BRB No. 96-1098

MICHAEL THIBODEAUX	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SOUTHCOAST SERVICES, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
CIGNA INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

M. Terrance Hoychick (Young, Hoychick & Aguillard L.L.P.), Eunice, Louisiana, for claimant.

Michael J. Remondet, Jr. (Jeansonne & Remondet), Lafayette, Louisiana, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits (93-LHC-2584) of Administrative Law Judge Edward Terhune Miller 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On April 18, 1991, claimant suffered severe pain to his neck and head while moving

a heavy mud valve during the course of his employment with employer. Claimant has subsequently undergone two bilateral occipital neurectomies in an effort to relieve the pain resulting from his bilateral occipital neuralgia arising out of his employment injury. Employer voluntarily paid temporary total disability benefits to claimant for the period April 18, 1991, to November 12, 1992. 33 U.S.C. §908(b). In his Decision and Order, the administrative law judge, relying on claimant's testimony regarding his ongoing pain and headaches, as well as the testimony of Dr. Rivet, claimant's treating physician, and Dr. Curtis, concluded that claimant is incapable of resuming his usual employment duties with employer. Accordingly, the administrative law judge awarded claimant temporary total disability compensation from April 18, 1991, and continuing. Lastly, the administrative law judge found claimant to be entitled to the additional surgery recommended by his physicians.

Employer now appeals, challenging the administrative law judge's award of temporary total disability compensation to claimant; specifically, employer asserts that the administrative law judge erred in relying on claimant's complaints of pain to establish total disability and in not addressing the "considerable" periods of time during which claimant was pain-free following each of his post-injury surgeries. Claimant responds, urging affirmance of the administrative law judge's decision.[1]

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 New Orleans (Gulfwide) v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding & Construction 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 Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78 (CRT)(5th Cir. 1991); *Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988).

[1]We note that claimant's attorney has filed a fee petition along with his response brief seeking payment for work he performed before the administrative law judge. The Board may only award a fee for work performed before the Board; thus claimant's fee petition must be submitted to the Office of Administrative Law Judges for work performed before it.

In finding that claimant had established a *prima facie* case of total disability, the administrative law judge credited claimant's complaints of ongoing debilitating pain, as supported by the medical opinions of Drs. Revit and Curtis, over the contrary opinion of Dr. Flynn. Decision and Order at 13. Claimant testified at length regarding the incapacitating pain and headaches which he has experienced post-injury, as well as the physical limitations which he presently endures as a result of that pain. *See* Tr. at 51-61. Dr. Revit, as corroborated by Dr. Curtis, diagnosed claimant as having occipital neuropathy, and the administrative law judge specifically found that his opinion establishes a causal nexus between claimant's injury and his ongoing headaches. It is well-established that an administrative law judge, in arriving at his decision, is entitled to weigh the credibility of all witnesses and draw his own inferences from the evidence. *See John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *Wheeler v. Interocean Stevedoring*, 21 BRBS 33 (1988). In this instance, the administrative law judge could rationally credit claimant's subjective complaints of pain, regardless of the absence of objective medical findings of a structural disability, to find that claimant had established a *prima facie* case of total disability.[2] *Hairston v. Todd Shipyards Corp.*, 19 BRBS 6 (1986), *rev'd on other grounds,* 849 F.2d 1194, 21 BRBS 122 (CRT)(9th Cir. 1988); *see also Mijangos*, 948 F.2d at 944, 25 BRBS at 80 (CRT); *Eller and Company v. Golden*, 620 F.2d 71 (5th Cir. 1980). Thus, as the administrative law judge's finding that claimant is totally disabled by his pain is rational and supported by substantial evidence of record, we affirm the administrative law judge's finding that claimant established a *prima facie* case of total disability. *See generally Manigault v. Stevens Shipping Co.*, 22 BRBS 332 (1989). As the administrative law judge found an absence of evidence of suitable alternate employment, claimant's award of temporary total disability benefits is affirmed.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

[2]We note that although the administrative law judge did not directly address the issue of whether claimant could have performed his usual job for any period of time following his surgeries, employer points to no evidence of record that claimant's treating physician ever released him to return to his usual job.

REGINA C. McGRANERY
Administrative Appeals Judge