

ALBERT DAGGETT)
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 Claimant-Petitioner)
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 v.))
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 SELECT CARGO SERVICES,)
 INCORPORATED) DATE ISSUED: March 26, 2002
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 and)
)
 SIGNAL MUTUAL INDEMNITY)
 ASSOCIATION)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Jorden N. Pedersen, Jr. (Baker, Garber, Duffy & Pedersen, P.C.), Hoboken, New Jersey, for claimant.

Christopher J. Field (Field Womack & Kawczynski, LLC), South Amboy, New Jersey, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (99-LHC-2302) of Administrative Law Judge Ralph A. Romano 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant was employed as a foreman mechanic on May 13, 1998, when he fell from a

ladder while checking a refrigeration unit. It is unclear whether claimant was rendered unconscious from the fall or an electric shock. Tr. at 73, 75, 76. Claimant's original complaints included headache, neck, right knee and foot pain, CX 2, and later claimant also alleged he suffered from neck and low back pain and carpal tunnel syndrome resulting from the injury. See CX 4. Claimant consulted various medical experts who provided conflicting diagnoses with regard to claimant's ability to work. Employer paid claimant temporary total disability compensation from May 14, 1998, until October 6, 1998, at the rate of \$835.74 per week. Decision and Order at 2, Stip. 5; EX 10. Claimant sought continuing total disability compensation benefits and medical benefits.

In his decision, the administrative law judge found that claimant did not establish that he cannot perform his usual work, and he thus denied benefits. On appeal, claimant argues that the administrative law judge erred in finding that he did not establish that he could not return to his usual employment and in not awarding medical benefits. Claimant also contends that the administrative law judge's decision violates the Administrative Procedure Act (APA) in several respects. Employer responds, urging affirmance of the administrative law judge's decision.

In order to demonstrate a *prima facie* case of total disability, claimant must establish that he is unable to return to his usual employment due to his work-related injury. See, e.g., *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *Harmon v. Sea-Land Service*, 31 BRBS 45 (1997). In finding that claimant failed to establish that he is not able to perform his usual work as foreman mechanic, and therefore did not establish his *prima facie* case, the administrative law judge found that claimant's medical experts based their conclusions of total disability in greater part on claimant's expressions of symptomatology, *i.e.*, pain and extent of functional restrictions, rather than the objective clinical data on which employer's experts relied in reaching contrary conclusions. The administrative law judge concluded that claimant's testimony was not credible, citing claimant's history of illegal and dishonest behavior,¹ which diminished the probative value of any medical report based on his allegations of pain. The administrative law judge, therefore, accorded greater weight to the opinions of Drs. Nehmer, Rosenblum and Head, all of whom who stated that claimant was not disabled from performing his usual work, than to the opinions of Drs. Youseff, Stolz and Klingon that claimant cannot return to his usual work. The administrative law judge also relied on the fact that Dr. Nehmer is board-certified and Dr. Youseff is not, and he found that Dr. Youseff's conclusions have little, if any, support in the objective clinical data, and are therefore not well documented or reasoned. Decision and Order at 4.

¹At the time of the accident claimant was under investigation by the Waterfront Commission for revocation of his limited waterfront pass which he had acquired after having been rejected for it several times on the ground of past criminal behavior. EX 20.

It is well-established that an administrative law judge is entitled to weigh the evidence and to evaluate the credibility of all witnesses, including doctors, and may draw his own conclusions from the evidence.² *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 (2^d Cir. 1961). As the Board may not reweigh the evidence, and as substantial evidence supports the administrative law judge's finding, we affirm his determination that claimant does not have any physical or psychological impairments precluding his return to his former position.³ *See generally Gacki*

²Claimant contends that there were no factual findings regarding the nature of claimant's duties or physical requirements as a foreman mechanic. The burden is on claimant to establish that he cannot perform his usual work, which includes establishing the duties and physical requirements of the job. *See generally McCabe v. Sun Shipbuilding & Dry Dock Co.*, 602 F.2d 59, 10 BRBS 614 (3^d Cir. 1979). Claimant testified as to his job duties, and a job description prepared by employer was admitted into the record. The physicians credited by the administrative law judge related no restrictions on claimant's ability to work, and thus claimant has not demonstrated error in the administrative law judge's not describing claimant's job duties in his decision.

v. Sea-Land Service, Inc., 33 BRBS 127 (1998).

³Claimant contends that the administrative law judge only considered the issue of whether claimant was totally disabled without specifying whether he was considering temporary total or permanent total disability. Whether a condition is temporary or permanent goes to the nature of a disability, while in this case the administrative law judge was addressing the extent of claimant's disability. *See Stevens v. Director, OWCP*, 909 F.2d 1256, 23 BRBS 89(CRT) (9th Cir. 1990), *cert. denied*, 498 U.S. 1073 (1991). Since the administrative law judge found that claimant is not totally disabled, the nature of the disability is not relevant to the outcome. Moreover, the same standards apply for determining the extent of disability whether the claim is for temporary total or permanent total disability. *Bell v. Volpe/Head Constr. Co.*, 11 BRBS 377 (1979).

Claimant also contends that the administrative law judge violated the APA by failing to address claimant's left carpal tunnel syndrome and entitlement to medical benefits. The failure to analyze or discuss the relevant issues or evidence and to identify the evidentiary basis for the administrative law judge's conclusions violates the APA, 5 U.S.C. §557(c)(3)(A). *See, e.g., Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380 (1990); *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988). While Dr. Nehmer testified that claimant has carpal tunnel syndrome, EX 23 at 58-59, and there is some evidence that claimant's carpal tunnel syndrome could be causally related to his work accident, EX 25 at 26, there is no credited medical report which states that claimant cannot perform his usual work due to carpal tunnel syndrome. *See* EX 23 at 60; EX 25 at 27-28. Therefore, even if work-related, this condition would not change the administrative law judge's analysis regarding claimant's ability to work or his denial of total disability benefits.⁴

We agree with claimant, however, that the case must be remanded for the administrative law judge to address claimant's entitlement to medical benefits. Employer is liable for reasonable medical expenses necessary for the treatment of claimant's work-related injuries. 33 U.S.C. §907(a). It is claimant's burden to establish the necessity of treatment for his work-related injury. *See generally Schoen v. U. S. Chamber of Commerce*, 30 BRBS 112 (1996); *Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988). Claimant need not be economically disabled in order to be entitled to medical benefits, if the credited medical evidence demonstrates claimant's need for continuing treatment for his work injuries. *See generally Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993); *Winston v. Ingalls Shipbuilding, Inc.*, 16 BRBS 168 (1984). In this case, the administrative law judge did not address claimant's entitlement to medical treatment for his cervical and lumbar conditions, or for carpal tunnel syndrome, although claimant raised these issues before the administrative law judge. *See* Tr. at 6; CX 4;⁵ Cl. Post-hearing Br. at 21. With regard

⁴Claimant could be entitled to permanent partial disability under the schedule, 33 U.S.C. §908(c)(1), (3), if this condition resulted in any permanent impairment of the arm or hand; however, claimant does not assert that he has a rated impairment at this time.

⁵This exhibit contains specific requests to employer from Dr. Youseff for authorization for a left carpal tunnel decompression and an MRI of the cervical and lumbar

to this latter condition, the administrative law judge did not discuss whether claimant's carpal tunnel syndrome is work-related. On remand, therefore, the administrative law judge must discuss the work-relatedness of the carpal tunnel syndrome in light of Section 20(a) of the Act, 33 U.S.C. §920(a), and determine claimant's entitlement to medical benefits for his work-related conditions, notwithstanding claimant's ability to return to his usual work.

spine. *See* 33 U.S.C. §907(d).

Accordingly, the administrative law judge's Decision and Order denying additional disability compensation is affirmed. The case is remanded to the administrative law judge for consideration fo claimant's entitlement to medical benefits pursuant to Section 7.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge