



BRB No. 17-0624

KENNETH H. NEAL)

Claimant-Petitioner)

v.)

PORTS AMERICA OUTER HARBOR)
TERMINAL)

and)

PORTS INSURANCE COMPANY)

Employer/Carrier-)
Respondents)

SSA TERMINALS, LLC)

and)

HOMEPORT INSURANCE COMPANY)

Employer/Carrier-)
Respondents)

DATE ISSUED: May 18, 2018

DECISION and ORDER

Appeal of the Decision and Order Denying Medical and Compensation Benefits of William J. King, Administrative Law Judge, United States Department of Labor.

Kenneth H. Neal, San Leandro, California.

Laura G. Bruyneel, Gursimmar S. Sibia, and Alan Chang (Bruyneel Law Firm, LLP), San Francisco, California, for SSA Terminals, LLC and Homeport Insurance Company.

Before: BOGGS, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant, appearing without legal representation, appeals the Decision and Order Denying Medical and Compensation Benefits (2015-LHC-00945, 2016-LHC-00811) of Administrative Law Judge William J. King 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). In an appeal by a claimant without legal representation, the Board will review the administrative law judge's findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and in accordance with law. If they are, they must be affirmed. 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, while working for Ports America as a longshoreman on April 18, 2013, sustained an injury to his left ring finger. Claimant stated that he was working to unsnag a thick wire from a small gear box when it swung back and struck his left ring finger. Hearing Transcript (HT) at 48-50. He reported the incident immediately to employer, and treatment was administered consisting of an ice pack, application of anti-septic, and a bandage to a cut on that finger. *Id.* at 50-51. Claimant went to the emergency room, where the nurse noted a minor abrasion of the left ring finger, gave claimant a splint, and prescribed pain medication. *Id.* On April 24, 2013, claimant sought treatment from an orthopedist, Dr. Blackwell, who diagnosed an avulsion laceration of the left ring finger and a contusion and sprain of the left hand. Dr. Blackwell removed claimant from work until June 4, 2013, when he opined that claimant could "return to full work" the next day. Ports America paid claimant temporary total disability and medical benefits from April 19 through June 4, 2013. PX 2.12. Claimant returned to longshore work with Stevedoring Services of America (SSA) on June 5, 2013.

After his second day of work with SSA on June 6, 2013,¹ claimant went to the emergency room for left hand symptoms, where Dr. Mull diagnosed "hand pain" and replaced claimant's finger splint. Claimant followed up with Dr. Blackwell on June 7, 2013, who removed claimant from work and began regularly treating claimant. Dr. Blackwell subsequently diagnosed claimant with Complex Regional Pain Syndrome (CRPS) I which he stated is directly related to the April 18, 2013 work injury. Dr. Blackwell prescribed nerve blocks, performed by Dr. Jamasbi on January 7 and April 29, 2014, and acupuncture. He opined, on June 30, 2014, that claimant was permanent and

¹Claimant's worked with SSA as an auto driver, using only his right hand, on day one and then as a signalman on day two.

stationary and capable of working within the restrictions he imposed.² Dr. Chin, an orthopedic hand specialist, and Dr. Skomer, a neurologist, disagreed with Dr. Blackwell's diagnosis of CRPS. PX 6; SSAXs 19, 20. Both physicians opined, based on the lack of existing physical conditions and objective evidence of CRPS, that claimant has a somatoform pain disorder. Dr. Chin stated that claimant was permanent and stationary and should be physically capable of returning to work as a hold man, auto driver, baggage porter or tractor driver. Ports America paid claimant temporary total disability benefits from June 7, 2013 through August 19, 2014, when a labor market survey commissioned by Ports America identified light to medium jobs that claimant should be capable of performing. PX 5. Claimant, however, has not worked since June 6, 2013. PX 2.22.

Claimant filed a claim under the Act against Ports America, alleging that the April 18, 2013 left ring finger injury caused CRPS, which has rendered him permanently totally disabled since June 7, 2013. Ports America controverted the claim on the ground that claimant's April 18, 2013 work injury had completely resolved by June 4, 2013. Ports America also joined SSA to the case to assert, in the alternative, that any disability claimant experienced after June 4, 2013, is due to an aggravation/injury he sustained while working for SSA on June 5-6, 2013. SSA asserted that claimant did not sustain an aggravating or new injury during his work on those two days.

The case was forwarded to the Office of Administrative Law Judges; claimant was not represented by counsel in these proceedings. Prior to the formal hearing, the administrative law judge held a telephonic conference with the parties to address Ports America's motion, opposed by claimant, to compel a psychiatric examination "on the grounds that the claimant's orthopedic diagnosis, Complex Regional Pain Syndrome, may in part be based on psychological factors." Ports America Motion dated April 4, 2016. Claimant stated he was not claiming a psychological condition, but only a "scheduled" injury to his hand/arm. The administrative law judge discussed with claimant the consequences of his waiving any claim based on a psychological injury and concluded that claimant "has made a knowing stipulation that he is alleging a scheduled injury to his left upper extremity and no more and that he's knowingly waiving any claim for an

²Dr. Blackwell precluded claimant from: repetitive use of the left upper extremity; power grasping and gripping; use of his left upper extremity for work at or above shoulder level; lifting, carrying, pushing, or pulling greater than five pounds; data entry work; and work involving unprotected heights or climbing. PX 6.155. Dr. Blackwell, however, subsequently stated, apparently based on claimant's representation on his work abilities and given claimant's pursuit of a total disability claim, that claimant would be unable to work until he completed a vocational rehabilitation program. On December 30, 2014, Dr. Blackwell opined that claimant has a 13 percent left upper extremity permanent impairment.

unscheduled injury of any kind,” including any claim based on a psychological condition.³ Telephonic Conference Call dated April 18, 2016 (TCC) at 58-64, 69. Ports America’s counsel stated that its motion for a psychological evaluation thus was moot. *Id.* at 58-59, 65. The administrative law judge memorialized these findings in an Order Approving Claimant’s Stipulation, issued on April 19, 2016, in which he dismissed Ports America’s motion for a psychiatric examination.

Following a formal hearing, the administrative law judge found that the work-related left hand/arm injury claimant sustained on April 18, 2013, completely resolved on June 4, 2013, without any permanent impairment. He also concluded that claimant does not have CRPS related to the April 18, 2013, injury. The administrative law judge further found that claimant did not allege any work-related injury occurred with SSA on June 5-6, 2013, that could have caused further physical impairment. Accordingly, the administrative law judge denied claimant’s claim for additional compensation and medical benefits.

As claimant is without counsel, we will review the findings that are adverse to him. SSA responds, urging affirmance of the administrative law judge’s decision. Ports America has not responded to claimant’s appeal.

As an initial matter, the administrative law judge did not err in determining that claimant was not making any claim for a psychological condition/somatoform disorder. The telephonic conference was held to address Ports America’s request that claimant undergo a psychological examination and “to give [claimant] the opportunity to explain why” the motion for the examination should not be granted. TCC at 58. Ports America’s counsel reiterated the basis for the motion, i.e., “the diagnosis of some conditions that [claimant] has would involve the field of psychiatry, as opposed to orthopedics,” and he stated that if claimant “is willing to stipulate that there is no psychiatric claim and that stipulation becomes part of the record binding on the administrative law judge, then there is no psychiatric claim and . . . no need for the examination by Dr. Weiss.” *Id.* at 58-59. This prompted the administrative law judge to ask claimant whether he was aware of “the role that findings regarding psychological or psychiatric condition might have” on his claim, to which claimant responded, “I feel that it is a scheduled injury” involving his left hand/arm and “that the psychic part should not be allowed and we should move forward. That’s my position.” *Id.* at 60. The administrative law judge explained what claimant

³The administrative law judge stated in his decision that “I repeatedly suggested [to claimant] the value of having an attorney.” Decision and Order at 2, n. 2. The administrative law judge also stated that claimant “adamantly denied any psychiatric problems, conditions, or claims, and steadfastly refused to undergo a psychiatric examination even though he was clearly informed that doing so would limit his claim to a left upper extremity claim.” Decision and Order at 2.

would be giving up if he agreed to Ports America's stipulation. *Id.* at 60-64. After discerning that claimant had no questions regarding his explanations, the administrative law judge accepted claimant's stipulation that his claim was limited to his alleged left upper extremity injury/impairment.⁴ As the administrative law judge carefully ascertained that claimant understood the ramifications of his decision to forego a claim based on a psychological condition, the claim before the administrative was properly limited to claimant's claim for disability benefits for a physical injury to his left ring finger and for CRPS. *See generally* 33 U.S.C. §923(a) (proceeding should "best ascertain the rights of the parties").

We next address the administrative law judge's finding that claimant's left ring finger injury resolved without permanent impairment. Dr. Blackwell's progress notes dated April 24 and 30, 2013, and May 8, 2013, state that claimant's left finger injury should heal "uneventfully and completely" with no permanent residual disability within a short period. PXs 6.13, 6.15, 6.21-22. Following his examination of claimant on June 4, 2013, Dr. Blackwell stated that claimant could "return to full work" on June 5, 2013. *Id.* at 6.24. Dr. Skomer stated that the puffiness claimant experienced on June 6, 2013, was of no clinical significance and was not diagnosed when claimant was examined later that week. SSAX 24 at 354. We affirm the administrative law judge's finding that the left finger injury claimant sustained on April 18, 2013, completely resolved as of June 4, 2013, as it is supported by substantial evidence. *SSA Terminals v. Carrion*, 821 F.3d 1168, 50 BRBS 61(CRT) (9th Cir. 2016); *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT) (9th Cir. 2010); *Ion v. Duluth, Missabe & Iron Range Ry. Co.*, 31 BRBS 75 (1997) *Mason v. Baltimore Stevedoring Co.*, 22 BRBS 413 (1989). Thus, as claimant was cleared to return to his usual work, he did not establish a basis for an award of total disability benefits. *See generally Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd mem. sub nom. Chong v. Director, OWCP*, 909 F.2d 1488 (9th Cir. 1990).

An award of permanent partial disability benefits for a scheduled disability is predicated solely on the existence of a permanent anatomical impairment to a member listed in the schedule, and economic loss is not considered in determining an impairment

⁴Pursuant to Section 15(b) of the Act, 33 U.S.C. §915(b), claimant could not waive his right to compensation. The telephonic conference, however, was taken in response to Ports America's motion for a psychiatric examination, and it resulted in claimant's stipulation "to limiting his claim to a scheduled injury" of his left upper extremity, TCC at 65. *See generally U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 613 n.7, 14 BRBS 631, 633 n.7 (1982) (Supreme Court held that the Section 20(a) presumption attaches only to the claim that is made by claimant).

rating under the schedule. *See, e.g., Soliman v. Global Terminal & Container Service, Inc.*, 47 BRBS 1 (2013); *Young v. Newport News Shipbuilding & Dry Dock Co.*, 45 BRBS 35 (2011); *see also Gilchrist v. Newport News Shipbuilding & Dry Dock Co.*, 135 F.3d 915, 32 BRBS 15(CRT) (4th Cir. 1998). An award under the schedule is based on the degree of impairment to the injured body part. *See Boone v. Newport News Shipbuilding & Dry Dock Co.*, 37 BRBS 1 (2003); *Wright v. Superior Boat Works*, 16 BRBS 17 (1983).

The record contains substantial evidence to support the administrative law judge's finding that claimant's left ring finger injury did not result in permanent impairment to the finger, hand or arm. Dr. Blackwell stated on May 8, 2013, "I do not anticipate that [claimant] will have a permanent residual disability" due to the April 2013 work injury. PX 6.21-22. Dr. Pugh similarly stated on May 8, 2013 that claimant "will have no final permanent impairment" as a result of the April 2013 work-related left hand/ring finger injury. PX 6.19. In light of this evidence, the administrative law judge's finding that claimant "has a 0 % impairment rating" related to his April 18, 2013 work injury is affirmed as it is supported by substantial evidence.

We next address the administrative law judge's finding that claimant does not have CRPS, either as a consequence of the April 2013, finger injury or a subsequent injury with SSA on June 5-6, 2013. The administrative law judge rejected Dr. Blackwell's diagnosis of CRPS because "[t]he other doctors in this case did not observe" the alleged characteristics identified by Dr. Blackwell in support of that diagnosis.⁵ PX 6.86. The administrative law judge credited Dr. Chin's opinion that claimant does not have CRPS based on lack of symptoms, objective test results, and claimant's use of his left arm when not under observation. SSA X 23 at 337. The administrative law judge gave greatest weight to Dr. Skomer, a board-certified neurologist, who stated that claimant does not have CRPS because the objective criteria are absent and the neurological tests were normal.⁶ SSAXs 19; 24 at 351-353.

The administrative law judge is entitled to determine the weight to be accorded to the medical evidence. *See, e.g., Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT). The administrative law judge permissibly gave less weight to Dr. Blackwell's opinion because

⁵Dr. Blackwell noted at various times increased hair growth, thinning skin, swelling, increased sensitivity, redness, mottling, and ridging of the fingernails. PX 6.86. The administrative law judge found that, on one occasion, Dr. Gordon observed that claimant's skin had a "slightly shiny appearance," which is a symptom of CRPS. PX 6.89.

⁶Dr. Skomer said claimant may have a somatoform pain disorder or may simply be malingering, because "his symptoms are out of proportion to clinical and radiology study findings." SSAX 19.

his clinical observations were not noted by any other physicians, and he relied on claimant's subjective complaints of pain, which the administrative law judge found are not credible.⁷ Decision and Order at 11-13; see *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999). The administrative law judge rationally gave greater weight to Drs. Chin and Skomer because their diagnoses were supported by objective tests and clinical observations. *Id.* Accordingly, we affirm the administrative law judge's finding that claimant does not have CRPS as it is supported by substantial evidence of record. See generally *Bis Salamis, Inc. v. Director, OWCP*, 819 F.3d 116, 50 BRBS 29(CRT) (5th Cir. 2016); *Mackey v. Marine Terminals Corp.*, 21 BRBS 129 (1988). Therefore, we affirm the denial of additional benefits.

Although our affirmance of the finding that claimant does not have CRPS precludes an award of benefits, the administrative law judge's finding that claimant did not sustain any injury at SSA on June 5 and 6, 2013, also is supported by substantial evidence. The administrative law judge addressed whether claimant's work at SSA changed the character of his April 18, 2013 work-related finger laceration to a neurological disorder. Relying on claimant's denials that he sustained any injury while working for SSA on June 5-6, 2013, and finding that claimant "does not allege that any accident or work condition caused an injury,"⁸ the administrative law judge concluded that claimant did not establish his prima facie case of a new physical injury to his left upper extremity on June 5-6, 2013. Moreover, Dr. Skomer stated that claimant did not sustain a new injury or aggravation of the April 2013 work injury during his two days of work at SSA. SSAX 24, Dep. at 18. Therefore, we affirm this finding.

⁷The administrative law judge found that claimant's testimony and subjective complaints are not credible because his alleged symptoms are not borne out on examination by physicians. The administrative law judge also found that claimant engaged in "doctor shopping" each time he was cleared to return to work. Decision and Order at 11-12. This finding is affirmed as it is rational and within the administrative law judge's discretion. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).

⁸The administrative law judge found that since claimant "denied any accident and further clearly stated that he did not use his left hand while working [for SSA on June 5-6, 2013] as an auto driver and signalman," he could not have sustained any injury to his left upper extremity as a result of that work.

Accordingly, the administrative law judge's Decision and Order Denying Medical and Compensation Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge