

BRB No. 91-1410

SAMUEL BICKHAM, Jr. )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 FOSS MARITIME COMPANY ) DATE ISSUED:  
 )  
 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.

J. Bradford Doyle, Seattle, Washington, for claimant.

Robert L. Brousseau (Brousseau & Jankovich), Seattle, Washington, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (89-LHC-1299) 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 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 lumbosacral sprain in 1979 while employed as a welder, for which he received temporary total disability benefits and a permanent partial disability award. Emp. Ex. 27. He also suffered a low back injury on July 1, 1981 while working as a welder which left him with a 15 percent permanent impairment. He received temporary total and permanent partial disability compensation for this injury. Emp. Ex. 19.

Claimant was working as a welder for employer when, on August 5, 1986, he slipped and fell in the hull of a barge, striking his chest on a steel girder. Claimant was treated for a twisting sprain of the lumbosacral and dorsal spines and generalized contusions. Claimant was released for work on February 2, 1987. Cl. Ex. at 18. Claimant returned to work as a welder for another employer in March 1987 and worked through December 1987. After recuperating from a hand injury which developed while claimant was working as a welder for Todd Shipyards in 1988,

claimant sought light duty work. However, while employed as a temporary laborer for a non-maritime employer, claimant suffered another back injury in March 1989, for which he received five weeks of state workers' compensation benefits. Cl. Ex. 20. Claimant has not worked since the 1989 back injury and sought permanent total disability benefits under the Act due to the 1986 injury at Foss Maritime Company.

The administrative law judge found that the credible medical evidence does not indicate that the 1986 injury increased claimant's pre-existing permanent partial disability. The administrative law judge concluded that the evidence suggests that claimant sustained an exacerbation of his back condition which was temporarily disabling but subsequently resolved. Thus, the administrative law judge found that claimant failed to establish a *prima facie* case of total disability due to the 1986 back injury and denied benefits.

On appeal, claimant contends that the administrative law judge erred in failing to apply the Section 20(a), 33 U.S.C. §920(a), presumption and in finding that claimant did not establish a *prima facie* case of total disability as three physicians opined that his condition had worsened due to the 1986 injury. Finally, claimant contends that the administrative law judge's decision evidences bias because he is a young black male, and requests that the case be remanded to another impartial administrative law judge. Employer responds, urging affirmance of the administrative law judge's Decision and Order as it is supported by substantial evidence.

Initially, we reject claimant's contentions regarding Section 20(a) as it is not disputed that claimant suffered a work-related disability following the 1986 injury; employer paid claimant temporary total disability benefits for over 25 weeks from August 7, 1986 until February 2, 1987. However, the parties did dispute the extent of disability following the 1986 injury, and Section 20(a) is not applicable to this inquiry. *Jones v. Genco, Inc.*, 21 BRBS 12 (1988).

Claimant also contends that the administrative law judge erred in finding that claimant has no permanent disability following the accident at Foss Maritime as three physicians of record opined that his condition worsened due to the 1986 back injury. To establish a *prima facie* case of total disability, claimant must show that he cannot return to his regular or usual employment due to his work-related injury. *Manigault v. Stevens Shipping Co.*, 22 BRBS 332 (1989). In order to determine whether claimant has shown total disability, the administrative law judge must compare claimant's medical restrictions with the specific physical requirements of his usual employment. *See Carroll v. Hanover Bridge Marina*, 17 BRBS 176 (1985). Claimant's credible complaints of pain alone may be enough to meet his burden. *See generally Avondale Shipyards, Inc. v. Kennel*, 914 F.2d 88, 24 BRBS 46 (CRT)(5th Cir. 1990); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989).

In the instant case, the administrative law judge found that claimant's subjective complaints of pain, and his testimony regarding his ability to work, are not credible. In addition to claimant's testimony, the record contains the medical opinions of Drs. Joyner, Worsham and Mullins. Dr. Joyner opined that claimant has a permanent residual disability arising from the 1986 injury which can be rated a "Category V" for back impairment. He noted that this impairment rating had increased from a "Category IV" impairment before the 1986 injury. Cl. Ex. 22. The administrative law judge found that Dr. Joyner's opinion was weak as it was not supported with medical findings or a reasoned rationale as to the meaning of a "Category IV or V" impairment, and accorded Dr. Joyner's opinion less weight as he is a general practitioner and not a specialist. Decision and Order at 7.

Dr. Worsham, a specialist in medical rehabilitation, released claimant for work on February 2, 1987 and Dr. Joyner concurred in this decision. Cl. Ex. 7. Following an examination in 1990, Dr. Worsham opined that claimant's hand, arm and both legs and spine are impaired, but noted that she could find no objective medical condition.<sup>1</sup> Cl. Ex. C at 29. At the time of the examination in 1990, Dr. Worsham had not been told about the 1989 back injury and noted that the 1986 and 1989 injuries contribute to claimant's disability. Cl. Ex. C. at 69. Dr. Mullins, a neurologist, testified in a deposition that there were no significant objective changes in claimant's symptoms in examinations conducted in 1983, 1988 and 1990. Cl. Ex. A at 44. Dr. Mullins rated claimant's back impairment as 15 percent in 1990, which was the same as in 1983. Although the doctor testified that claimant's continuing problems are due to the 1986 injury, Cl. Ex. A at 51, he also noted that claimant's neurological exam was normal in 1988 and 1990 and testified that there has been no change in claimant's impairment at all.<sup>2</sup> Cl. Ex. A at 50.

In addition to the medical evidence, the administrative law judge also found persuasive the fact that claimant returned to work in March 1987 and worked as a heavy welder until he hurt his hand in 1988. Claimant testified that during this time he did not have any problems with his back.<sup>3</sup> H. Tr. at 59. During this period he earned more than he had in the four years preceding his 1986 back injury combined.

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<sup>1</sup>Dr. Worsham concluded that claimant cannot return to heavy welding based in part on his back condition.

<sup>2</sup>Following an examination in October 1986, Dr. Burns opined that claimant was not disabled from longshore work and noted that he could not substantiate claimant's subjective complaints. Emp. Ex. 3.

<sup>3</sup>Claimant also testified that he had difficulty with back pain throughout this period. H. Tr. at 54-57

In weighing the medical evidence, the administrative law judge is entitled to consider all credible inferences. *Todd Pacific Shipyards Corp. v. Director, OWCP*, 913 F.2d 1426, 24 BRBS 25 (CRT)(9th Cir. 1990). She can accept any part of an expert's testimony; she may reject it completely. *Kenel*, 914 F.2d at 90, 24 BRBS at 48 (CRT). In the present case, the administrative law judge accepted the testimony of Drs. Worsham and Mullins with regard to claimant's level of disability. She found, based on these opinions, that claimant suffers the same degree of impairment in 1990 as he did in 1983, before the 1986 injury. The administrative law judge rejected the physicians' opinion regarding the relationship between claimant's increased objective symptoms<sup>4</sup> and the 1986 back injury based on the doctors' ignorance of the 1989 back injury. Both Drs. Mullins and Worsham testified that the 1989 injury could affect claimant's symptoms, but concluded that it would be difficult to determine one way or the other. Further, the administrative law judge found that claimant was not a credible witness because of the inconsistencies in his testimony and employment applications, and the omissions in the medical histories given to doctors.

We affirm the administrative law judge's credibility determinations as they are rational. *Todd Pacific Shipyards Corp.*, 913 F.2d at 1434, 24 BRBS at 33(CRT). Moreover, we affirm the administrative law judge's finding that the credited medical evidence does not indicate that the 1986 injury increased claimant's pre-existing permanent partial disability and that claimant failed to establish a *prima facie* case of disability due to the 1986 injury.<sup>5</sup> See generally *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). Finally, we hold that there is no evidence in the record that the administrative law judge based her decision on racial prejudice, and we deny claimant's request for remand to another administrative law judge for reconsideration.

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<sup>4</sup>The physicians noted that claimant exhibited an increased limitation of movement at the 1990 examination.

<sup>5</sup>Given our disposition of this case, we need not address claimant's contention regarding his post-injury wage-earning capacity.

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

SO ORDERED.

NANCY S. DOLDER, Acting Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge