

BRB No. 99-0110

JOSEPH GRILLO)
)
 Claimant-Petitioner) DATE ISSUED:
)
 v.)
)
 UNIVERSAL MARITIME SERVICE)
 CORPORATION)
)
 and)
)
 SIGNAL MUTUAL INDEMNITY)
 ASSOCIATION)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Michael E. Glazer (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

Christopher J. Field (Weber Goldstein Greenberg & Gallagher), Jersey City, New Jersey, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (96-LHC-1969) of Administrative Law Judge Robert D. Kaplan 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).

The parties stipulated that claimant injured his back and right shoulder on

December 3, 1993, in a work-related accident and that employer paid claimant compensation for temporary total disability for various periods through December 31, 1993. The parties also agreed that beginning in 1994, claimant has been paid under the industry's guaranteed annual income program, earning at least as much as he earned in his last employment with employer. Claimant sought benefits under the Act for partial disability, either under Section 8(c)(1), 33 U.S.C. §908(c)(1), for an impairment to his arm, or under Section 8(c)(21), 33 U.S.C. §908(c)(21), for a loss in wage-earning capacity due to a shoulder impairment. Alternatively, claimant sought a *de minimis* award.

In denying benefits, the administrative law judge found that claimant has no physical impairment to his arm or shoulder, crediting the opinion of Dr. Nehmer in this regard. The administrative law judge thus concluded that claimant is not entitled to benefits for partial disability or to a *de minimis* award. On appeal, claimant contends the administrative law judge erred in denying compensation. Employer, responds, urging affirmance.

Claimant bears the burden of establishing the nature and extent of his disability. *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56, 59 (1980). Contrary to claimant's contention, the administrative law judge was not required to credit the opinion of Drs. Patel and Parisi that claimant is impaired as there is no indication that they are claimant's treating physicians, and as the administrative law judge rationally concluded that it was unreasoned. See generally *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2nd Cir. 1961); CX 2. Moreover, the credited report of Dr. Nehmer supports the administrative law judge's conclusion that claimant has no physical impairment to his right arm, shoulder or back. EX 6, 7. As the administrative law judge's findings are rational, supported by substantial evidence, and in accordance with law, we affirm the administrative law judge's denial of benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge