

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

Appeal of the Decision and Order of Victor J. Chao, Administrative Law Judge, United States Department of Labor.

Richard J. Zeitler, Colonia, New Jersey, for claimant.

Celestino Tesoriero (Grainger, Tesoriero & Bell), New York, New York, for employer.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (87-LHC-867) of Administrative Law Judge Victor J. Chao awarding 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 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 applicable law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant worked for employer as a checker until 1983.¹ On June 26, 1981, claimant fell as he was running to sign in for work on time. Landing on the concrete surface, he injured his chest and ribs, left knee and right arm. Tr. at 10-12; Cl. Ex. 1. Claimant was assisted to the sign-in office where, although he signed in for work, he rested much of the day. Tr. at 12. The next day he reported his injury, and he went to the hospital. Doctors gave him pain medication and a brace to wear around his ribs. Tr. at 13. Dr. Pack, who examined claimant on June 29, 1981, determined that

¹As of the date of the hearing, claimant was employed as a checker with Maher Terminal, Inc. Tr. at 27.

he had contusions of the right elbow, right ribs, and left knee. Cl. Ex. 4; Emp. Ex. 7. Based on these injuries, particularly the arm injury, claimant remained out of work until August 6, 1981. *See* Emp. Exs. 3, 5. Subsequently, he filed a claim for permanent partial disability benefits for his arm and knee injuries.

A hearing was held wherein claimant and employer stipulated that employer voluntarily paid temporary total disability benefits from June 30, 1981 through August 5, 1981, and medical expenses. The sole issue in dispute before the administrative law judge was claimant's entitlement to permanent partial disability benefits. Tr. at 5-7. The administrative law judge reviewed the medical evidence of record and found that claimant has a five percent impairment of the arm due to his right elbow injury, but has no impairment of the left knee. Decision and Order at 4. Consequently, he awarded claimant benefits pursuant to Section 8(c)(1), 33 U.S.C. §908(c)(1), for 15.6 weeks.

On appeal, claimant contends that the evidence establishes he has a knee impairment and a greater impairment of the arm than that awarded by the administrative law judge. Particularly, claimant cites his own testimony and the reports of Drs. Ahmad,² Feit and Schneiderman to support his claim. In response, employer argues that the opinions of Drs. Schneiderman and Schultze support the administrative law judge's decision, which should be affirmed.

Claimant testified that he is constantly in pain as a result of his injuries. Tr. at 16. He stated that his condition has not improved, but has gotten worse since his treatment with Dr. Schultze ended in 1982.³ Tr. at 18, 20-21. Although the administrative law judge discussed claimant's testimony concerning his condition, he relied on the medical evidence in determining claimant's degree of impairment. With regard to claimant's knee, Dr. Schultze reported on July 24, 1981 that the objective findings were negative, and he determined that the injury caused only an occasional ache. Emp. Ex. 2. On August 7, 1981, Dr. Schultze noted marked improvement in claimant's condition and stated claimant has no impairment. Emp. Ex. 3-4. Dr. Schneiderman examined claimant on May 17, 1982, observing a stable knee with complete range of motion. Emp. Ex. 6. The administrative law judge credited this evidence and concluded there is no impairment in claimant's left knee. Decision and Order at 4. The opinions of Drs. Schultze and Dr. Schneiderman constitute substantial evidence to support the administrative law judge's finding that claimant's knee is not permanently impaired, and we affirm this finding. *See, e.g., Rivera v. United Masonry, Inc.*, 24 BRBS 78 (1990), *aff'd*, 948 F.2d 774, 25 BRBS 51 (CRT) (D.C. Cir. 1991).

With regard to claimant's right elbow, on February 5, 1982, Dr. Feit reported a decreased range of motion and pain, which he determined qualified as a permanent impairment of 10 percent.

²As is within his discretion, the administrative law judge rejected Dr. Ahmad's opinion because Dr. Ahmad failed to explain how he converted a 20 percent disability of the whole person into a 20 percent disability for each of the leg and the arm. *See Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969); Decision and Order at 4.

³We note that claimant admitted he has not sought medical treatment for his arm or leg condition since 1982, and he has not lost any time from work due to these problems. He continues, however, to take medication. Tr. at 17-18, 20-21, 27.

Cl. Ex. 2. Based on Dr. Feit's report, the administrative law judge divided the injury into components of "loss of motion" and "pain." In March 1982, Dr. Schultze reported that the x-rays were negative and there was full range of motion, allowing claimant to return to work with only an occasional ache in his elbow. Emp. Ex. 4. On May 17, 1982, Dr. Schneiderman found satisfactory range of motion in claimant's elbow, but noted there was pain upon extension of the wrist. He diagnosed lateral epicondylitis⁴ of the right elbow. Emp. Ex. 6. Because neither Dr. Schneiderman nor Dr. Schultze found claimant's elbow to have a decreased range of motion, the administrative law judge determined that claimant's elbow is not affected by a loss of motion. Decision and Order at 4. However, the administrative law judge noted that both Dr. Feit and Dr. Schneiderman found that claimant's elbow exhibits signs of pain. Because Dr. Feit's 10 percent impairment rating for claimant's arm is attributed to both pain and loss of motion, the administrative law judge halved the percentage and concluded claimant suffers a five percent permanent partial disability in his right arm. Decision and Order at 4.

In evaluating the evidence, the fact-finder is entitled to weigh the medical evidence and draw his own inferences from it and is not bound to accept the opinion or theory of any particular medical examiner. *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). Further, the administrative law judge has the discretion to find a degree of disability other than the disability ratings found by physicians if that degree of disability is reasonable. *Mazze v. Frank J. Holleran, Inc.*, 9 BRBS 1053 (1978). We conclude that the administrative law judge rationally determined that claimant has no loss of motion in his arm and that his

⁴Inflammation of a rounded projection on a bone or of the tissues adjoining it. *Dorland's Illustrated Medical Dictionary* (26th ed. 1981).

impairment is due solely to the pain noted by the physicians. Thus, the administrative law judge rationally divided the impairment rating given by Dr. Feit by two and awarded claimant benefits for a five percent impairment to the arm. *Mazze*, 9 BRBS at 1055.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge