

A.Y.)
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 Claimant-Petitioner)
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 v.)
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 EAGLE MARINE SERVICES) DATE ISSUED: 10/24/2008
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 Self-Insured)
 Employer-Respondent) DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Anne Beytin Torkington, Administrative Law Judge, United States Department of Labor.

Vernon Goldwater (Goldwater & Richman), San Pedro, California, for claimant.

Daniel F. Valenzuela (Samuelson, Gonzalez, Valenzuela & Brown, LLP), San Pedro, California, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Awarding Benefits (2007-LHC-0632) of Administrative Law Judge Anne Beytin Torkington 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. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant has worked at various positions as a longshoreman for 43 years, primarily as a crane driver. Claimant suffered an injury to his left knee on November 21, 2001, while working for employer as a marine clerk. Claimant sought treatment from Dr. Kvitne, who performed arthroscopic surgery on his knee on March 28, 2002. Claimant was released to return to his duties as a crane driver on August 3, 2002, and has been working without restrictions since that date. Employer paid claimant temporary total

disability benefits from November 22, 2001, to August 2, 2002, and permanent partial disability benefits under the schedule for a 10 percent impairment to the left leg. Claimant sought additional permanent partial disability benefits under the Act.

The administrative law judge found that each physician rated claimant's left knee impairment at 10 percent pursuant to the American Medical Association *Guides to the Evaluation of Permanent Impairment* (AMA *Guides*). The administrative law judge rejected claimant's contentions that he is entitled to an additional two percent impairment for symptoms of pain and that the California workers' compensation methodology yields a more accurate rating of his work-related impairment.¹ Therefore, the administrative law judge found claimant entitled to permanent partial disability benefits pursuant to Section 8(c)(2), 33 U.S.C. §908(c)(2), for a 10 percent impairment of the left lower extremity. 33 U.S.C. §908(c)(19).

On appeal, claimant contends the administrative law judge erred in awarding permanent partial disability benefits for only a 10 percent impairment of the left lower extremity. Claimant contends that the AMA *Guides* do not accurately reflect the extent of his impairment, and that the California workers' compensation rating system would yield a more complete assessment of claimant's limitations. Moreover, claimant contends that the administrative law judge incorrectly analyzed the evidence under the AMA *Guides*. Employer responds, urging affirmance of the administrative law judge's decision as it was reasonable for the administrative law judge to use the AMA *Guides* to determine the extent of claimant's partial disability and her decision is supported by substantial evidence. Claimant has filed a reply brief.

In the event of an injury to a scheduled member, recovery for a claimant's permanent partial disability under Section 8(c), 33 U.S.C. §908(c), is confined to the schedule in Section 8(c)(1)-(19), 33 U.S.C. §908(c)(1)-(19). *Potomac Electric Power Co. v. Director, OWCP*, 449 U.S. 268, 14 BRBS 363 (1980). In cases other than those involving hearing loss, *see* 33 U.S.C. §908(c)(13)(E), the administrative law judge is not bound by any particular standard or formula but may consider medical opinions and observations in addition to claimant's description of symptoms and the physical effects of his injury in assessing the extent of claimant's permanent impairment. *See, e.g., Cotton v. Army & Air Force Exch. Services*, 34 BRBS 88 (2000); *Pimpinella v. Universal Mar. Serv., Inc.*, 27 BRBS 154 (1993).

¹ Claimant contended that use of this system provides an impairment rating of 23.25 percent.

In this case, the record contains the opinions of three physicians who address the extent of claimant's left knee impairment. Dr. Kvitne treated claimant from the time of the injury through his recovery from the related surgery. He released claimant to perform his usual duties as a crane driver without restrictions, but noted that claimant should not climb stairs repetitively, run, jump, work at unprotected heights, or stand for more than 30 minutes per hour per day.² Dr. Kvitne opined that claimant has a 10 percent impairment of the left lower extremity based on the *AMA Guides*. Cl. Ex. 8. Dr. Nagelberg opined that claimant has a 10 percent impairment of his left lower extremity, which is due in part to his pre-existing chondromalacia and in part to his work-related accident. Dr. Nagelberg also opined that claimant's level of pain is ratable and is not adequately addressed by the conventional impairment system of the *AMA Guides*. Therefore, he assessed an additional two percent impairment rating to account for the reported symptoms of pain. Cl. Ex. 9. Claimant's medical records also were reviewed on behalf of employer by Dr. Brigham. Dr. Brigham agreed with Dr. Kvitne's 10 percent impairment rating. Emp. Ex. 4.

The administrative law judge addressed claimant's contention that the evidence should be evaluated pursuant to the methodology outlined in the California workers' compensation system. She found that all of the medical evidence in this case was presented pursuant to the framework of the *AMA Guides* and that none of the physicians addressed the California system advocated by claimant. Therefore, the administrative law judge declined to assess claimant's impairment pursuant to that system through use of the physical restrictions placed by Dr. Kvitne. The administrative law judge found that claimant has a 10 percent impairment of his left lower extremity pursuant to the *AMA Guides*. The administrative law judge declined to assess an additional impairment rating based on claimant's subjective complaints of pain and Dr. Nagelberg's opinion. The administrative law judge relied on the absence of a rating for pain in the opinions of Drs. Kvitne and Brigham, and on Dr. Kvitne's release of claimant to his usual work.

It is well established that the administrative law judge is entitled to determine the weight to be accorded to the evidence of record and that the Board cannot reweigh the evidence. *See Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). The administrative law judge rationally rejected claimant's contentions that his impairment should be rated under the California system due to the absence of evidence discussing a rating under this system and that he is entitled to a rating for his pain. The administrative law judge's decision to credit the opinions of the physicians that claimant has a 10 percent impairment of his left lower extremity pursuant to the *AMA Guides* is rational

² Contrary to claimant's contention, Dr. Kvitne did not restrict claimant to part-time work. *See* Cl. Ex. 8.

and is supported by substantial evidence. *King v. Director, OWCP*, 904 F.2d 17, 23 BRBS 85(CRT) (9th Cir. 1990); *Cotton*, 34 BRBS 88; *Mazze v. Frank J. Holleran, Inc.*, 9 BRBS 1053 (1978). Therefore, we affirm the award of benefits for a 10 percent impairment pursuant to Section 8(c)(2).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGIINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge