

R.R.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
UNIVERSAL MARITIME SERVICE)	DATE ISSUED:
)	03/26/2008 <u>2008</u>
and)	
)	
SIGNAL MUTUAL INDEMNITY)	
ASSOCIATION, LIMITED)	
)	
Employer/Carrier-)	
Respondents)	

DECISION and ORDER

Appeal of the Decision and Order on Remand and Order Denying Motion for Reconsideration of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

Sidney Ravkind (The Ravkind Firm), Montgomery, Texas, for claimant.

Jennifer O’Sullivan (Fulbright & Jaworski, L.L.P.), Houston, Texas, for employer/carrier.

Before: SMITH, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand and Order Denying Motion for Reconsideration (2004-LHC-1151) of Administrative Law Judge Lee J. Romero, Jr., 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’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). This is the second time this case has been before the Board.

Claimant sustained injuries to his neck, lower back, and leg, while in the course of his work for employer as a truck driver on either May 20 or May 21, 2002. Claimant began treatment with Dr. Sardinas who operated on his right knee and subsequently released claimant for work with no restrictions, on October 27, 2003. Claimant attempted to return to work on November 16 and 19, 2003, but testified that he had to stop due to pain. Claimant eventually returned to work in his former position as a truck driver on April 2, 2004, with no reduction in wages. Claimant sought benefits under the Act.

In his initial decision, the administrative law judge found that claimant's right knee, neck and back injuries are causally related to the May 2002 work incident, that claimant established his entitlement to temporary total disability benefits from May 20, 2002 to October 26, 2003, and that claimant suffered a 10 percent impairment of his right leg, and thus, was entitled to permanent partial disability benefits pursuant to Section 8(c)(2) of the Act, 33 U.S.C. §908(c)(2). Additionally, the administrative law judge found that claimant did not establish an inability to return to his usual employment as of October 27, 2003, and that claimant returned to work on April 2, 2004, with no loss in wage-earning capacity. He thus concluded that claimant was not entitled to any additional disability benefits subsequent to October 27, 2003.

Claimant appealed, challenging the administrative law judge's finding that he was not totally disabled from October 27, 2003, to April 1, 2004. In its decision, the Board vacated the administrative law judge's finding that claimant did not establish an inability to return to his usual work during the period from October 27, 2003 and April 1, 2004, as there was probative evidence of record which was not addressed by the administrative law judge in his decision. [*R.R.*] v. *Universal Maritime Service*, BRB No. 05-0542 (Mar. 23, 2006) (unpub.). The case was thus remanded for a determination regarding claimant's ability to perform his usual work and his prospective entitlement to disability benefits for the period between October 27, 2003 and April 1, 2004.¹ *Id.* On remand, the administrative law judge again found that claimant did not establish an inability to return to his usual work after October 27, 2003. He therefore reinstated his earlier finding that claimant is not entitled to total disability compensation for the period from October 27, 2003, to April 1, 2004. The administrative law judge subsequently denied claimant's motion for reconsideration.

¹ The Board summarily denied claimant's motion for reconsideration. [*R.R.*] v. *Universal Maritime Service*, BRB No. 05-0542 (Aug. 2, 2006) (unpub. Order).

On appeal, claimant challenges the administrative law judge's denial of total disability benefits for the period between October 27, 2003, and April 1, 2004. Employer responds, urging affirmance.

After consideration of the administrative law judge's decisions, the arguments raised by the parties on appeal, and the relevant evidence of record, we affirm the administrative law judge's denial of benefits. The Board instructed the administrative law judge to address claimant's unsuccessful attempts to return to work on November 16 and 19, 2003,² Hearing Transcript (HT) at 53-54, Dr. Sardinas's opinion that claimant's condition became symptomatic upon his return to work and may have interfered with his ability to earn pre-injury wages, Employer's Exhibit (EX) 34 at 57, and the report of vocational counselor, Ms. Rapant, which indicated that she had been told by Dr. Sardinas, in February 2004, that claimant could not return to his former employment at that time, Claimant's Exhibit (CX) 9. *R.R.*, slip op. at 3-4. On remand, the administrative law judge concluded that the credible medical evidence of record did not support claimant's position that he could not perform his former job for the period between October 27, 2003, and April 1, 2004.³ Specifically, the administrative law judge addressed and resolved the conflicts between the statements made by claimant and Ms. Rapant, as opposed to the written reports of Dr. Sardinas, as well as the perceived inconsistencies between Dr. Sardinas's written reports and his deposition testimony.

In this regard, the administrative law judge rationally accorded greatest weight to the written reports of Dr. Sardinas,⁴ that state that claimant could return to work without restrictions as of October 27, 2003, *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 (2^d Cir. 1961), and acted within his discretion in discrediting claimant's complaints of pain, *see Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744

² Claimant testified that he had to stop working after two hours on November 16, and that he could not return to work after November 19 due to pain. H. Tr. at 53-54.

³ Claimant's contention that the Board's prior decision accepted his position that he was totally disabled during the period in question reflects an inaccurate interpretation of the Board's decision. In its decision, the Board merely instructed the administrative law judge to address all relevant evidence, including specifically claimant's testimony, regarding his ability to return to work.

⁴ We further note, as the administrative law judge's decision on remand infers, and as claimant concedes, that Dr. Sardinas's opinion that claimant was able to return to his usual work without restrictions as of October 27, 2003, is corroborated by the opinions of Drs. Barrash and Freeman. *See* EXs 19, 20, and 23.

(9th Cir. 1978), *cert. denied*, 470 U.S. 911 (1979); *Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9 (2001), *aff'd mem.*, 32 Fed. Appx. 126 (5th Cir. 2002) (table), as well as Ms. Rapant's statements as they are contradicted by contemporaneous written medical reports. Moreover, claimant's arguments on appeal are tantamount to a request that the Board reweigh the evidence of record, *e.g.*, claimant argues that the administrative law judge incorrectly interpreted his testimony, a role outside of the Board's scope of review. *See, e.g., Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994). We thus affirm the administrative law judge's finding that claimant did not establish an inability to perform his usual work for employer after October 27, 2003. Consequently, the administrative law judge's denial of total disability benefits for the period between October 27, 2003, and April 1, 2004, is affirmed as it is rational, supported by substantial evidence, and in accordance with law.

Accordingly, the administrative law judge's Decision and Order on Remand and Order Denying Motion for Reconsideration are affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge