

DAVID R. BINGHAM)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
JONES WASHINGTON STEVEDORING)	DATE ISSUED:
COMPANY)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Thomas Schneider, Administrative Law Judge, United States Department of Labor.

Michael F. Pozzi, Seattle, Washington, for claimant.

Robert H. Madden (Madden & Crockett), Seattle, Washington, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Awarding Benefits (92-LHC-1980) of Administrative Law Judge Thomas Schneider 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 if they 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).

Claimant was injured during the course of his employment on March 16, 1990, when the van in which he was riding was struck by another vehicle. Claimant returned to his usual job in July 1991. Tr. at 10. Although claimant received multiple injuries in the accident, all have resolved except for the injury to claimant's left knee for which he sought an award under the schedule. 33 U.S.C. §908(c)(2).

In his decision, the administrative law judge found that claimant was entitled to compensation under the schedule for a five percent impairment to his lower left leg plus all interest

due under 28 U.S.C. §1961. He further determined that employer was not liable for the payment of claimant's attorney's fees because the award was no greater than the amount tendered by employer. 33 U.S.C. §928(b).

Claimant now appeals, contending that the administrative law judge erred in finding that claimant is entitled to compensation based on a five percent impairment to his lower left leg. Employer responds, urging affirmance.

Claimant challenges the administrative law judge's decision to award claimant permanent partial disability compensation for a five percent impairment to his lower left leg pursuant to Section 8(c)(2) of the Act. Specifically, claimant asserts that he has sustained at least a ten percent impairment to that extremity. It is well-established that claimant bears the burden of establishing the nature and extent of any disability sustained as a result of a work-related injury. *See Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding and Construction Co.*, 17 BRBS 56 (1985).

In the instant case, the administrative law judge, in awarding claimant compensation based upon a five percent impairment rating, reviewed the opinion of Dr. Ozolin, who opined that claimant suffers an approximate ten percent impairment to his lower left leg, CX 1, and the opinion of Dr. Nichols, that claimant suffers a zero percent work-related impairment. EX 28. The administrative law judge placed less reliance upon the opinion of Dr. Ozolin because that physician refused to explain what criteria from the American Medical Association *Guides to the Evaluation of Permanent Impairment* he used or how he applied them when rating claimant's impairment. Decision and Order at 4. Thus, in reaching his determination on the extent of claimant's disability, the administrative law judge apparently averaged the impairment ratings of the two physicians of record in concluding that claimant has a five percent impairment to his left lower extremity.

We hold that the administrative law judge committed no error in averaging the impairment ratings of record. In adjudicating a claim, it is well-established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences from it, *see Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988), and he is not bound to accept the opinion or theory of any particular witness. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). Thus, as the administrative law judge's credibility determinations are rational and within his authority as factfinder, and as these opinions constitute substantial evidence to support the administrative law judge's ultimate findings, we affirm the administrative law judge's determination that claimant suffers from a five percent permanent partial disability to his left lower extremity. *See generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *Sam v. Loffland Brothers Co.*, 19 BRBS 228 (1987).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge