BRB No. 93-0432

FRANCISCO ARMENTAL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
A.G. SHIP MAINTENANCE CORPORATION	)	DATE ISSUED:
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Philip J. Rooney and Michael E. Glazer (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (90-LHC-02935) of Administrative Law Judge Ainsworth H. Brown 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, employed as a lasher, sustained an injury to his neck, back, and shoulder while working for employer.[1] In his Decision and Order, the administrative law judge accepted the parties' stipulations that claimant's accident on June 1, 1989, arose out of and within the scope of claimant's employment with employer and that claimant was paid temporary total disability from June 2, 1989, to April 25, 1990. After weighing the conflicting medical opinions of record, the administrative law judge concluded that claimant's compensation was properly terminated on April 25, 1990, as

[1]As a lasher for employer, claimant loaded and unloaded ships by tying and untying containers aboard the ships. Tr. at 19. He was required to bend down and pick up material weighing 40-50 pounds. Tr. at 31.

claimant did not establish that he could not return to his usual employment as a lasher. On appeal, claimant challenges the administrative law judge's denial of continuing disability benefits. Employer did not file a response brief.

Claimant's challenge to the administrative law judge's finding that he could return to his usual employment as a lasher after April 25, 1990 lacks merit. In order to establish a *prima facie* case of total disability, claimant must establish that he cannot return to his usual employment due to his work-related injury. *Hawthorne v. Ingalls Shipbuilding, Inc.*, 28 BRBS 73 (1994), *modified on other grounds on recon.*, 29 BRBS 103 (1995). The administrative law judge discussed and weighed the opinions of Drs. Larkins, Zaretsky, Leonhardt, Koval, and Miranda, claimant's treating physician.[2] Decision and Order at 2-4; Cl. Exs. 2, 6 at 19; Emp. Exs. 2, 3, 6, 12 at 8. In concluding that the preponderance of the medical opinion evidence supports a finding of no residual disability from claimant's 1989 injury, the administrative law judge acted within his discretion in relying on the opinion of Dr. Larkins, whose opinion was consistent with those of Drs. Zaretsky and Leonhardt.[3] *Avondale Shipyards, Inc. v. Kennel*, 914 F.2d 88, 24 BRBS 46 (CRT) (5th Cir. 1990); Decision and Order at 4; Cl. Ex. 2; Emp. Exs. 2, 3, 12 at 8. As substantial evidence supports the administrative law judge's finding that claimant did not establish that he cannot perform his usual employment as a lasher, we affirm the administrative law judge's denial of continuing disability benefits after April 25, 1990.[4]

[2]Drs. Larkins, Zaretsky, and Leonhardt concluded that claimant could return to his usual employment as a lasher while Dr. Miranda testified that claimant could not return to his usual employment as a lasher. Cl. Exs. 2, 6 at 19; Emp. Exs. 2, 3, 12 at 8. Dr. Koval opined that claimant could return to his usual employment as a lasher if his MRI results were negative. Emp. Ex. 6.

[3]The administrative law judge was not required to defer to the opinion of Dr. Miranda, claimant's treating physician. *Avondale Shipyards, Inc. v. Kennel*, 914 F.2d 88, 24 BRBS 46 (CRT)(5th Cir. 1990).

[4]Contrary to claimant's contention, the presumption pursuant to Section 20(a), 33 U.S.C. §920(a), applies to the issue of causation and not to the extent of disability, which is at issue in this case. *Jones v. Genco, Inc.*, 21 BRBS 12 (1988). In addition, the true doubt rule is no longer applicable. *Director, OWCP v. Greenwich Collieries*, U.S. , 114 S.Ct. 2251, 28 BRBS 43 (CRT)(1994).

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

JAMES F. BROWN
Administrative Appeals Judge