BRB No. 97-1577

ROOSEVELT ANTHONY	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
I.T.O. CORPORATION OF BALTIMORE, INCORPORATED	)	
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Sheldon R. Lipson, Administrative Law Judge, United States Department of Labor.

Michael C. Eisenstein, Baltimore, Maryland, for claimant.

David P. Chaisson and Robert J. Lynott (Thomas & Libowitz, P.A.), 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 (94-LHC-2089) of Administrative Law Judge Sheldon R. Lipson 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).

On October 1, 1992, claimant, while working as a grain man for employer, sustained an injury to the little finger on his left, non-dominant hand. Claimant, who underwent two separate operations on his hand, subsequently returned to work without restrictions. Employer voluntarily paid claimant temporary partial disability compensation from November 11, 1992 through July 8, 1993, as well as medical

benefits. Claimant thereafter filed a claim for additional benefits under the Act.

In his Decision and Order, the administrative law judge found*, inter alia,* that claimant had returned to his regular work, and was therefore not totally disabled. The administrative law judge next awarded claimant permanent partial disability benefits pursuant to Section 8(c)(3) of the Act, 33 U.S.C. §908(c)(3), for a five percent disability to the left hand.

On appeal, claimant argues that the administrative law judge erred in determining the extent of claimant's disability. Claimant also alleges that he was prejudiced by the administrative law judge's delay in issuing his Decision and Order following the formal hearing. Employer responds, urging affirmance.

It is well-established that the 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 & Const. Co.,* 17 BRBS 56 (1980). In the instant case, the administrative law judge, in awarding claimant compensation based upon a five percent impairment rating to the hand, credited the opinion of Dr. Gordon, claimant's treating physician, over that of Dr. Rosenbaum, because Dr. Rosenbaum was not the treating physician and neither documented his examination notes nor appeared to be familiar with the American Medical Association *Guides to the Evaluation of Permanent Impairment* (AMA *Guides*).[1] The administrative law judge further noted that Dr. Gordon, unlike Dr. Rosenbaum, opined that claimant would definitely not function without his injured finger, since that finger still has function.

[1]Dr. Gordon opined that, following the criteria set forth in the AMA *Guides*, claimant suffered a 46 percent impairment to the left little finger, and that this equates to a loss of five percent of the left hand. EX-2A. Dr. Rosenbaum, who initially found a 100 percent impairment to the left fifth finger, which was compatible with a 10 percent permanent impairment of the left hand, then took into account claimant's pain, loss of function and other factors and determined that claimant had an overall rating of 22 percent permanent impairment of his left hand. CX-5.

Initially, our review reveals that the administrative law judge committed no error in relying upon the opinion of Dr. Gordon rather than that of Dr. Rosenbaum in determining the extent of claimant's left hand impairment. 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). As claimant states in his brief, the Act does not require impairment ratings based on medical opinions using the criteria of the AMA *Guides* except in cases involving compensation for hearing loss and voluntary retirees, *see* 33 U.S.C. §§908(c)(13), 902(10); *Pimpinella v. Universal Maritime Service, Inc.,* 27 BRBS 154 (1993). Thus, an administrative law judge is not bound by any particular standard or formula in determining the extent of disability sustained by claimant. Rather, the administrative law judge may consider a variety of medical opinions and observations in assessing the extent of a claimant's disability under the schedule. *See Pimpinella,* 27 BRBS at 159-60; *Mazze v. Frank J. Holleran, Inc.,* 9 BRBS 1053 (1978). In the instant case, Dr. Gordon's opinion that claimant suffers a five percent permanent partial disability to his left hand constitutes substantial evidence to support the administrative law judge's ultimate determination that claimant sustained a five percent permanent partial disability to that hand.

Next, we reject claimant's contention that the administrative law judge erred by failing to base claimant's scheduled award on the economic effects of his hand injuries in addition to his medical impairment. The schedule is the exclusive remedy for permanent partial disability to the members listed therein. *See Potomac Electric Power Co. v. Director, OWCP,* 449 U.S. 268, 14 BRBS 363 (1980). Awards under the schedule are based on medical impairment and economic loss is not considered in determining a disability rating under the schedule. *Gilchrist v. Newport News Shipbuilding & Dry Dock Co.,* 135 F.3d 915, 32 BRBS 15 (CRT) (4th Cir. 1998). Accordingly, as the administrative law judge's decision to credit the opinion of Dr. Gordon is rational, we affirm his award of permanent partial disability compensation for a five percent disability to claimant's left hand.

Lastly, we reject claimant's contention that the administrative law judge's decision should be vacated because of the three year lapse between the date of the formal hearing and the issuance of the administrative law judge's Decision and Order. Claimant has not shown that this delay resulted in prejudice to him. *See Garvey Grain Co. v. Director, OWCP*, 639 F.2d 366, 12 BRBS 821 (7th Cir. 1981); *Dean v. Marine Terminals Corp.*, 15 BRBS 394 (1983).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge