

BILLY J. OWENS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING	)	DATE ISSUED: _____
AND DRY DOCK COMPANY	)	
	)	
Self-Insured	)	
Employer-Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits and the Decision on Motion for Reconsideration of Robert S. Amery, Administrative Law Judge, United States Department of Labor.

Robert E. Walsh (Rutter & Montagna), Norfolk, Virginia, for claimant.

Cathleen Reilly-Brew (Seyfarth, Shaw, Fairweather & Geraldson), Washington, D.C., for self-insured employer.

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

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits and the Decision on Motion for Reconsideration (90-LHC-2127) of Administrative Law Judge Robert S. Amery 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On October 19, 1984, claimant sustained a work-related injury to his back and leg. Claimant returned to light duty work and, sometime thereafter, to his regular work. In November 1986, claimant aggravated his lower back when he fell while working for employer and was again placed on light duty work with a restriction against repetitive bending. Claimant stopped working on April 16, 1987, and has not worked since. Employer voluntarily paid temporary total disability compensation from October 31, 1984, through November 4, 1984, from November 8, 1984, through

December 17, 1984, and from February 2, 1987, through February 4, 1987. Claimant sought additional disability and medical benefits, including the costs of his chiropractic and psychiatric treatment.

After declining to approve a Section 8(i), 33 U.S.C. §908(i), settlement proposed by the parties, the administrative law judge found that claimant suffered an injury to his back on October 19, 1984, which was aggravated by the November 1986 work injury. Crediting the medical opinions of treating physicians Drs. Scharf, Capps, and Dotti, rather than the opinions provided by the shipyard doctors, the administrative law judge found that claimant was unable to perform the work assigned to him by employer on April 16, 1987, and that inasmuch as employer failed to establish the availability of suitable alternate employment, claimant was entitled to permanent total disability compensation commencing April 17, 1987. Based on the testimony of Dr. Scharf, the administrative law judge further determined that claimant's psychological disability is, to a major extent, related to his work-related back injuries. Accordingly, he awarded claimant past and future medical benefits for his work-related injuries, including his chiropractic and psychiatric care.

In his Decision and Order Motion for Reconsideration, based on new evidence of suitable alternate employment submitted by employer, the administrative law judge modified his prior decision to reflect that claimant was entitled to permanent partial disability compensation from April 17, 1987 until December 31, 1988. The administrative law judge reinstated his award of permanent total disability compensation after that date, however, crediting Dr. Capps's opinion that as of late 1988, claimant was incapable of even sedentary work, which he found corroborated by Dr. Scharf's May 1990 opinion.

On appeal, employer challenges the administrative law judge finding that claimant's disability is related to his October 19, 1984, back injury, alleging that the administrative law judge erred in crediting claimant's chiropractors over the shipyard doctors and in considering the November 1986 accident because the claim had been filed based only on the 1984 injury. In addition, employer asserts that the administrative law judge erred in finding claimant's psychological condition work-related, and in awarding him permanent partial disability benefits during a time in which suitable work was shown to be available in the shipyard which paid the same as his pre-injury wages. Finally, employer maintains that the administrative law judge erred in holding it liable for the chiropractic treatment provided by Drs. Dotti and Capps because this treatment was unauthorized.

Employer's arguments are rejected. The United States Supreme Court has noted that amendments to a claim are generally liberally accepted in workers' compensation cases, unless the effect is one of undue surprise or prejudice, neither of which was present in this case. *See U.S. Industries v. Director, OWCP*, 455 U.S. 608, 613 n.7, 14 BRBS 631, 633 n.7 (1982). Thus, employer's assertion that the administrative law judge erred in entertaining claimant's arguments regarding the November 1986 aggravating injury is rejected. *See Mikell v. Savannah Shipyard Co.*, 24 BRBS 100 (1990), *aff'd on recon.*, 26 BRBS 32 (1992), *aff'd mem. sub nom. Argonaut Ins. Co. v. Mikell*, 14 F.3d 58 (11th Cir. 1994); *Dangerfield v. Todd Pacific Shipyards*, 22 BRBS 104, 107 (1989). After considering employer's arguments relating to claimant's entitlement to disability compensation for his physical and psychological injuries, we affirm the administrative law judge. The findings contested by employer are rational, are in accordance with applicable law, and are

supported by the medical opinions of Drs. Dotti, Capps, and Scharf, whom the administrative law judge acted within his discretion in crediting.<sup>1</sup> See *O'Keeffe*, 380 U.S. at 360; *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 1335, 8 BRBS 744, 747 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *Konno v. Young Brothers, Ltd.*, 28 BRBS 57 (1994); *Sanders v. Alabama Dry Dock & Shipbuilding Co.*, 22 BRBS 340 (1989). The administrative law judge's determination that employer is liable for claimant's chiropractic bills is also affirmed; the record reflects that employer refused to authorize this treatment and the administrative law judge acted within his discretion in determining that the treatment rendered by Drs. Dotti and Capps, which claimant procured on his own initiative, was necessary for the injury. See *Roger's Terminal and Shipping Corp. v. Director, OWCP*, 784 F.2d 687, 18 BRBS 79 (CRT) (5th Cir.), *cert. denied*, 479 U.S. 826 (1986); 33 U.S.C. 907(d).<sup>2</sup>

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<sup>1</sup>Employer's argument that the administrative law judge erred in awarding claimant permanent partial disability benefits as of April 16, 1987 because suitable light duty work was available to claimant in the shipyard at his pre-injury wages is without merit. Inasmuch as the shipyard made it clear to claimant when he reported to work in April 1987 that it would not honor Dr. Dotti's restrictions, the administrative law judge rationally inferred that suitable alternate work was not realistically available to claimant at the shipyard. See Decision and Order at 3, 9.

<sup>2</sup>We reject employer's contention that claimant was not entitled to seek the help of a chiropractor because none of the doctors who examined claimant prior to the chiropractors found evidence of subluxation. Inasmuch as Dr. Dotti found evidence of subluxation when he examined the claimant, claimant's chiropractic care is compensable. Claimant's Exhibit 8 at 14. See 20 C.F.R. §702.404.

Accordingly, the administrative law judge's Decision and Order as modified by his Decision On Motion for Reconsideration is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge