

BRB No. 90-615

LEON G. CHAMPAGNE)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
JONES OREGON STEVEDORING)	DATE ISSUED:
COMPANY)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Vivian Schreter-Murray, Administrative Law Judge, United States Department of Labor.

Peter W. Preston (Pozzi, Wilson, Atchison, O'Leary & Conboy), Portland, Oregon, for claimant.

William M. Tomlinson (Lindsay, Hart, Neil & Weigler), Portland, Oregon, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand (84-LHC-00671) of Administrative Law Judge Vivian Schreter-Murray 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 if they 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).

This case is before the Board for the second time. While working for employer as a longshore supervisor, claimant injured his left leg on December 26, 1981, which caused pain in his knees and left hip. Claimant missed work from December 27, 1981 through February 2, 1982, and employer paid claimant temporary total disability benefits for this period. Claimant underwent an arthroscopy on his left knee on March 4, 1983, and a left hip replacement on April 19, 1983. Claimant returned to work on October 9, 1983.

Prior to the December 1981 injury, claimant had a history of knee and back problems. He

underwent a lumbar laminectomy in May 1981, and a meniscectomy on his right knee in July 1982. These surgeries were not related to the December 26, 1981 injury. After the May 1981 surgery, Dr. Miller restricted claimant from performing heavy lifting or bending at the waist. Dr. Freudenberg deposed that the main factors limiting claimant's work capability were attributable to the May 1981 laminectomy. Following the July 1982 meniscectomy, Dr. Noall restricted claimant from working on uneven ground.

In the first decision, the administrative law judge denied claimant additional benefits, finding that claimant's left hip and knee conditions are not work-related. Claimant appealed this decision to the Board. In *Champagne v. Jones Oregon Stevedoring Co.*, BRB No. 85-661 (Jan. 27, 1989)(unpublished), the Board held that the Section 20(a), 33 U.S.C. §920(a), presumption was invoked for claimant's left hip and knee conditions, and was not rebutted as there is no evidence in the record to establish that these conditions were not caused or aggravated by the work injury of December 26, 1981. The Board therefore reversed the administrative law judge's finding that claimant's left hip and knee conditions are not related to claimant's injury at work, and remanded the case for the administrative law judge to consider the remaining issues regarding claimant's entitlement to benefits.

In the Decision and Order on Remand, the administrative law judge found that claimant did not suffer a loss in wage-earning capacity because the December 1981 injury did not impair claimant's ability to perform his work. The administrative law judge found the restrictions placed on claimant were the result of the non-work-related May 1981 laminectomy and July 1982 meniscectomy. The administrative law judge found that no new restrictions were placed on claimant as a result of the operations for the December 1981 injury. Further, the administrative law judge considered that claimant worked without interruption from October 1983 through his voluntary retirement in June 1988. The administrative law judge therefore awarded claimant temporary total disability benefits from March 18, 1983 through October 9, 1983, and denied benefits thereafter.

On appeal, claimant contends that the administrative law judge erred in finding that he did not suffer a loss in wage-earning capacity due to the work injury. Employer responds, urging affirmance.

The administrative law judge's finding that claimant did not suffer a loss in wage-earning capacity due to the work injury is based on substantial evidence in the record. *See generally Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27 (CRT) (9th Cir. 1988). The administrative law judge's finding that the work restrictions placed on claimant were for non-work-related conditions and remained unchanged after the December 26, 1981, injury is supported by the physicians' reports. Specifically, the administrative law judge found that claimant was precluded from heavy lifting and repetitive bending following his 1981 laminectomy, Emp. Ex. at 342, and that the restriction against working on uneven ground was due to the right knee meniscectomy which preceded the hip replacement. Emp. Ex. at 415. The administrative law judge noted that no new restrictions were placed on claimant after the operations for the work injury, and that claimant is capable of performing his supervisory work. *See Dep. of Dr. Freudenberg at 15, 27.*

Moreover, contrary to claimant's contention, the administrative law judge considered the decrease in the number of hours claimant worked after the injury and the fact that claimant's average weekly wage increased after the injury, and found that claimant did not show that the decrease in the number of hours was due to his work restrictions. *See generally Burkhardt v. Bethlehem Steel Corp.*, 23 BRBS 273 (1990). The administrative law judge found that claimant may simply have chosen to work fewer hours or that labor market conditions rather than medical factors may have limited the available work. Decision and Order at 4. The administrative law judge rationally found that claimant's post-injury work was not hampered by his work injury as he worked without interruption for more than 4 1/2 years from October 1983 until his retirement in 1988. As the administrative law judge's finding that claimant has no loss in wage-earning capacity is supported by the evidence of record, we affirm the administrative law judge's denial of benefits after October 1983. *See generally Long v. Director, OWCP*, 767 F.2d 1578, 17 BRBS 149 (CRT) (9th Cir. 1985).

Accordingly, the administrative law judge's Decision and Order on Remand is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge