

BRIAN SKELLY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
WOODS HOLE OCEANOGRAPHIC)	
INSTITUTE)	DATE ISSUED: _____
)	
and)	
)	
INSURANCE COMPANY OF NORTH)	
AMERICA/CIGNA)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Anthony J. Iacobo, Administrative Law Judge, United States Department of Labor.

Janet Simons (Kistin, Babitsky, Latimer & Beitman), Falmouth, Massachusetts, for claimant.

Timothy F. Nevils (Sullivan & Cronin), Boston, Massachusetts, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (92-LHC-1912) of Administrative Law Judge Anthony J. Iacobo 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 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. 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant worked as a level two research assistant for employer, preparing electronic equipment for scientists to measure ocean currents. He worked both in a laboratory and on ships. Tr. at 17. On November 14, 1983, while on a vessel in the North Pacific, claimant injured his right ankle when the ship took a violent roll and floatation devices collided with

his ankle. Claimant remained off work for two or three weeks. Tr. at 18-19. On May 19, 1984, while on a vessel in the Caribbean, claimant injured his right knee when the ship took a violent roll and 1,400 pounds of equipment pinned him to a bulkhead. Tr. at 19-20. Claimant remained off work for a day or two thereafter.

Claimant was diagnosed with reflex sympathetic dystrophy. He testified he changed jobs with employer in September 1985 and became a casual worker because he could not handle his previous work due to pain. In December 1985, he quit because the treatment he was receiving made work difficult. Claimant became self-employed in January 1986, servicing electrical and electronic systems on boats. Tr. at 22, 24-26.

The parties stipulated that employer paid temporary partial disability benefits from September 1, 1985, through September 16, 1990, pursuant to Section 8(e) of the Act, 33 U.S.C. §908(e), and that employer has paid, and continues to pay, medical benefits. The only issue raised before the administrative law judge is whether claimant is entitled to any scheduled permanent partial disability benefits for a disability to the lower right extremity. 33 U.S.C. §908(c)(2), (19).

The administrative law judge found that claimant has no residual impairment to his right leg and is not entitled to benefits. The administrative law judge noted, however, that his finding "does not disturb Claimant's continued right to medical treatment as his work-related injury may require." Decision and Order at 5. Claimant appeals the decision, contending the administrative law judge's conclusions are not supported by substantial evidence and are contrary to law. Employer responds, urging the Board to affirm the decision based on substantial evidence.

Claimant has the burden of establishing the nature and extent of his disability. *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56 (1985). Compensation awards for a permanent partial disability to a member enumerated in Section 8(c)(1)-(20) of the Act are based on a claimant's medical condition after maximum medical improvement is reached and not on his loss of wage-earning capacity. 33 U.S.C. §908(c)(1)-(20); *Henry v. George Hyman Construction Co.*, 749 F.2d 65, 17 BRBS 39 (CRT) (D.C. Cir. 1984); *Bachich v. Seatrain Terminals of California*, 9 BRBS 184 (1978). Therefore, compensation awards calculated under the schedule must be based on the claimant's physical impairment alone. *Bachich*, 9 BRBS at 187.

In the instant case, the administrative law judge credited the opinion of Dr. Schimenti, a neurologist who examined claimant on September 9, 1991. She found, contrary to claimant's physician, that claimant has no objective evidence of disability and no permanent loss of function. Emp. Ex. 1. The administrative law judge found this opinion to be supported by testimony and photographic evidence of employer's private investigator who stated that he saw claimant walk and work with no apparent discomfort in his right leg. Emp. Ex. 2; Tr. at 59, 62-63. The photographs show claimant walking, working, carrying tools, and climbing a mast. Emp. Exs. 2-3.

Questions of witness credibility are for the administrative law judge as the trier-of-

fact, and he may accept or reject any testimony according to his judgment. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). In this case, the administrative law judge clearly credited the opinion of Dr. Schimenti and evidence from the private investigator. As the record contains substantial evidence supporting the administrative law judge's finding that claimant's right leg is not permanently impaired, we affirm the denial of permanent partial disability benefits.¹ See, e.g., *Rivera v. United Masonry, Inc.*, 24 BRBS 78 (1990), *aff'd*, 948 F.2d 774, 25 BRBS 51 (CRT) (D.C. Cir. 1991).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

¹Contrary to claimant's assertion, an undisputed entitlement to continuing medical benefits does not equate to a permanent impairment or warrant entitlement to disability benefits. To be entitled to medical benefits, Section 7 requires only that an injury be work-related, not that it be economically disabling or cause a measurable impairment. 33 U.S.C. §907; *Davison v. Bender Shipbuilding & Repair Co., Inc.*, ___ BRBS ___, BRB No. 92-2183 (Feb. 22, 1996); *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380 (1990). Therefore, we reject claimant's contention that the administrative law judge's decision is contrary to law.