed to make the necessary credibility determinations regarding Dr. Graham, the administrative law judge expressly credited Dr. Lee's opinion over that of Dr. Graham. In finding Dr. Graham's opinion not to be probative, the administrative law judge relied foremost on the absence of confirmation from the objective testing for Dr. Graham's conclusions. *See* Decision and Order at 4-5. Moreover, while the administrative law judge may consider a physician's status as treating physician in making credibility determinations, he is not required to accord a physician's opinion greater weight on this basis. *See generally Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1982).

[5]We note that the administrative law judge acted within his discretion in declining to credit claimant's subjective complaints of pain. *See Donovan*, 300 F.2d at 741. Contrary to claimant's contention that the administrative law judge erred by failing to address claimant's credibility, the administrative law judge explicitly declined to credit claimant's complaints which he determined

Cordero v. Triple A Machine Shop, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).[6]

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

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could not be correlated with the objective medical evidence. *See* Decision and Order at 4.

[6]Finally, we reject claimant's assignment of error to the administrative law judge's failure to recognize a duty on the part of employer to provide ongoing light duty work or present evidence of suitable alternate employment. Implicit in the administrative law judge's determination that claimant sustained no impairment subsequent to February 6, 1991, and that claimant therefore had not met his burden of establishing the nature and extent of disability, is the recognition that the burden of proof did not shift to employer to establish the availability of suitable alternate employment. *See, e.g., McCabe v. Sun Shipbuilding & Dry Dock Co.*, 602 F.2d 59, 10 BRBS 614 (3d Cir. 1979).