

PAUL BRUCE	)	
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Claimant-Petitioner	)	
	)	
v.	)	
	)	
I.T.O. CORPORATION OF	)	DATE ISSUED:
BALTIMORE	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order and Decision and Order-Denial of Motions for Reconsideration and Rehearing of Joel R. Williams, Administrative Law Judge, United States Department of Labor.

Myles R. Eisenstein, Baltimore, Maryland, for claimant.

Michael W. Prokopik (Semmes, Bowen & Semmes), Baltimore, Maryland, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order and Decision and Order-Denial of Motions for Reconsideration and Rehearing (92-LHC-1052) of Administrative Law Judge Joel R. Williams awarding benefits 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 administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are 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 worked as a longshoreman for 23 years, and his job consisted of latching and unlatching containers and heavy equipment and climbing heights up to 9 and one-half feet. Claimant was injured on April 19, 1990, when his right foot was caught between two containers. Claimant's injury was diagnosed as a crush injury of the ankle and he underwent surgery on September 4, 1990, for a right tarsal tunnel release. Claimant was paid temporary total disability benefits from April 20, 1990 to July 8, 1990, and from September 4, 1990 to January 9, 1991.

In his Decision and Order, the administrative law judge awarded claimant permanent partial

disability benefits for a 7 percent loss of use of the right leg pursuant to Section 8(c)(2), (19), 33 U.S.C. §908(c)(2), (19).<sup>1</sup> On appeal, claimant contends that the administrative law judge erred in awarding benefits for an impairment of the leg pursuant to Section 8(c)(2), rather than for an impairment to the foot pursuant to Section 8(c)(4), 33 U.S.C. §908(c)(4). Employer responds, urging affirmance of the award.

Contrary to claimant's contention, the administrative law judge permissibly relied on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (3d ed. 1988) (AMA *Guides*), in considering the degree of claimant's impairment. *Pimpinella v. Universal Maritime Service Inc.*, 27 BRBS 154 (1993). Drs. Honick and Hunt relied on the AMA *Guides* in determining claimant's impairment, and the Board has held that as the AMA *Guides* is used as an interpretive guide and is a standard reference widely used by physicians. It is therefore unnecessary for the AMA *Guides* to be introduced into evidence. *See generally Jones v. I.T.O. Corp. of Baltimore*, 9 BRBS 583 (1979). Moreover, the administrative law judge properly based his disability award on the evidence of physical impairment alone without reference to economic considerations. *Bachich v. Seatrain Terminals of California*, 9 BRBS 184 (1978).

Further, the administrative law judge permissibly rejected Dr. Honick's opinion regarding claimant's degree of impairment. The administrative law judge found that Dr. Honick conducted the impairment evaluation too soon after claimant's surgery based on the opinions of Dr. Naiman and Dr. Hunt that claimant's condition should not be rated until two years after the surgery. The administrative law judge also noted that the limitation of motion found by Dr. Honick was not reported by the other physicians, and that Drs. Naiman, Hunt and Kan found only sensory impairment while Dr. Honick found impairment of loss of function. Emp. Ex 1, 3, 4, 7, 9; Cl. Ex. 2, 3, 6.

Lastly, claimant contends that the administrative law judge erred in finding that he has an impairment to the leg rather than to the foot. We agree. Dr. Hunt stated that claimant has a two percent impairment of the foot and he noted sensory impairment of the tibial nerve. Dr. Kan stated claimant has a 15 percent impairment of the foot and ankle, and he noted sensory impairment of the tibial nerve.<sup>2</sup> Dr. Honick estimated a 39 percent loss of the right lower extremity, and Dr. Naiman stated that the tibial nerve was entrapped in scar tissue behind the ankle joint. The administrative law judge found that the injury occurred to the tibial nerve which is in the leg and resulted in impairment to the foot/ankle. Citing to *Mason v. Baltimore Stevedoring Co.*, 22 BRBS 413 (1989), wherein the Board held that an injury to the larger member encompasses an injury to the smaller member and that an award for the larger member is therefore appropriate, the administrative law judge awarded claimant benefits for the larger member. The instant case, however, is

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<sup>1</sup>Claimant filed a motion for reconsideration which the administrative law judge denied.

<sup>2</sup>Contrary to claimant's contention, the administrative law judge did not deem Dr. Kan an impartial specialist merely by reference to 20 C.F.R. §702.411(a), in light of his specific finding that Dr. Kan was not accorded such status under 33 U.S.C. §907(e), (i).

distinguishable from *Mason*, as the injury here occurred to the smaller member, the ankle. Although a leg nerve was injured, the site of the harm was in claimant's ankle and foot and not the leg itself. Further, as none of the physicians of record found an impairment of the leg, the administrative law judge's finding of a leg impairment is unsupported by the medical evidence of record. *Williams v. Newport News Shipbuilding & Dry Dock Co.*, 17 BRBS 61 (1985). We therefore vacate the administrative law judge's finding of a 7 percent loss of use of a leg, and we remand the case for the administrative law judge to determine the extent of impairment of the foot under Section 8(c)(4) based on the medical evidence of record. *Pimpinella*, 27 BRBS at 154; *Mazze v. Frank J. Holleran, Inc.*, 9 BRBS 1053 (1978).

Accordingly, the administrative law judge's Decision and Order awarding benefits for an impairment to the leg is vacated, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge