BRB No. 90-911

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| HERBERT MILLS | ) | |
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| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
| | ) | DATE ISSUED:_____ |
| MATSON TERMINALS, INCORPORATED | ) | |
| | ) | |
| | ) | |
| Self-Insured Employer-Respondent | ) | DECISION and ORDER |

Appeal of the Decision and Order of Vivian Schreter-Murray, Administrative Law Judge, United States Department of Labor.

Philip R. Weltin and Brian Kerss (Weltin, Van Dam & Flores), San Francisco, California, for claimant.

B. James Finnegan (Finnegan & Marks), San Francisco, California, for employer.

Before: BROWN and McGRANERY, Administrative Appeals Judges, and SHEA, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Decision and Order (89-LHC-1808) of Administrative Law Judge Vivian Schreter-Murray 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 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).

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (1988).

On January 26, 1988, claimant injured his low back during the course of his employment as a vanning clerk for employer. He suffered low back strain and was off work for approximately six weeks. Thereafter, he returned for five or six weeks but was unable to continue. Cl. Ex. 6 at 30; Tr. at 91, 109-113. Claimant received medical treatment throughout the summer of 1988, and his return to work was scheduled for November 15, 1988. Tr. at 73. Dr. LeClair, claimant's physician, first examined claimant on October 28, 1988, diagnosed continuing back pain and facet syndrome and approved the return to work. Tr. at 23, 184. An MRI exam dated December 6, 1988 confirmed the facet syndrome diagnosis and showed minimum bulging at L4-5 and L5-S1. Emp. Ex. G. Despite a lack of any change in claimant's condition since October 28, 1988, Dr. LeClair relied on the MRI results and extended claimant's disability to March 2, 1989, although he now doubted claimant would ever return to work. Cl. Ex. 6 at 59; Tr. at 74. On March 31, 1989, Dr. LeClair reported that claimant's condition is permanent and stationary and that he is unable to return to his regular job. Cl. Ex. 6 at 92. Claimant has not worked since April 25, 1988. Tr. at 150.

A hearing was held on September 15, 1989, wherein the parties disputed only the nature and extent of claimant's disability. After reviewing the record, the administrative law judge found that claimant failed to establish a *prima facie* case of total disability as she concluded he is capable of performing the duties of his regular job. Decision and Order at 1, 6-7. Consequently, she denied benefits. *Id.* at 7. Claimant appeals the denial of benefits, contending the administrative law judge mischaracterized the evidence, made irrational credibility determinations, and reached a decision which is not supported by substantial evidence. Employer responds, urging affirmance. We hold that claimant has shown no reversible error on the part of the administrative law judge.

To establish a *prima facie* case of total disability, claimant must show that he is unable to return to his usual employment due to his work-related injury. *Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd mem. sub nom. Chong v. Director, OWCP*, 909 F.2d 1488 (9th Cir. 1990). In this case, claimant's usual work was that of a vanning clerk. A vanning clerk job is a "light duty" position.[1] It requires the incumbent to verify the amount of cargo being transported, inspect the cargo for damage, and supervise and monitor two longshoremen as they load and/or unload the transport cargo. The greatest physical requirements of this job are prolonged walking and standing. Minimal twisting, bending, climbing and light lifting may be necessary if the clerk is unable to read the cargo markings or easily verify the count. Emp. Exs. J-L; Tr. at 92-100; *see also* Decision and Order at 4-5. Despite claimant's insistence that this job cannot be performed accurately from a sitting position, Dr. Stark, employer's expert witness, observed a clerk who, occasionally, was able to do so. The administrative law judge credited Dr. Stark's observation and determined that a vanning clerk need not stand or walk continuously, as he is afforded the opportunity to change positions at will. Decision and Order at 4-6; Tr. at 196-203. Further, she agreed with Dr. Stark and concluded that the activities required for full performance of this job demand no more than do the "normal activities of daily life." Decision and Order at 4, 7; Tr. at 220.

[1]Claimant injured his cervical spine in 1979 while working as a holdman. Claimant was adjudged to be permanently partially disabled as a result of this injury and was receiving benefits from the Special Fund as of the date of the formal hearing.

After considering claimant's contentions, the administrative law judge's Decision and Order, and the evidence of record, we affirm the administrative law judge's finding that claimant is able to perform his usual work. In this case, the administrative law judge credited the testimony of Dr. Stark over that of Dr. LeClair. Although Dr. Stark diagnosed lumbar strain superimposed over degenerative disc and joint disease, he found negative neurological findings, and when he compared claimant's physical restrictions with a job analysis of the vanning clerk position, he determined that claimant's restricted activities are not required of a vanning clerk.[2] Emp. Exs. D-E; Tr. at 203-204, 218-219. Therefore, contrary to Dr. LeClair's opinion, Dr. Stark believed claimant is capable of performing his regular job duties.[3] Emp. Exs. D-E.

It is well-established that an administrative law judge is not bound to accept the opinion or theory of any particular medical examiner. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). Rather, the administrative law judge is entitled to evaluate the credibility of all witnesses, including doctors, and to draw her own inferences and conclusions from the evidence. *See 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). In the instant case, the administrative law judge, who set forth specific and comprehensive reasons, rationally determined that Dr. Stark's opinion is well-reasoned and well-documented. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th

[2]Dr. LeClair restricted claimant from repetitive lifting, squatting, twisting or bending. Tr. at 37. Dr. Stark testified that patients with facet syndrome backs should refrain from lifting, repetitive bending or pulling, prolonged stooping or carrying, or jumping or jarring activities. Tr. at 233.

[3]In 1989, Dr. Stark discovered evidence suggestive of a lateralized herniation at L5-S1. Emp. Ex. Q; Tr. at 205-208, 211-212. However, he did not ascribe this worsening of claimant's condition with the January 1988 work incident because evidence of the herniation did not materialize until after June 1989. Emp. Ex. L at 5; Tr. at 35, 206-207, 217-218. Even these new objective findings did not dissuade Dr. Stark from his conclusion that claimant can perform the duties of a vanning clerk. Emp. Ex. Q; Tr. at 213-214, 232.

Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Moreover, Dr. Stark's opinion constitutes substantial evidence to support the finding that claimant can return to his usual work. *See Peterson v. Washington Metropolitan Area Transit Authority*, 13 BRBS 891 (1981). Therefore, we affirm the denial of benefits.

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

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge