

BRB No. 97-1430

HERMAN MAY)	
)	
Claimant-Petitioner)	DATE ISSUED:
)	
v.)	
)	
CASCADE GENERAL)	
)	
and)	
)	
LIBERTY NORTHWEST INSURANCE)	
)	
Employer/Carrier- Respondents)	DECISION and ORDER

Appeal of the Decision and Order of Alexander Karst, Administrative Law Judge, United States Department of Labor.

Herman May, Portland, Oregon, *pro se*.

Gene L. Platt (Cummins, Goodman, Fish & Platt, P.C.), McMinnville, Oregon, for employer/carrier.

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

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order (96-LHC-624) of Administrative Law Judge Alexander Karst denying 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). In an appeal by a claimant without counsel, we review the administrative law judge's findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and in accordance with law; if so, they must be affirmed. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3); 20 C.F.R. §§802.211(e), 802.220.

On July 27, 1994, claimant, a general laborer, fell off a ladder and hit his head, back, knee and hip. Claimant sustained an undisplaced fracture of his cervical spine. Employer paid total disability and medical benefits to claimant from July 28, 1994 to July 16, 1995, when employer offered claimant a light duty job within the restrictions stated by his treating physician, Dr. Grewe, after the physician released claimant to sedentary work. Claimant, after working a few hours a day for two days in this position, alleged that he suffered from dizziness which made him unable to perform this job, and he did not return to work. Claimant contacted Dr. Grewe regarding his dizziness and was informed that he was required to report to work and accept any employment that included the restrictions, which the physician characterized as overly restrictive in claimant's favor. Employer refused to continue disability and medical benefits.

In his Decision and Order, the administrative law judge found that claimant presented insufficient evidence to establish that he is unable to perform his usual work. The administrative law judge thus denied benefits. On appeal, claimant, representing himself, challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance.

Claimant has the burden of establishing the nature and extent of his disability. *Trask v. Lockheed Shipbuilding and Construction Co.*, 17 BRBS 56 (1985). To establish a *prima facie* case of total disability, claimant must show that he is unable to perform his usual employment due to his work-related injury. See *Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988); *Williams v. Halter Marine Service, Inc.*, 19 BRBS 248 (1987). A claimant's credible complaints of pain alone may be enough to meet his burden of establishing disability. See *Richardson v. Safeway Stores, Inc.*, 14 BRBS 855 (1982); *Miranda v. Excavation Construction, Inc.*, 13 BRBS 882 (1981).

The administrative law judge found that the medical evidence uniformly supports a finding that claimant has no objective physical impairment and that the dizziness of which claimant complains has no physiological basis. The administrative law judge stated that the only evidence supporting a finding of any disability are the representations made by claimant that he has neck pain and suffers from dizziness. The administrative law judge concluded that claimant was not credible based on his felony convictions and his misrepresentations concerning his convictions to the neuropsychologist, Dr. Lab. The administrative law judge also found claimant's credibility compromised by his inability to explain his inaccuracy to the doctor and by evasiveness in answering questions concerning a trucking business. The administrative law judge further considered that the only work restrictions placed on claimant, *i.e.*, no working at heights and, according to Dr. Grewe, at least for a while,

no significant lifting, are based solely on claimant's subjective complaints of dizziness and pain. The administrative law judge found that since claimant's complaints are the sole basis for the restrictions placed on him, and since these complaints lack credibility, there are no restrictions on claimant's ability to work. The administrative law judge therefore concluded that claimant did not carry his burden of proving that he cannot return to his usual employment.¹

It is well-established that, in arriving at his decision, the administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence. See *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). The administrative law judge's credibility determinations are not to be disturbed unless they are inherently incredible or patently unreasonable. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Inasmuch as the administrative law judge's findings are rational, his decision is supported by substantial evidence. We, therefore, affirm the administrative law judge's determination that claimant failed to establish that he is unable to perform his usual employment due to his work-related injury. See generally *Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd mem.*, 909 F.2d 1488 (9th Cir. 1990). The administrative law judge's failure to address the issue of claimant's entitlement to further medical treatment is harmless error inasmuch as the administrative law judge discredited claimant's subjective complaints of dizziness and pain.² See

¹The administrative law judge also stated that inasmuch as claimant introduced no evidence as to the requirements of his usual employment as a shipyard laborer, even if restrictions on claimant's ability to work existed, the administrative law judge would have insufficient evidence to find that claimant could not return to shipyard labor.

²At the hearing, employer agreed to pay for an evaluation of claimant's complaints of dizziness by Dr. Hodgson, a neuro-otologist, recommended by Dr. Peterson, a physician selected by claimant. After reviewing claimant's previous medical reports and tests, the hearing transcript and after conducting a physical and neuro-otologic examination of claimant, Dr. Hodgson stated that claimant suffered from subjective dizziness, without convincing objective evidence of organic vestibular abnormality. Dr. Hodgson also stated that the abnormal results from the postural testing performed by Dr. Mirka was strong evidence of non-organic factors at play. Dr. Hodgson concluded that claimant could work in the shipyard in sedentary jobs, with a restriction from working at heights based on claimant's

generally Brooks v. Newport News Shipbuilding & Dry Dock Co., 26 BRBS 1 (1992),
aff'd sub nom. Brooks v. Director, OWCP, 2 F.3d 64, 27 BRBS 100 (CRT)(4th Cir.
1993).

subjective complaints of dizziness.

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

REGINA C. MCGRANERY
Administrative Appeals Judge