

EARL D. LANDBOROUGH)	
)	
Claimant)	
)	
v.)	
)	
PORT OF PORTLAND)	DATE ISSUED:
)	
and)	
)	
LIBERTY NORTHWEST INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Petitioner)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Paul A. Mapes, Administrative Law Judge, United States Department of Labor.

LuAnn Kressley (J. Davitt McActeer, Acting Solicitor of Labor; Carol DeDeo, Associate Solicitor; Janet R. Dunlop, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIUM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order Awarding Benefits (95-LHC-2239) of Administrative Law Judge Paul A. Mapes 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 17, 1993, a close friend of claimant was run over and crushed under the wheel of a large toploader as claimant and his friend were walking across a dock. Claimant's friend died on the scene from massive injuries. In the following weeks, claimant worked several more shifts, but eventually ceased working and sought counseling to deal with the resulting mental trauma. Claimant was diagnosed with post-traumatic stress disorder and has not returned to work. Employer voluntarily paid temporary total disability benefits until the date claimant's physician found his condition had become permanent and stationary, April 12, 1995. Claimant sought continued benefits under the Act. In addition to controverting the claim, employer sought relief from continuing compensation liability pursuant to Section 8(f), 33 U.S.C. §908(f), of the Act.

The administrative law judge found that claimant is unable to return to his former duties, but has the residual earning capacity of \$240 per week, as of February 7, 1996. Thus, he awarded claimant permanent total disability benefits from April 12, 1995 to February 6, 1996, and permanent partial disability benefits from the latter date and continuing. In addition, the administrative law judge found that the evidence establishes that claimant suffered from manifest pre-existing psychological disabilities that significantly limit the types of jobs he can perform. Therefore, the administrative law judge granted employer relief from continuing compensation liability pursuant to Section 8(f) of the Act.

On appeal, the Director contends that the administrative law judge erred in finding employer established that claimant's pre-existing disability was manifest under Section 8(f), as the record contains no "unambiguous objective and obvious indication of a psychological disability" pre-dating the work injury and, thus, the award of Section 8(f) relief should be reversed. Employer does not respond to this appeal.

Section 8(f) relief is available if employer establishes that: 1) the employee had an existing permanent partial disability prior to the employment injury; 2) the disability was manifest prior to the employment injury; and 3) the current disability is not due solely to the most recent injury. *Director, OWCP v. General Dynamics Corp. [Bergeron]*, 982 F.2d 790, 26 BRBS 139 (CRT)(2d Cir. 1992). The manifest requirement is satisfied if employer has actual knowledge of the pre-existing disability or if the disability was objectively determinable from medical records pre-dating the work injury. *Director, OWCP v. Campbell Industries, Inc.*, 678 F.2d 836, 14 BRBS 974 (9th Cir. 1982), *cert. denied*, 459 U.S. 1104 (1983). The United States Court of Appeals for the Ninth Circuit has held that a medical record describing pain without an identification of the cause of the pain or ascribing the condition as a psychological disorder does not by itself constitute sufficient unambiguous, objective, and obvious indication of a psychological disability sufficient to render claimant's psychological condition manifest. *Bunge Corp. v. Director, OWCP*, 951 F.2d 1109, 25 BRBS 82 (CRT)(9th Cir. 1991). Moreover, a *post-hoc* diagnosis of a pre-existing condition, even if based on pre-existing medical records, is insufficient to satisfy the manifest requirement. *Caudill v. Sea Tac Alaska Shipbuilding*, 25 BRBS 92 (1991), *aff'd mem. sub nom. Sea Tac Alaska Shipbuilding v. Director, OWCP*, 8 F.3d 29 (9th Cir. 1993).

In the instant case, the administrative law judge found that all of the medical experts of record agree that prior to April 17, 1993, claimant had pre-existing psychological and cognitive disabilities, including somatoform, anxiety, and personality disorders.¹ Cl. Exs. 13, 15; Emp. Exs. 79, 80. In addition, the administrative law judge found that if it had not been for the claimant's pre-existing psychological impairments, his work-related injury might not have been disabling at all or at least would not have caused any disability for more than a brief period. See Decision and Order at 7; Emp Ex. 65, 80. In reviewing the evidence regarding whether these psychological disabilities were manifest to employer prior to the work injury, the administrative law judge stated that the evidence was "hardly overwhelming." Nonetheless, he found that the records contain at least one explicit diagnosis of "anxiety," see Emp. Ex. 64 at 217, and various other entries which indicate that even before an anxiety disorder had been expressly diagnosed, claimant had been repeatedly given medications such as Valium, which are used to treat anxiety. See, e.g., Emp. Ex. 63. The administrative law judge also notes Drs. Rosen's and Turco's post-injury opinions that claimant's medical records show that before the work-related injury claimant had been treated for anxiety. The administrative law judge concluded that in combination this evidence reasonably justifies an inference that claimant's permanent psychological impairment was manifest prior to the work injury. Decision and Order at 10.

As there is substantial evidence to support the administrative law judge's finding, we affirm the administrative law judge's finding that in combination, the medical reports reasonably justify an inference that claimant had a pre-existing permanent psychological

¹Although the administrative law judge found that claimant is completely illiterate and significantly limited in the types of jobs that he can perform due to his cognitive disorders, he found that these disorders were not manifest to employer prior to April 17, 1993. Therefore, the administrative law judge did not base his award of Section 8(f) relief on these disorders. See Decision and Order at 6, 9.

impairment that was manifest to employer from the existing medical records.² See *generally Greene v. J.O. Hartman Meats*, 21 BRBS 214 (1988). Moreover, while the administrative law judge notes in his review of the evidence the 1975 medical questionnaire wherein claimant stated he was taking Valium, drank 3-4 alcoholic drinks a day, and acknowledged that he became depressed easily, he does not rely solely on it in his reaching his conclusion, contrary to the contention of the Director. See Decision and Order at 9-10.

Accordingly, the Decision and Order Awarding Benefits of the administrative law judge granting employer relief from continuing compensation liability based on claimant's manifest pre-existing anxiety disorder is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

²However, the administrative law judge also finds that there is some evidence that claimant's pre-existing medical records contain information that could warrant a diagnosis of a somatoform disorder. The reviewing psychiatrists base this opinion on claimant's repeated treatment for injuries and pain and the length of his recovery time for those injuries. As these reports only address claimant's treatment for individual injuries and pain, specifically back pain, and the treating physicians do not document a psychological component in their diagnoses, we hold that this evidence is insufficient to establish that claimant's somatoform condition was objectively determinable prior to the work injury. *Bunge*, 951 F.2d at 1112, 25 BRBS at 85 (CRT); *Caudill*, 25 BRBS at 99.