

BRB No. 01-0180

WILLIE CORBITT, JR.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DELAWARE RIVER STEVEDORES,)	DATE ISSUED: <u>10/16/01</u>
INCORPORATED)	
)	
and)	
)	
LIBERTY MUTUAL INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

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

Aloysius J. Staud (Fine and Staud), Philadelphia, Pennsylvania, for claimant.

John E. Kawczynski (Weber Goldstein Greenberg & Gallagher, LLP), Jersey City, New Jersey, for employer/carrier.

Before: SMITH, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (00-LHC-1612) 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 sustained injuries to his right knee and leg when, on November 4, 1998, he

fell into the hold of a ship while working for employer.¹ Employer voluntarily paid claimant temporary total disability compensation from November 5, 1998 through February 7, 1999, *see* 33 U.S.C. §908(b), at which time claimant returned to work. Claimant subsequently experienced testicular problems, ultimately diagnosed as hematospermia, for which he underwent a cystoscopy on June 3, 1999. Claimant thereafter sought temporary total disability compensation for the period of July 19, 1999 through September 9, 1999, during which time he was allegedly unable to work due to his testicular injury.

In his decision, the administrative law judge found that claimant's testicular condition is causally related to his November 4, 1998, work accident, but that claimant failed to establish that he was incapable of performing his usual employment duties between July 19, 1999 and September 9, 1999, as a result of any disability arising from that condition. Accordingly, the administrative law judge, while awarding claimant medical benefits pursuant to 33 U.S.C. §907, denied the claim for temporary total disability compensation sought by claimant. Claimant's motion for reconsideration was subsequently denied by the administrative law judge.

Claimant now appeals, challenging the administrative law judge's denial of his claim for temporary total disability compensation. Specifically, claimant avers that the administrative law judge erred in failing to credit claimant's testimony that his treating physician had prohibited his return to work prior to September 9, 1999. Employer responds, urging affirmance of the administrative law judge's decision in its entirety.

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). In order to establish a *prima facie* case of total disability, claimant bears the burden of establishing that he is unable to return to his usual work. *See McCabe v. Sun Shipbuilding & Dry Dock Co.*, 602 F.2d 59, 10 BRBS 614 (3d Cir. 1979); *Harmon v. Sea-Land Service, Inc.*, 31 BRBS 45 (1997); *Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988). In addressing this issue, the administrative law judge may credit a claimant's subjective complaints of pain to find that claimant has established his *prima facie* case. *See Hairston v. Todd Shipyards Corp.*, 19 BRBS 6 (1986), *rev'd on other grounds*, 849 F.2d 1194, 21 BRBS (CRT)(9th Cir. 1988); *Thompson v. Northwest Enviro Services, Inc.*, 26 BRBS 53 (1992).

In concluding that claimant had not established a *prima facie* case of total disability, the administrative law judge declined to credit the testimony of claimant that his treating

¹Claimant apparently straddled a ladder while falling into the hold.

physician advised him not to work following his June 1999 surgery. Rather, the administrative law judge found that claimant produced no medical evidence to establish that he sustained any period of disability as a result of his work-related testicular condition.

We reject claimant's contention that the administrative law judge erred by failing to give determinative weight to his testimony that Dr. Yorker, the physician who performed claimant's June 1999 surgery, told him to stay out of work until September 9, 1999. It is well-established that the administrative law judge has the authority to address questions of witness credibility and to weigh the evidence. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *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); *Anderson*, 22 BRBS at 22. In the instant case, the administrative law judge rationally found that claimant's testimony was not determinative as to the extent of his alleged disability as of July 19, 1999. In rendering this determination, the administrative law judge specifically found that the record contained no medical evidence establishing any period of disability related to claimant's testicular condition, and that in fact claimant's treating physician, Dr. Yorker, in two reports following claimant's June 3, 1999, surgery made no suggestion that claimant was incapable of returning to work. *See* Clt. Exs. 2, 3. As the administrative law judge's credibility determinations are rational and within his authority as factfinder, we affirm the administrative law judge's determination that claimant has failed to meet his burden of proving that he was incapable of performing his usual employment duties with employer from July 19, 1999 through September 9, 1999. *See generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *Donovan*, 300 F.2d 741.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge