BRB No. 00-262

BURNELL W. PULLEY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY	)	DATE ISSUED: Oct. 27, 2000
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Richard E. Huddleston, Administrative Law Judge, United States Department of Labor.

John H. Klein (Montagna, Klein & Camden, L.L.P.), Norfolk, Virginia, for claimant.

Christopher A. Taggi (Mason, Cowardin & Mason), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (98-LHC-0040) of Administrative Law Judge Richard E. Huddleston 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. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant sustained an injury at work on November 30, 1993, when his foot became entangled in a rope over a stanchion. Dr. Prillaman diagnosed a "comminuted bimalleolar fracture of the left ankle." Cl. Ex. 4a. On December 1, 1993, Dr. Prillaman performed surgery on the ankle, and, on June 22, 1995, assigned a seven percent impairment rating to claimant's foot. Cl. Ex. 4e. The parties stipulated that employer paid claimant compensation

benefits for a seven percent impairment to his foot under Section 8(c)(4) of the Act, 33 U.S.C. §908(c)(4).

In his Decision and Order, the administrative law judge found, based on the evidence, that claimant had been properly compensated for a seven percent impairment of the foot pursuant to Section 8(c)(4), rejecting claimant's contention that he should be compensated instead under Section 8(c)(2) of the Act, 33 U.S.C. §908(c)(2).[1] On appeal, claimant contends that the administrative law judge erred in finding that he is entitled to an award for an impairment to the foot rather than for an impairment to the leg. Employer responds, urging affirmance of the award. Claimant has filed a reply brief.

The administrative law judge first stated that, "The location of Claimant's injury does not, however, determine the amount of compensation. . . . Thus, the focus when determining a claimant's disability is on the effects of the injury rather than its location." Decision and Order at 3. This statement is incorrect to the extent that it suggests the site of the disability controls the type of permanent partial disability to which claimant is entitled. The site of the injury, and not that of the resulting disability, determines whether the claimant is potentially entitled to an award under the schedule or to an award pursuant to Section 8(c)(21). *See, e.g.*, *Pool Co. v. Director, OWCP [White]*, 206 F.3d 543, 34 BRBS 19 (CRT) (5th Cir. 2000); *Rowe v. Newport News Shipbuilding & Dry Dock Co.*, 193 F.3d 836, 33 BRBS 160(CRT) (4th Cir. 1999); *Barker v. U.S. Dep't of Labor*, 138 F.3d 431, 32 BRBS 171(CRT) (1st Cir. 1998); *Gilchrist v. Newport News Shipbuilding & Dry Dock Co.*, 135 F.3d 915, 32 BRBS 15(CRT) (4th Cir. 1998)*; Long v. Director, OWCP*, 767 F.2d 1578, 17 BRBS 149(CRT) (9th Cir. 1985)*; Andrews v. Jeffboat, Inc.*, 23 BRBS 169 (1990).

[1]The schedule provides for 205 weeks of compensation for the loss of a foot, 33 U.S.C. §908(c)(4), compared with 288 weeks for the loss of a leg, 33 U.S.C. §908(c)(2).

Nevertheless, we affirm the administrative law judge's finding that, on the facts of this case, claimant is limited to compensation payable under Section 8(c)(4). Claimant contends that the administrative law judge should not have accepted what he alleges is Dr. Prillaman's inaccurate rating. We disagree. The administrative law judge is not bound by any particular standard but may consider a variety of medical opinions and observations in addition to claimant's descriptions of symptoms and physical effects of his injury in assessing the extent of claimant's disability under the schedule. *Cotton v. Army & Air Force Exch. Services,* 34 BRBS 88 (2000); *Pimpinella v. Universal Maritime Service*, 27 BRBS 154 (1993). Depending on the evidence, an injury to the ankle may be compensated under either Section 8(c)(2), *see Bluhm v. Cooper Stevedoring Co.*, 13 BRBS 427 (1981), or Section 8(c)(4), s*ee Green v. I.T.O.*, 32 BRBS 67 (1998), *modified on other grounds*, 185 F.3d 239, 33 BRBS 151(CRT) (4th Cir. 1999). While Dr. Prillaman's description of claimant's injury and surgery, *see* Cl. Ex. 3a, provides a basis for claimant's argument that the injury was to his leg rather than to his foot, and the administrative law judge commented that "the fibula, which the uncontradicted evidence shows to be the bone broken by claimant, is not part of the foot," Decision and Order at 2, the fact remains that there is no medical evidence of record which provides a basis for an impairment rating of the leg.[2] The only evidence of record is Dr. Prillaman's assessment that claimant has a seven percent impairment of the foot. Cl. Ex. 4e. It is claimant's burden to establish the extent of his disability. As there is no evidence of record on the basis of which the administrative law judge could determine a leg impairment rating, *see Griffin v. Gates & Fox Constr. Co.*, 13 BRBS 384 (1981), the administrative law judge's finding that claimant's compensation benefits were properly paid pursuant to Section 8(c)(4) is affirmed, as it is supported by substantial evidence.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

[2]Employer contends in its response brief that the administrative law judge properly determined that an ankle injury is properly compensated under Section 8(c)(4), by analogizing to the provisions of Section 8(c)(15), which covers the amputation of arms and legs. The Board has rejected a similar argument in a case involving a hand versus an arm impairment. *See Mason v. Baltimore Stevedoring Co.*, 22 BRBS 413, 417 (1989).

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge