BRB No. 96-1118

JOHN KENT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NICHOLS BROTHERS BOAT BUILDERS	)	DATE ISSUED: _____
	)	
	)	
and	)	
	)	
EAGLE PACIFIC INSURANCE COMPANY	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Alexander Karst, Administrative Law Judge, United States Department of Labor.

Tim L. Wakenshaw (Law Office of Peter Moote), Freeland, Washington, for claimant.

Russell A. Metz (Metz & Associates), Seattle, Washington, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (94-LHC-1484, 94-LHC-1485) of Administrative Law Judge Alexander Karst 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 the 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).

Claimant, a longshoreman, suffered a work-related injury to his back on February 8,

1991, and a work-related aggravation of that injury on December 6, 1991. Thereafter, he was involved in an automobile accident on March 31, 1992, which also resulted in a back and neck injury. Claimant returned to full duty work after each of his injuries and continued to work for employer until he was laid off on January 31, 1992. Claimant sought continuing temporary total disability compensation commencing February 15, 1992, and reimbursement or payment of medical expenses for treatment rendered by Drs. Allen and McCabe subsequent to December 31, 1991.

The administrative law judge determined that claimant was not entitled to the claimed temporary total disability compensation and medical benefits because the credible medical evidence of record established that he had fully recovered without residual impairment and was capable of performing his usual work as of December 31, 1991. The administrative law judge further determined that claimant's request for vocational rehabilitation was not properly before him because Section 39 of the Act, 33 U.S.C. §939, vests all authority for vocational rehabilitation under the Act in the Secretary of Labor, who has delegated this authority to the district directors. Decision and Order at 2, fn. 1.

Claimant appeals, contending that inasmuch as Dr. McCabe and Dr. Allen testified that claimant has work restrictions due to his 1991 work injuries which would preclude him from performing his usual work duties and that the medical treatment they provided subsequent to December 31, 1991 was necessitated, at least in part, by these injuries, the administrative law judge erred in denying his claim for temporary total disability and medical benefits. Claimant further asserts that employer should be assessed with the costs of claimant's vocational training as a manicurist and that the Board should hold that claimant's average weekly wage was $12.05 per hour or $482 per week. Employer responds, requesting affirmance of the decision below.

We affirm the administrative law judge's Decision and Order in all respects because his finding that claimant had fully recovered from the effects of the work injury and could perform his usual work as of December 31, 1991, is rational, supported by substantial evidence, and is in accordance with applicable law. *O'Keeffe*, 380 U.S. at 359. In making this determination, the administrative law judge found the deposition testimony of Drs. Burns and McCollum, EXS-24, 25, more persuasive than the contrary opinions of Drs. Allen and McCabe. CXS-1-4; EX-8. The administrative law judge's decision to credit the opinion of Dr. Burns over that of Dr. McCabe, an osteopath, based on Dr. Burns' superior credentials as an orthopedic surgeon was neither inherently incredible nor patently unreasonable. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 1335, 8 BRBS 744, 747 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Moreover, he rationally discredited Dr. Allen's opinion that claimant is unable to work as laborer and is in need of additional medical treatment due to his 1991 work injuries based on evidence in the record which suggests that Dr. Allen's views tend to vary with his audience,[1] and the fact that Dr. Allen

[1]When deposed, it was brought out on cross-examination that Dr. Allen had prepared two reports for The Department of Health and Human Services (HHS) in 1994 which conflicted with his diagnosis of record in this case. In June 1994, Dr. Allen prepared

stood to profit because he owns the clinic where he wants claimant to obtain the recommended treatment. CX-2; *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

Dr. Burns opined that although claimant sustained a minimal work-related compression fracture at T-12, he had fully recovered without residual impairment and was capable of performing his usual work for employer as of December 31, 1991. Dr. McCollum stated that when he examined claimant on November 11, 1994, he found no objective evidence of injury, saw no need for further treatment, and felt that claimant could return to the type of work he had performed previously as he had no permanent impairment or residuals from the 1991 work injuries. EX-24, p.11. Moreover, Dr. McCollum provided testimony that a compression fracture usually takes between six weeks and three months to heal. EX-24, p. 12. The administrative law judge is not bound to accept the opinion of any particular medical expert, but is free to accept or reject all or any part of any medical evidence as he sees fit. *Thompson v. Northwest Enviro Services, Inc.*, 26 BRBS 53 (1992). Inasmuch as the medical opinions of Drs. Burns and McCollum provide substantial evidence to support the administrative law judge's finding that claimant fully recovered from the effects of his 1991 work injuries and was capable of performing his usual work as of December 31, 1991, we affirm his denial of claimant's claim for temporary total disability compensation after this date. *See generally Hawthorne v. Ingalls Shipbuilding, Inc.*, 28 BRBS 73, 76 (1994), *modified on other grounds on recon.*, 29 BRBS 103 (1995); *Thompson*, 26 BRBS at 60-61; *Canty v. S.E.L. Maduro*, 26 BRBS 147 (1992). Under the same reasoning, the administrative law judge's denial of medical benefits for the treatment rendered by Drs. Allen and McCabe subsequent to December 31, 1991, is also affirmed; as claimant fully recovered by December 31, 1991, any treatment rendered thereafter was not treatment rendered for claimant's work-related injuries. 33 U.S.C. §907; *See Brooks v. Newport News Shipbuilding & Dry Dock Co.,* 26 BRBS 1 (1992), *aff'd sub nom. Brooks v. Director, OWCP,* 2 F.3d 64, 27 BRBS 100 (CRT) (4th Cir. 1993).[2]

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a report which did not indicate any problem as a result of his work-related injury, but diagnosed claimant with back and neck pain due to the March 1992 auto accident, CX-4 at 22-23. Dr. Allen also prepared a report for HHS in September 1994 which stated there was no indication that claimant suffered with limitations on agility, mobility or flexibility. CX-4 at 21.

[2]In light of our affirmance of the administrative law judge's determination that

claimant fully recovered from his work-related injury and has no resulting disability, we need not address claimant's remaining arguments.

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

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BETTY JEAN HALL
Chief Administrative Appeals Judge

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JAMES F. BROWN
Administrative Appeals Judge

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NANCY S. DOLDER
Administrative Appeals Judge