

CLIFFORD SLIGHTOM)
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 Claimant-Petitioner)
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 v.)
)
 NATIONAL MAINTENANCE AND)
 REPAIR)
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 and)
)
 FRANK GATES ACCLAIM) DATE ISSUED: May 23, 2002
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS,)
 UNITED STATES DEPARTMENT)
 OF LABOR)
)
 Party-In-Interest) DECISION and ORDER

Appeal of the Decision and Order and the Supplemental Decision and Order -
Motion for Reconsideration of Donald W. Mosser, Administrative Law Judge,
United States Department of Labor.

Joseph E. Hoefert (Hoefert and Perica, P.C.), Alton, Illinois, for claimant.

Gregory P. Sujack (Garofalo, Schreiber & Hart, Chartered), Chicago, Illinois,
for employer/carrier.

Before: McGRANERY, HALL and GABAUER, Administrative Appeals
Judges.

PER CURIAM:

Claimant appeals the Decision and Order and the Supplemental Decision and Order - Motion for Reconsideration (2000-LHC-1670) of Administrative Law Judge Donald W. Mosser 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).

On November 8, 1994, claimant sustained injuries to his left and right upper extremities while working for employer. Claimant, who underwent five surgeries to his left upper extremity and one surgical procedure to his right upper extremity, returned to light duty work for employer in its tool room in June 1997.

In his Decision and Order, the administrative law judge found, *inter alia*, that claimant had returned to light-duty employment with employer and, therefore, did not have a continuing total disability. The administrative law judge next credited the medical report and testimony of Dr. Brigham and awarded claimant temporary total disability compensation from March 28, 1995, through June 25, 1997, and permanent partial disability benefits thereafter for an eighteen percent impairment to his left upper extremity and a one percent impairment to his right upper extremity. *See* 33 U.S.C. §908(b), (c)(1). In denying claimant's subsequent motion for reconsideration, the administrative law judge stated that, contrary to claimant's assertion, he had taken into consideration a number of factors in evaluating the medical evidence, and that he continued to find that Dr. Brigham's assessment of claimant's conditions was the most reasoned medical opinion in the record.

On appeal, claimant challenges the administrative law judge's determination that he is entitled to permanent partial disability compensation based on an eighteen percent impairment rating to his left upper extremity and a one percent impairment rating to his right upper extremity. Specifically, claimant asserts that the administrative law judge erred in crediting the opinion of Dr. Brigham over the opinion of Dr. Perry. Employer responds, urging affirmance

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 & Constr. Co.*, 17 BRBS 56 (1985). Where, as here, claimant has sustained an injury to a member specified in the schedule contained in Sections 8(c)(1)-(20), 33 U.S.C. §908(c)(1)-(20), and he is not totally disabled, claimant's permanent partial disability must be compensated under the schedule.¹ *Potomac Electric Power Co. v. Director, OWCP*, 449 U.S. 268, 14 BRBS 363

¹The administrative law judge's finding that employer established the availability of suitable alternate employment based on claimant's return to work in its tool room is

(1980). Awards under the schedule are based on the percentage of permanent impairment sustained by the injured body part. *See, e.g., Pimpinella v. Universal Maritime Service*, 27 BRBS 154 (1993).

We affirm the administrative law judge's determination of the degree of compensable impairment sustained by claimant to his left and right upper extremities. In the instant case, in awarding claimant permanent partial disability compensation based upon an eighteen percent impairment rating to claimant's left upper extremity and a one percent impairment to claimant's right upper extremity, the administrative law judge relied upon the opinion of Dr. Brigham, which he found to be well-reasoned and ultimately supported by that of Dr. MacKinnon. In rendering this determination, the administrative law judge found that Dr. Brigham wrote the companion textbook to the *AMA Guides*, and that he serves as editor-in-chief of the *AMA Guides Newsletter*.² Next, the administrative law judge addressed the arguments raised by claimant regarding Dr. Brigham's testimony and report, and concluded that Dr. Brigham's assessment of claimant's conditions was the most reasoned medical opinion in the record. In reaching this conclusion, the administrative law judge further found that the Dr. Brigham's final ratings were reviewed and approved by claimant's treating physician, Dr. MacKinnon. In contrast, the administrative law judge declined to rely upon the opinions of Drs. Perry and Lipede, in part because those physicians did not adequately explain in their respective opinions how they calculated claimant's impairment ratings under the *AMA Guides*.³

unchallenged on appeal, and is therefore affirmed.

²The Act does not require impairment ratings based on medical opinions using the criteria of the American Medical Association *Guides to the Evaluation of Permanent Impairment* (*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). In this case, however, all four of the physicians' ratings were based on the *AMA Guides*.

³Dr. Perry, upon whom the claimant relies in support of his allegations of error, opined

that claimant sustained a 40 percent impairment to each of his upper extremities.

As claimant acknowledges on appeal, it is well-established that it is for the administrative law judge, in adjudicating a claim, to determine the weight to be accorded the medical evidence. *See generally 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); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969); *Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988). In the instant case, the administrative law judge fully evaluated the medical opinions of record and ultimately gave determinative weight to Dr. Brigham's opinion, which he found to be well-reasoned, in part based upon Dr. Brigham's expertise regarding the use of the AMA *Guides* and the fact that Dr. MacKinnon ultimately did not disagree with his findings.⁴ This determination is rational and within the administrative law judge's authority as factfinder; moreover, the credited evidence constitutes substantial evidence supporting the administrative law judge's determination that claimant suffers from an eighteen percent impairment to his left upper extremity and a one percent impairment to his right upper extremity. *See O'Keefe*, 380 U.S. 359.

We also reject claimant's contention that the administrative law judge erred by failing to base claimant's scheduled award on the economic effects of his injuries in addition to his medical impairments. As we previously stated, the schedule is the exclusive remedy for claimant's permanent partial disability. *Potomac Electric*, 449 U.S. 268, 14 BRBS 363. Awards under the schedule are based on medical impairment and economic loss is not considered in determining the degree of disability. *Gilchrist v. Newport News Shipbuilding & Dry Dock Co.*, 135 F.3d 915, 32 BRBS 15(CRT)(4th Cir. 1998). Accordingly, as the

⁴Contrary to claimant's assertions on appeal, the administrative law judge stated in his decision that he had considered claimant's symptoms, limitations, surgical interventions, and the fact that Dr. Brigham was a witness for employer when he considered the issue of the extent of claimant's disability. *See* Supplemental Decision and Order at 2. Additionally, the administrative law judge acknowledged that Dr. Brigham's opinion was based upon his review of the medical evidence and that Dr. Brigham admitted on cross-examination that, had he examined claimant, his assessment of claimant's condition would be more reliable. Nonetheless, he rationally chose to credit Dr. Brigham, and these two facts do not establish error in his weighing.

administrative law judge's decision to credit the opinion of Dr. Brigham is rational, we affirm his award of permanent partial disability compensation for an eighteen percent impairment to claimant's left upper extremity and a one percent impairment to claimant's right upper extremity.

Accordingly, the administrative law judge's Decision and Order and Supplemental Decision and Order - Motion for Reconsideration are affirmed.

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge