

BRB No. 02-0253

OYLADI DEBOW	)	
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Claimant-Respondent	)	
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UNIVERSAL MARITIME SERVICE	)	DATE ISSUED: <u>Nov. 19, 2002</u>
CORPORATION	)	
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY	)	
ASSOCIATION	)	
	)	
Employer/Carrier-	)	
Petitioners	)	DECISION and ORDER

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

Kathleen M. Reilly, Kearny, New Jersey for claimant.

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

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order and Order on Motion for Reconsideration (2000-LHC-2198) 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, a hustler driver, was injured in a work-related accident on August 19, 1999, when a crane lifted her vehicle off the ground and dropped it as the crane attempted to pick up a container from the hustler. Claimant sustained injuries to her neck, back, right knee and left wrist. Subsequently, on January 13, 2000, Dr. Meese performed surgery for

a traumatically induced ganglion cyst on claimant=s left wrist. Employer voluntarily paid claimant temporary total disability benefits from August 20, 1999, to November 4, 1999, and from January 13, 2000, until April 13, 2000, the date Dr. Nehmer stated that claimant could return to work with accommodations. Claimant sought additional temporary total disability compensation from November 5, 1999, to January 12, 2000, and from April 14, 2000, to August 22, 2000, when she returned to work. Claimant also sought permanent partial disability compensation for loss of use of the left arm pursuant to Section 8(c)(1), (19) of the Act, 33 U.S.C. '908(c)(1), (19).

In his Decision and Order, the administrative law judge awarded claimant the temporary total disability benefits she sought, as well as medical benefits including the unpaid bill of Dr. Hernandez. Additionally, the administrative law judge determined that claimant is entitled to permanent partial disability benefits under the schedule at Section 8(c)(1) for a 25 percent loss of use of the left arm, pursuant to the opinion of Dr. Wroblewski. The administrative law judge summarily denied employer=s motion for reconsideration.

On appeal, employer challenges only the administrative law judge=s award of permanent partial disability benefits. Employer contends that the administrative law judge erred in crediting the opinion of Dr. Wroblewski without determining whether it was well-reasoned in light of the other medical evidence of record. Employer also contends that Dr. Wroblewski=s permanent impairment rating is premised on a faulty application of the *Guides to the Evaluation of Permanent Impairment (AMA Guides)*, and that the administrative law judge erred in awarding claimant benefits for an impairment to her arm, as claimant sustained no more than an injury to her hand and wrist. Claimant responds, urging affirmance.

In the event of an injury to a scheduled member, recovery for permanent partial disability is confined to the schedule in Section 8(c)(1)-(19), *Potomac Electric Power Co. v. Director, OWCP [PEPCO]*, 449 U.S. 268, 14 BRBS 363 (1980), and claimant is compensated based on the degree of physical impairment. See *Rowe v. Newport News Shipbuilding & Dry Dock Co.*, 193 F.3d 836, 33 BRBS 160(CRT) (4<sup>th</sup> Cir. 1999). Moreover, the Board has affirmed an administrative law judge=s decision to rely on a physician=s impairment rating based on subjective factors, holding that an administrative law judge is not bound by any particular formula but may rely on a variety of medical opinions and observations in addition to claimant=s description of symptoms and physical effects of the injury in assessing the extent of impairment. See *Pimpinella v. Universal Maritime Service, Inc.*, 27 BRBS 154, 159 (1993).

We affirm the administrative law judge=s award of permanent partial disability benefits. Contrary to employer=s contention, the administrative law judge acknowledged the opinions of Drs. Meese and Nehmer, but accorded them less weight than that of Dr.

Wroblewski. Dr. Meese, claimant=s treating physician, last saw claimant in August 2000, and he stated that claimant=s strength and motion were improving, although she still had some paresthesias in her left hand, which could be a permanent condition. CX A, K at 23. Dr. Meese did not note any deficit in claimant=s grip strength or range of motion, CX K at 34-35, and he stated claimant could return to work and Aprogress with activities as tolerated.@ CX A. Dr. Nehmer last examined claimant on January 5, 2001, at employer=s behest. He noted claimant=s complaints of paresthesias, but found she has a full range of wrist motion in her wrist and fingers and no swelling. He stated that claimant has no permanent impairment under the *AMA Guides* (5<sup>th</sup> ed. 2000). EX 17, 19 at 18-21.

The administrative law judge credited Dr. Wroblewski=s opinion that claimant has a 25 percent impairment to her left arm, finding this opinion to be more consistent with claimant=s credible testimony concerning her condition. Decision and Order at 5-6. Claimant testified she has pain and a Apins and needles@ sensation in her left thumb, wrist and arm, Tr. at 39, 41-42, and that she does not have full strength in her arm. Tr. at 62. The administrative law judge=s decision to credit claimant=s testimony is affirmed as it is within his discretion. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9<sup>th</sup> Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Dr. Wroblewski reported, after an examination on March 9, 2001, that claimant complained of weakness, numbness and pain in her left wrist and hands, CX D, L at 11, and that her grip strength, thumb extension and flexion, and wrist extension and flexion were reduced, CX D, L at 14-15. Dr. Wroblewski also found reduced dexterity and coordination, and decreased sensory results. CX L at 15-16. Finally, the doctor noted that claimant complained of pain that reduced her functional ability. *Id.* at 19.

In crediting Dr. Wroblewski=s opinion over that of Dr. Nehmer, the administrative law judge rationally stated that ADr. Nehmer=s unyielding opinion of lack of permanency appears to inappropriately discount and ignore claimant=s credible subjective complaints.@ Decision and Order at 6. Furthermore, the administrative law judge rationally determined that Dr. Meese=s opinion does not contradict Dr. Wroblewski=s opinion, as Dr. Meese stated that claimant=s paresthesias could be permanent, CX K at 23, and that her condition was Aimproving@ in August 2000. The administrative law judge=s crediting of Dr. Wroblewski=s opinion is consistent with claimant=s credible testimony, and his

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<sup>1</sup>Thus, we reject employer=s contention that the administrative law judge=s decision violates the Administrative Procedure Act, 5 U.S.C. '557(c)(3)(a), for failure to discuss all relevant evidence.

<sup>2</sup>Dr. Meese stated that paresthesias is a Aburning, numbness sensation.@ CX K at 23.

opinion need not be discounted because he examined claimant on only one occasion. See *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5<sup>th</sup> Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2<sup>d</sup> Cir. 1961). Moreover, the fact that Dr. Wroblewski did not test claimant=s grip strength with a dynamometer, as prescribed in the *AMA Guides*, does not require the rejection of his opinion. Dr. Wroblewski stated he tested claimant=s grip strength repetitively throughout his examination to look for consistent results, CX L at 20-21, and his impairment rating is based on numerous factors and not only loss of grip strength. As use of the *AMA Guides* is not mandatory in this case, the alleged failure of Dr. Wroblewski to examine claimant in strict compliance with the *Guides* is not cause for rejection of his opinion. See *Pimpinella*, 27 BRBS at 159-160. Finally, there is no error in the award of benefits for an impairment to claimant=s arm, as injuries to a lesser member, such as the hand and wrist can cause impairment to the greater member. *Young v. Todd Pacific Shipyards Corp.*, 17 BRBS 201 (1985). As the administrative law judge rationally credited Dr. Wroblewski=s opinion, and as this opinion constitutes substantial evidence in support of the award of permanent partial disability benefits, the award for a 25 percent impairment to claimant=s arm is affirmed. *Pimpinella*, 27 BRBS 154; *Young*, 17 BRBS 201.

Accordingly, the administrative law judge=s Decision and Order and Order on Reconsideration are affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge

BETTY JEAN HALL  
Administrative Appeals Judge