BRB No. 96-1399

GUS WILLIAMS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CONTINENTAL STEVEDORING TERMINALS	)	DATE ISSUED:
	)	
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LIMITED	)	
	)	
	)	
Employer/Carrier-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Robert G. Mahony, Administrative Law Judge, United States Department of Labor.

Barry A. Pemsler, Miami, Florida, for claimant.

Lawrence F. Valle, Frank J. Soli (Valle & Craig, P.A.), Miami, Florida, for employer/carrier.

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

PER CURIAM:

Claimant appeals Decision and Order (94-LHC-1749) of Administrative Law Judge Robert G. Mahony denying benefits 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).

Claimant sustained a concussion on July 17, 1989, when a falling piece of metal pipe struck him on the head and right shoulder during the course of his employment for employer. Claimant subsequently complained of headaches and pain in his neck, back and right leg. He received treatment from Dr. Neal and was also examined by Drs. Yates and Nadler. Dr. Nadler released claimant to return to his usual employment on October 12,

1989. Employer voluntarily paid compensation for temporary total disability, 33 U.S.C. §908(b), until approximately November 1989. Claimant sought additional compensation under the Act.

In his Decision and Order, the administrative law judge found that claimant suffered no work-related disability subsequent to October 12, 1989. Accordingly, the administrative law judge denied the claim for additional compensation.

On appeal, claimant challenges the administrative law judge's finding that he is not entitled to disability compensation subsequent to October 12, 1989. Claimant also alleges he was prejudiced by the administrative law judge's failure to issue his Decision and Order within 20 days of the formal hearing. *See* 20 C.F.R. §§702.348, 702.349. Employer responds, urging affirmance.[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 Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding and Const. Co.,* 17 BRBS 56 (1985). In concluding in the instant case that claimant did not sustain a compensable impairment subsequent to October 12, 1989, the administrative law judge credited the opinions of Drs. Nadler and Yates, both of whom opined that claimant could return to his usual employment as a longshoreman. He also credited the opinions of Drs. Wagshul, Tarkan and Goldberg, who found claimant had no neurological impairment or any impairment in the ear, nose and throat areas. The administrative law judge found these opinions more persuasive than the contrary opinions of Drs. Nedd, Rose and Gilbert, who opined that claimant was permanently disabled.

[1]We hereby deny claimant's Motion for Oral Argument submitted to the Board on October 23, 1996. 20 C.F.R. §802.306.

We hold that the administrative law judge committed no error in crediting the opinions of Drs. Nadler and Yates, as supported by the testimony of Drs. Wagshul, Tarkan and Goldberg, rather than the opinions of Drs. Nedd, Rose and Gilbert, in concluding that claimant sustained no compensable impairment subsequent to October 12, 1989. In declining to rely upon Dr. Rose's opinion, the administrative law judge specifically noted that Dr. Rose acknowledged performing only a "gross kind of examination" lasting between fifteen and thirty minutes; similarly, the administrative law judge did not rely upon Dr. Gilbert's testimony as that physician did not address whether claimant is capable of resuming his usual employment duties. Lastly, the administrative law judge accorded less weight to the opinion of Dr. Nedd who, he noted, acknowledged making a "judgment call" regarding claimant's condition and who, moreover, conceded that claimant may be exaggerating his complaints. In contrast, the administrative law judge specifically relied upon the opinions of Drs. Nadler and Yates, both of whom released claimant to return to work without restrictions, as supported by the opinions of Drs. Tarkan, Wagshul and Goldberg.[2] In adjudicating a claim, it is well-established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences from it, *see Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988), and he is not bound to accept the opinion or theory of any particular witness. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). Thus, as the administrative law judge's credibility determinations are rational and within his authority as a factfinder, and as these credited opinions constitute substantial evidence to support the administrative law judge's ultimate findings, we affirm the administrative law judge's determination that claimant sustained no impairment subsequent to October 12, 1989. *See generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).

Lastly, we reject claimant's contention that the administrative law judge's decision should be remanded because of the fourteen month lapse between the date of the hearing and the issuance of the Decision and Order, as claimant has not shown that the delay resulted in prejudice to him. *See Garvey Grain Co. v. Director, OWCP*, 639 F.2d 366, 12 BRBS 821 (7th Cir. 1981); *Dean v. Marine Terminals Corp.*, 15 BRBS 394 (1983).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

[2]Contrary to claimant's assertion on appeal, the record indicates that Drs. Wagshul and Goldberg, both of whom found no evidence of head injury, are Board-certified neurologists. Moreover, Dr. Yates, who is a neurosurgeon, found claimant to be neurologically intact on August 18, 1989.

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge