

CLEAVIN B. MUNGIN)	
)	
Claimant-Petitioner)	DATE ISSUED:
)	
v.)	
)	
NEWPORT NEWS SHIPBUILDING)	
AND DRY DOCK COMPANY)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

Robert E. Walsh (Rutter & Montagna, L.L.P.), Norfolk, Virginia, for claimant.

Jonathan H. Walker (Mason & Mason, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (95-LHC-1238) of Administrative Law Judge Daniel A. Sarno, Jr., 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, while employed as a sheet metal mechanic for employer, sustained a work-related injury to his left knee in 1979 for which he ultimately received compensation for a forty percent permanent partial impairment of the left leg under Section 8(c)(2), 33 U.S.C. §908(c)(2), of the Act. After a second knee surgery, claimant returned to light-duty work with employer sometime in 1982, and worked in that capacity until he was laid off due to economic factors in November 14, 1994. Claimant was recalled to work in his light-duty position with employer on May 30, 1995. At the time of the hearing, claimant was still working at the same light-duty job. During the period of his layoff, November 14, 1994 to May 30, 1995, claimant was unable to locate any employment,

prompting him to file a claim for permanent total disability benefits for that limited period of time.

The administrative law judge initially determined that claimant has not shown that his work-related knee injury was totally disabling and caused, in any way, his layoff from the shipyard. In addition, the administrative law judge found that claimant has not shown that the alleged total disability was permanent, as evidenced by the fact that claimant returned to the same position following his six month layoff. Consequently, the administrative law judge concluded that pursuant to the decision of the United States Supreme Court in *Potomac Electric Power Co. v. Director, OWCP [PEPCO]*, 449 U.S. 268, 14 BRBS 363 (1980), claimant is precluded from receiving additional compensation other than that already received for his permanent partial disability under the schedule. Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in finding that he is not entitled to permanent total disability benefits for the six months that he was out of work. Employer responds, urging affirmance of the administrative law judge's Decision and Order Denying Benefits.

We reject claimant's contention that he is entitled to total disability benefits during the period of his layoff from November 14, 1994 to May 30, 1995. A permanent partial disability award under the schedule is based on the degree of permanent physical impairment, and the Act presumes that the schedule award fully compensates claimant for any loss in wage-earning capacity. *See PEPCO*, 449 U.S. at 269, 14 BRBS at 363; *Henry v. George Hyman Construction Co.*, 724 F.2d 65, 17 BRBS 79 (CRT) (D.C. Cir. 1984). Thus, as claimant herein is entitled to a scheduled award and suitable alternate employment was temporarily unavailable to claimant for reasons unrelated to his injury, claimant's temporary layoff cannot be the basis for an award of total disability. We therefore affirm the administrative law judge's determination that claimant is not entitled to permanent total disability benefits from November 14, 1994, to May 30, 1995.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge