BRB No. 92-1212

DONALD E. YARBORO	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	DATE ISSUED:
	)	
BETHLEHEM STEEL CORPORATION	)	
	)	
Self-Insured	)	
Employer-Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order -- Award of Benefits of Charles P. Rippey, Administrative Law Judge, United States Department of Labor.

Robert S. Armstrong (Goodman, Meagher & Enoch), Baltimore, Maryland, for claimant.

Richard W. Scheiner (Semmes, Bowen & Semmes), Baltimore, Maryland, for self-insured employer.

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

PER CURIAM:

Employer appeals the Decision and Order -- Award of Benefits (91-LHC-2108) of Administrative Law Judge Charles P. Rippey 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, a carpenter, injured his left hand on August 3, 1988 while working for employer. Employer voluntarily paid claimant temporary total disability benefits from August 5, 1988, to September 5, 1988, and medical expenses. Claimant sought permanent partial disability compensation for a 15 percent permanent impairment of his left hand pursuant to Section 8(c)(3) and (19) of the Act, 33 U.S.C. §908(c)(3), (19). Crediting claimant's subjective complaints of pain and the impairment rating of Dr. Macht, the administrative law judge awarded claimant compensation for a 15 percent loss of use of his left hand based on the stipulated average weekly wage of $425.58.

On appeal, employer contends that the administrative law judge's award of compensation must be reversed because it was, contrary to the Board's decision in *Young v. Todd Pacific Shipyards Corp.*, 17 BRBS 201, 204 (1985), based solely on claimant's subjective complaints of pain. Employer avers that the administrative law judge erred in awarding claimant any compensation

where the evidence of record established that he was performing his usual job duties without restrictions or need for medical care, and where two board-certified orthopedic surgeons, Drs. Kan and Wenzlaff, found no objective evidence of permanent physical impairment. Claimant responds, urging affirmance. Employer replies, reiterating the arguments raised in its Petition for Review.

After review of the administrative law judge's Decision and Order in light of the record, we affirm his award of compensation for a 15 percent permanent impairment. Contrary to employer's assertions, in *Young* the Board did not hold that pain and discomfort are never to be considered when a doctor rates the loss of a member or that pain and its symptoms should be disregarded. Rather, the Board stated only that a doctor's impairment rating should not be amplified so as to separately compensate claimant for "pain and suffering" as in a tort context. *See Pimpinella v. Universal Maritime Service Inc.*, 27 BRBS 154, 159 (1993). With the exception of hearing loss claims and claims involving voluntary retirees, which must be evaluated pursuant to the American Medical Association *Guides to the Evaluation of Permanent Impairment* (3d ed. 1988) (the AMA *Guides*), in determining the extent of claimant's physical impairment the administrative law judge is not bound by any particular standard or formula. Rather, he may consider a variety of medical opinions and observations in addition to claimant's description of his symptoms and the physical effects of his injury in assessing the extent of claimant's disability under the schedule. *Pimpinella*, 27 BRBS at 159-60; *Bachich v. Seatrain Terminals of California, Inc.*, 9 BRBS 184 (1978).

In the present case, after considering the relevant evidence of record, the administrative law judge credited claimant's testimony that he sometimes experiences shooting pains and weakness in his left hand when lifting heavy objects and as a result will have to use both hands. In addition, he found Dr. Macht's 15 percent impairment rating more persuasive than the findings of Drs. Kan and Wenzlaff that claimant had no physical impairment. Employer argues on appeal that Dr. Macht's 15 percent impairment rating was unsubstantiated by any objective findings. The record reflects, however, that Dr Macht based this rating on his observations of pain upon palpitation, motion, and resistance to active motion of claimant's fingers on the left hand, and a Class II weakness of claimant's handgrip which did not fit into any specific nerve distribution sufficient to allow for a calculation of his impairment under the AMA *Guides*. Moreover, in weighing the relevant evidence, the administrative law judge rationally determined that Dr. Wenzlaff's finding that claimant had no loss of endurance was unreasoned because it was not supported by any aspect of his examination. In addition, the administrative law judge reasonably found that claimant's testimony relating to his pain was not contradicted by Dr. Kan's medical opinion. Dr. Kan indicated that he did not have any reason to doubt claimant's assertions of pain while attempting to work but that, as claimant exhibited no pain symptoms during his examination, and he could find no physical basis for it, it did not enter into his impairment finding. The administrative law judge is not bound to accept the opinion or theory of any particular medical examiner, but is entitled to evaluate the credibility of all witnesses, including doctors, and to accept or reject all or any part of any witnesses' testimony as he sees fit. *See Avondale Shipyards, Inc. v. Guidry*, 967 F.2d 1039, 26 BRBS 30 (CRT) (5th Cir. 1992); *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963). Inasmuch as Dr. Macht's opinion in conjunction with claimant's testimony provides substantial evidence to support the administrative law judge's finding regarding the extent of claimant's

disability, and employer has failed to raise any reversible error made by the administrative law judge in weighing the conflicting evidence and making credibility determinations, his award for a 15 percent permanent physical impairment under Section 8(c)(3) and (19) is affirmed.[1] *See generally Uglesich v. Stevedoring Services of America*, 24 BRBS 180, 183 (1991).

Accordingly, administrative law judge's Decision and Order -- Award of Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

[1]Employer's assertions regarding the adverse rulings made by the administrative law judge are insufficient to establish judicial bias. *Olsen v. Triple A Machine Shops, Inc.*, 25 BRBS 40 (1991), *aff'd mem. sub nom. Olsen v. Director, OWCP*, 996 F.2d 1226 (9th Cir. 1993).