

RAYMOND COLE MADSEN)
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 Claimant-Petitioner)
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 v.)
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 RAYTHEON DEMILITARIZATION) DATE ISSUED: May 5, 2005
 COMPANY)
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 and)
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 LIBERTY MUTUAL INSURANCE)
 COMPANY)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Decision and Order of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Ralph R. Lorberbaum, (Zipperer, Lorberbaum and Beauvais), Savannah, Georgia, for claimant.

Thomas C. Fitzhugh, III (Fitzhugh and Elliott), Houston, Texas, and Kurt A. Gronau, Glenwood Springs, Colorado, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (2003-LHC-1150, 2003-LHC-1151) of Administrative Law Judge Richard K. Malamphy 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.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *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).

Claimant worked for employer on Johnston Atoll as a maintenance worker, painter and carpenter. Claimant's work required him to use power tools such as pneumatic needle guns and sand blasting equipment. He alleges that he developed pain in both arms from just below the shoulder to below his elbow, and noticed numbness and tingling in his hands. The parties stipulated that the dates of accidents were August 20, 1999, and September 9, 1999. Decision and Order at 1-2, stip. 3. Claimant consulted Dr. Adelaar, who performed a left carpal tunnel release on November 22, 1999, JX 4 at 3, and a right carpal tunnel release on December 20, 1999. JX 6. Claimant also received cortisone injections in his right elbow. Dr. Adelaar released claimant for full-duty work on June 29, 2000, JX 4, but the work he was doing caused him pain and employer did not offer him further employment. Employer paid claimant temporary total disability compensation for certain periods and permanent partial disability compensation for a ten percent impairment to each hand.

In his Decision and Order, the administrative law judge awarded claimant permanent partial disability benefits for loss of use of the hand under Section 8(c)(3), 33 U.S.C. §908(c)(3), based on his finding of a 12.5 percent impairment to each upper extremity. On appeal, claimant challenges the administrative law judge's awards for loss of use of the hand under Section 8(c)(3), rather than for loss of use of the arm under Section 8(c)(1) of the Act, 33 U.S.C. §908(c)(1). Employer responds, urging affirmance of the administrative law judge's decision in its entirety.

Claimant initially avers that the injuries which he sustained while working for employer were to his arms and that, therefore, the administrative law judge erred in entering the awards for permanent partial disability pursuant to Section 8(c)(3), rather than pursuant to Section 8(c)(1) of the Act.¹ We agree with claimant that the administrative law judge's award of permanent partial disability compensation pursuant to Section 8(c)(3) cannot be affirmed. It is well established that injuries to claimant's wrists may be compensated as permanent partial disabilities to his arms under Section 8(c)(1) of the Act if there is evidence in the record which supports a finding of impairment to the arms. *See Brown v. Nat'l Steel & Shipbuilding Co.*, 34 BRBS 195 (2001); *Stokes v. George Hyman Constr. Co.*, 19 BRBS 110 (1986); *Young v. Todd Pacific Shipyards Corp.*, 17 BRBS 201 (1985). In this regard, the Board has held that, where an injury to a lesser member also affects a greater member, the Act provides for compensation equal to the amount which could be received for loss of use of the greater member alone. *See Brown*, 34 BRBS 195. Claimant thus may be eligible for an award under Section 8(c)(1) for loss of use of the arm, where the injury occurred below the elbow. *Mason v. Baltimore Stevedoring Co.*, 22 BRBS 413 (1989). Moreover, the

¹ The schedule provides 312 weeks of compensation for the loss of an arm compared with 244 weeks of compensation for the loss of a hand.

American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA *Guides*), while not mandatory in assessing a scheduled injury, state that the "wrist functional unit represents 60% of the upper extremity's function." See *AMA Guides* (5th ed.), p. 466.

In the instant case, the administrative law judge stated that, "[a]lthough the employer makes reference to Section 8(c)(1) of the Act, I find it more appropriate to rate each upper extremity for hand impairment as surgery was performed on the wrists and disability above that level is not well documented." Decision and Order at 7. This conclusion, however, is not supported by the medical evidence of record.² Specifically, Dr. Adelaar, who performed claimant's carpal tunnel releases and reported in May 2000 that claimant "still had some persistent loss of function in his median nerve indicating a loss of 25 percent of his potential grip strength in his hand," ultimately assigned claimant an impairment rating of 15 percent to one arm based on the loss of his carpal tunnel or median nerve function at the wrist, and 20 percent impairment to his other arm where his loss of grip strength combined with his elbow tendonitis. JX 4 (May 22, 2002 report). Additionally, following an evaluation of claimant on May 25, 2000, Dr. Shaia reported that claimant continues to complain of subjective pain and disability in both hands and wrists, but that he sees no objective evidence of significant weakness in either hand "due to the fact that there is no wasting." Dr. Shaia then concluded that: "[a]t this time, I would project [claimant's] permanent partial disability rating would not be any greater than 10% for each wrist or 12 percent for the whole body. This is an estimate and the actual rating may be less." JX 9. In a subsequent report, following a second examination on July 23, 2003, Dr. Shaia stated:

Using the American Medical Association Guidelines to evaluation of permanent disability, Fifth Edition, the guidelines would allocate a 10% partial permanent upper extremity disability for a 25% loss of grip strength. This loss of grip strength is based upon Dr. Adelaar's note of May 22, 2002. It is, however, difficult to measure grip strength since his exam was somewhat inconsistent. However, allowing for the 25% loss of grip strength, the disability book would allow a maximum of a 10% upper extremity disability. This is consistent with my previous note. I see no evidence on today's examination to increase his disability beyond 10% of each wrist. In addition, at the time of today's examination, he states that his elbow symptoms are markedly improved and do not limit him at this

² Moreover, the administrative law judge's statement is inconsistent on its face since an impairment to an employee's upper extremity may document a disability at or above the wrist, while a rating of the hand documents a disability to the hand; as such, specific ratings to these two distinct parts of an employee's body are not interchangeable.

time. *I would therefore stand by my previous rating of 10% permanent partial disability of each upper extremity or a 12% disability for the whole body.*

JX 9 (July 23, 2003 report) (emphasis added). Thus, Dr. Shaia's report of July 23, 2003, states that his prior, May 25, 2000, ten percent wrist rating related to a permanent partial disability rating of each upper extremity. Accordingly, contrary to the administrative law judge's finding that claimant's disability above his wrist level is not well-documented, the medical evidence of record relied upon by the administrative law judge provides specific impairment ratings for claimant's upper extremities which can support an award under Section 8(c)(1). We therefore vacate the administrative law judge's permanent partial disability award under Section 8(c)(3) of the Act, and we remand the case in order for him to consider all of the medical evidence in determining under which subsection of the Act to award claimant benefits for the work-related injuries that claimant has sustained to his wrists. *See Mason*, 22 BRBS 413.

Claimant further argues that, in determining the percentage of claimant's work-related impairment, the administrative law judge erred in failing to give Dr. Adelaar's opinion determinative weight since the credentials of Dr. Adelaar, who performed his carpal tunnel releases, are superior to those of Dr. Shaia. We agree with claimant that the administrative law judge on remand must reconsider the issue of claimant's permanent partial disability rating. In addressing this issue, the administrative law judge initially found that his review of the *AMA Guides* indicated that there is no clear cut answer to evaluating claimant's level of impairment. Decision and Order at 6. Next, the administrative law judge noted that the *Guides* state that strength measurements are influenced by subjective factors while the *Guides* are based on anatomic impairment, and that therefore the *Guides* do not assign a large role to such measurements; rather, the *Guides* acknowledge that further research is needed before loss of grip and pinch strength is given a larger role in impairment evaluation. *AMA Guides*, Section 16.8 (5th ed.). The administrative law judge subsequently found that "[t]able 16-34 [of the *Guides*] suggests that 31% to 60% strength loss in grip [as found by Dr. Shaia] could equate up to 20% of upper extremity impairment. However, it must be noted that Dr. Shaia did not see evidence of muscle wasting." *Id.* Pursuant to the foregoing, the administrative law judge determined that while he could not fully accept Dr. Adelaar's assessment of impairment, Dr. Shaia's ratings are low; the administrative law judge then summarily concluded that claimant sustained a 12.5 percent impairment to each upper extremity. *Id.* at 7.

It is well established that in adjudicating a claim the administrative law judge is entitled to weigh the medical evidence and draw his own inferences from it, *see John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *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). Moreover, the administrative law judge is not bound by any particular standard or formula but may consider a variety of medical opinions and observations in assessing the extent of claimant's disability. *Pimpinella v. Universal Maritime Serv. Inc.*, 27 BRBS 154 (1993). In the instant case, however, the administrative law judge failed to explain why he could not "fully accept" Dr. Adelaar's assessment of impairment, or why he concluded that Dr. Shaia's ratings are low. *See* Decision and Order at 7. We, therefore, vacate the administrative law judge's finding regarding the degree of impairment sustained by claimant as a result of his work-related wrist injuries. On remand, the administrative law judge must reconsider the extent of claimant's disability, setting forth an explanation for his ultimate determination on this issue. *See Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988).

Accordingly, the administrative law judge's Decision and Order is vacated, and the case is remanded for reconsideration consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge