

ARTHUR VIOLA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
UNIVERSAL MARITIME	)	DATE ISSUED: _____
SERVICE CORPORATION	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Nicodemo DeGregorio, Administrative Law Judge, United States Department of Labor.

Philip J. Rooney (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

Christopher J. Field (Gallagher & Field), Jersey City, New Jersey, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (94-LHC-3308) of Administrative Law Judge Nicodemo DeGregorio 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant worked as a deckman/signal man for 27 of his 35 years on the docks. He was not on any employer's "list," so he worked for many employers over the course of his career. Tr. at 13, 22. In the early 1980's, he began experiencing hearing problems. Tr. at 72. Claimant underwent audiometric evaluations in March and June 1991 and in July 1992. He filed a claim against employer in 1991, alleging injurious exposure to noise while in its employ. Tr. at 6.

The administrative law judge found that claimant does not have a hearing

impairment and that he failed to prove his case by a preponderance of the evidence; therefore, he denied the claim. Claimant appeals the denial of benefits, and employer responds, urging affirmance.

Claimant contends the administrative law judge erred in crediting Dr. Kramer's opinion and that his decision is not supported by substantial evidence.<sup>1</sup> Employer responds, urging affirmance and asserting that claimant alleges no error in the administrative law judge's decision but only seeks a *de novo* review of the witnesses' credibility.

In this case, claimant underwent an audiometric evaluation in March 1991 by Dr. West who determined that claimant has a 29 percent binaural impairment. He was also evaluated in June 1991 by Dr. Kramer, who concluded claimant has a zero percent impairment, and in July 1992 by Dr. Stingle, who determined that claimant has a 24.69 percent binaural impairment. Cl. Exs. 1-2; Emp. Ex. 3. The administrative law judge credited Dr. Kramer over claimant's doctors based on his credentials (the credentials of the others being absent) and his thorough explanation of the tests he performed, as well as his critique of the other audiograms.

Claimant bears the burden of establishing the extent of his impairment. See *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56 (1985); see also *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 114 S.Ct. 2251, 28 BRBS 43 (CRT) (1994) (proponent of a claim has the burden of proving his case). Questions of witness credibility are for the administrative law judge as the trier-of-fact, *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961), and the Board may not interfere with an administrative law judge's credibility determinations unless they are inherently incredible or patently unreasonable. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744

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<sup>1</sup>Claimant has submitted to the Board the same brief he submitted to the administrative law judge post-hearing. The administrative law judge declined to address the contentions raised in this brief as it was submitted eight months after the deadline set by the administrative law judge. Claimant has not appealed the administrative law judge's decision not to consider the specific contentions raised in regard to issues concerning the responsible employer and possible violations of 33 U.S.C. §941 (safety rules and regulations), and thus we will not address them on appeal.

(9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). As the administrative law judge reasonably credited the opinion of Dr. Kramer over those of the other doctors, and as the record contains substantial evidence which supports the finding that claimant has a zero percent hearing impairment, we reject claimant's arguments. Therefore, we affirm the denial of benefits.

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge