BRB Nos. 86-2610
and 94-2280

ROBERT N. ANDERSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SOUTHERN STEVEDORING COMPANY, INCORPORATED	)	DATE ISSUED:_____
	)	
and	)	
	)	
TEXAS EMPLOYERS' INSURANCE ASSOCIATION	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeals of the Decision and Order Denying Benefits and the Decision and Order on Petition for Modification of Ben H. Walley, Administrative Law Judge, United States Department of Labor.

Robert N. Anderson, Forest City, Iowa, *pro se*.

Edward W. Poole and Dennis J. Sullivan (Eastham, Watson, Dale & Forney), Houston, Texas, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Benefits and the Decision and Order on Petition for Modification (84-LHC-2713) of Administrative Law Judge Ben H. Walley 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). In an appeal by a *pro se* claimant, we will review the administrative law judge's decision to determine if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant injured his back and neck on December 13, 1983, when a stack of boxes of

bananas fell on him while he was in the ship's hold putting the boxes onto a conveyor belt for unloading. Tr. at 19-21. He continued to work but because he felt discomfort the next morning, he reported the injury and sought medical attention. *Id.* at 21-22, 25-26. Initially, claimant received care from Dr. Raines, a chiropractor. In early March 1984, Dr. Raines determined that claimant's condition had reached maximum medical improvement and he could return to work. Jt. Ex. 2 at 5. On March 7, 1984, employer sent claimant to an orthopedic surgeon, Dr. Andrew, who concurred,[1] and it ceased paying benefits as of March 6, 1984. Jt. Ex. 1. Claimant continued to seek medical treatment for persistent pain; however, he returned to work.

Claimant filed a claim for disability and medical benefits. The parties stipulated that employer paid temporary total disability benefits from December 14, 1983, through March 6, 1984, as well as all medical expenses except those incurred after June 6, 1984, or those of Dr. Cox. The administrative law judge credited the opinions of Dr. Andrew and Dr. York, an independent examiner.[2] He concluded that claimant reached his pre-injury state on March 7, 1984, that he was able to return to regular duty work at that time, and that he sustained no permanent disability as a result of the 1983 injury. Decision and Order at 5. Further, the administrative law judge found that claimant's injury healed by March 6, 1984; therefore, claimant is entitled to no additional medical benefits. *Id.* at 6. Consequently, the administrative law judge denied additional benefits.

Claimant appealed this decision to the Board. Concurrent with his appeal, he moved for modification. In an Order dated July 19, 1990, the Board acknowledged claimant as a *pro se* petitioner and remanded the case for action on the motion for modification, making the appeal subject to reinstatement if so requested by claimant. On January 23, 1992, the administrative law judge issued his decision denying modification. After reviewing the file, his previous decision, and new doctors' reports submitted by claimant, he found that claimant failed to show either a change of conditions or a mistake in fact which would warrant modification. Decision and Order on Modif. at 2. Accordingly, he denied the petition.

On February 12, 1992, claimant requested reinstatement of his original appeal in light of the decision on motion for modification. In an Order dated April 13, 1994, the Board reinstated the initial appeal, BRB No. 86-2610, also construing claimant's request as an appeal of the decision denying modification, BRB No. 94-2280. Claimant challenges the denial of benefits. Employer responds, urging affirmance of both decisions.

---

[1]Dr. Andrew found no objective evidence of injury. He concluded claimant had sufficiently recovered and could return to his usual work, needing no further medical treatment and sustaining no permanent disability. Jt. Ex. 2 at 6-7.

[2]Dr. York stated that x-rays revealed no abnormalities in either the neck or thoracic spine, that there is no objective evidence of injury to those areas, and that claimant can return to work as of May 23, 1984, with no additional treatment necessary and no permanent disability. Jt. Ex. 3 at 5, 12-14. After reviewing Dr. Andrew's report, Dr. York concluded that, if the report was accurate, claimant could have returned to his usual work as of March 7, 1984. *Id.* at 16, 18-20, 25, Ex. 2.

Claimant first contends the administrative law judge erred in denying disability benefits after March 6, 1984.[3] Specifically, claimant argues he could not return to his regular duty and he had not reached a pre-injury state as of March 6, 1984. He relies on the continuing treatment of Dr. Cox to support his argument. Dr. Cox diagnosed post-traumatic vertebral sprain syndrome, recommended light duty work, and treated claimant symptomatically with medication, therapy, and cortisone shots. Dep. Dr. Cox; Jt. Ex. 2 at 8-11. He last examined claimant on February 6, 1985, stating that his condition had reached maximum medical improvement. Dep. Dr. Cox at 20-21, 27.

Claimant has the burden of establishing the nature and extent of his disability. *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56 (1985). In this case, the administrative law judge credited the opinions of Drs. Andrew and York over that of Dr. Cox. Additionally, he noted that claimant's initial choice of physician, Dr. Raines, released claimant to work as of March 5, 1984, thereby concurring with Drs. Andrew and York. Decision and Order at 5; Jt. Ex. 2 at 1-5. The administrative law judge's credibility determination is rational and within his purview as factfinder, and the credited opinions constitute substantial evidence supporting his findings of no permanent disability and no need for further medical treatment. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). Therefore, we affirm the denial of additional medical and disability benefits beyond March 6, 1984.

Claimant also contends the administrative law judge erred in denying modification of the original decision denying benefits. Specifically, he argues he continued to need treatment for pain; therefore, the administrative law judge erred in concluding that he reached a pre-injury state on March 6, 1984. In support of his motion, claimant submitted additional medical reports.

To reopen the record under Section 22 of the Act, 33 U.S.C. §922, the moving party must allege a mistake of fact or a change in his economic or physical condition. *Metropolitan Stevedore Co. v. Rambo*, ___ U.S. ___, 115 S.Ct. 2144, 30 BRBS 1 (CRT) (1995); *Duran v. Interport Maintenance Corp.*, 27 BRBS 8 (1993). In this case, the administrative law judge reviewed the exhibits submitted by claimant. Despite the continued medical treatment, he concluded there was no mistake of fact or change in conditions warranting modification of his original decision. He found that the exhibits did not show, and that claimant did not allege, that his condition worsened since the issuance of the prior decision. Although claimant asserts that the administrative law judge made a mistake in a determination of a fact when he stated that Dr. Cox had not taken claimant off work, the administrative law judge relied on the reports of two other doctors who stated that claimant could work; therefore, the administrative law judge's misstatement of Dr. Cox's actions does not warrant re-opening the case. The administrative law judge thus rationally determined that claimant did not establish a basis for modification of the prior decision. *See Winston v. Ingalls Shipbuilding, Inc.*, 16 BRBS 168 (1984); *Kendall v. Bethlehem Steel Corp.*, 16 BRBS 3 (1983). Therefore, we affirm the administrative law judge's denial of claimant's motion for modification, and we affirm his decisions denying benefits.

[3]Claimant requests temporary partial disability benefits from March 7 through May 31, 1984, and permanent partial disability benefits thereafter.

Accordingly, the administrative law judge's decisions are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge