

PATRICK GRIERSON)

Claimant-Respondent)

v.)

MARINE TERMINALS CORPORATION)

and)

MAJESTIC INSURANCE COMPANY)

DATE ISSUED: 09/25/2013

and)

TECHNOLOGY INSURANCE COMPANY)

Employer/Carriers-
Petitioners)

WILLAMETTE STEVEDORING)
COMPANY, LIMITED LIABILITY)
COMPANY)

and)

LIBERTY NORTHWEST INSURANCE)
CORPORTATION)

Employer/Carrier-
Respondents)

KINDER MORGAN, INCORPORATED)

and)

ACE USA INSURANCE COMPANY)

Employer/Carrier-
Respondents)

and)

ILWU-PMA WELFARE PLAN

Intervenor-Respondent

) ORDER on MOTION for
) RECONSIDERATION *EN*
) *BANC*

Marine Terminals Corporation and its carriers (MTC) have filed a timely motion for reconsideration *en banc* of the Board's decision in *Grierson v. Marine Terminals Corp., et al.*, BRB No. 12-0562 (Jun. 18, 2013) (unpub.). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Claimant and Kinder Morgan, respond, in separate briefs, urging affirmance of the Board's decision. MTC filed a reply brief. Because MTC has not shown error in the Board's decision, we deny the motion for reconsideration *en banc*.

Claimant suffered a brain injury on June 25, 2001, while working for MTC. He returned to part-time work for at least three different employers thereafter, but the administrative law judge found that claimant was totally disabled when he left work in 2006 and that his condition was the result of the natural progression of his June 25, 2001, injury. The Board affirmed the administrative law judge's decision finding MTC liable and rejecting its assertion that claimant left work in December 2006 for non-work-related reasons. The Board concluded that substantial evidence and rational inferences supported the administrative law judge's finding that claimant's disability is due to the natural progression of the 2001 brain injury he suffered while working for MTC. *Grierson*, BRB No. 12-0562, slip op. at 5-7.

MTC contends the evidence supports a finding that claimant made a personal decision to leave work to care for his father, rather than return to work, after claimant realized that his union pension and social security benefits exceeded the amount he could earn by working. MTC asserts the fact that claimant had no incentive to return to work undermines his credibility, which, therefore, undermines the physicians' disability opinions because they are based on claimant's statements to the physicians. We reject MTC's assertions. As the Board previously explained, the administrative law judge rationally found claimant's testimony as to how his impairments limited his ability to work safely on the waterfront to be credible, "given the medical evidence indicating that claimant was not malingering and the testimony of his physicians and coworkers that the symptoms he reported make him unsafe to work." *Grierson*, BRB No. 12-0562, slip op. at 5; Decision and Order at 49. Although the administrative law judge could have interpreted the evidence in the manner MTC urges, he did not do so, choosing instead other findings and inferences that are rational and supported by substantial evidence. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). The Board is not empowered to reweigh the evidence. *Id.* Therefore, as the administrative law judge's determination is supported by the record, we reject MTC's motion for reconsideration on this issue.

MTC also contends the administrative law judge erred in finding that claimant's disability is due to the natural progression of his 2001 injury as every physician opined

that claimant's depression due to subsequent employment contributed to his decision to leave work. We reject this argument for the reasons stated in our decision: Drs. Lee, Wong-Ngan, and Turco, whom the administrative law judge credited, stated that claimant's physical symptoms stemming from the 2001 work injury make it unsafe for him to work; no physician opined claimant's depression makes him unsafe or unable to work; and, all of the physicians who diagnosed a neuropsychological impairment concluded that claimant did not suffer an aggravation in his post-injury employment. *Grierson*, BRB No. 12-0562, slip op. at 7; CX 23 at 29, 49; EX 23 at 58-61, 100, 108; Tr. at 301-02, 312-24, 369-371, 385. Thus, substantial evidence supports the administrative law judge's finding that claimant's disability is the result of the natural progression of his 2001 work injury. *Metropolitan Stevedore Co. v. Crescent Wharf & Warehouse Co. [Price]*, 339 F.3d 1102, 37 BRBS 89(CRT) (9th Cir. 2003), *cert. denied*, 543 U.S. 940 (2004); *see also Plappert v. Marine Corps Exch.*, 31 BRBS 109, *aff'g on recon. en banc* 31 BRBS 13 (1997). Because employer has not shown error in the Board's decision, we deny the motion for reconsideration *en banc*, and we affirm the Board's decision.

Accordingly, MTC's motion for reconsideration *en banc* is denied. 20 C.F.R. §§801.301(c), 802.409. The Board's decision affirming the administrative law judge's award of benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge