

ERNEST JONES)	
)	
Claimant)	
)	
v.)	
)	
NEW ORLEANS STEVEDORING)	DATE ISSUED: _____
COMPANY)	
)	
and)	
)	
SIGNAL ADMINISTRATION)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Petitioner)	DECISION and ORDER

Appeal of the Decision and Order-Awarding Benefits of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

Douglass M. Morages, Harahan, Louisiana, for employer/carrier.

Laura Stomski (Thomas S. Williamson, Jr., Solicitor of Labor; Carol A. De Deo, Associate Solicitor; Janet R. Dunlop, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Acting Chief Administrative Appeals Judge, McGRANERY, Administrative Appeals Judge, and SHEA, Administrative Law Judge.*

*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).

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order-Awarding Benefits (90-LHC-2154) of Administrative Law Judge James W. Kerr, Jr., 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 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, on October 2, 1986, sustained injuries to his shoulder and back while working for employer. Claimant was subsequently diagnosed as having sustained a rotator cuff tear and aggravation of degenerative disease of the lumbar spine. At the formal hearing, the parties stipulated that claimant was entitled to temporary total disability benefits from October 3, 1986 to February 18, 1988, and permanent partial disability benefits thereafter. 33 U.S.C. §908(b), (c)(21). Accordingly, the sole issue for adjudication before the administrative law judge was employer's entitlement to relief pursuant to Section 8(f) of the Act, 33 U.S.C. §908(f).

In his Decision and Order, the administrative law judge found employer entitled to relief under Section 8(f) of the Act on the basis of claimant's pre-existing degenerative back condition. On appeal, the Director challenges the administrative law judge's decision to award employer relief from compensation liability pursuant to Section 8(f). Employer responds, urging affirmance.

Section 8(f) shifts the liability to pay compensation for permanent disability or death benefits after 104 weeks from the employer to the Special Fund established in Section 44 of the Act, 33 U.S.C. §944. *See* 33 U.S.C. §908(f). Section 8(f) relief is available where employer establishes the following: 1) the injured employee had a pre-existing permanent partial disability; 2) such pre-existing disability, in combination with the subsequent work injury, results in a materially and substantially greater degree of permanent partial disability; and 3) the pre-existing disability was manifest to the employer. *See, e.g., Adams v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 78 (1989).

The Director, in his appeal, alleges that the administrative law judge erroneously granted employer relief from continuing liability for the payment of claimant's benefits; specifically, the Director contends only that employer failed to establish that claimant's pre-existing degenerative back condition was manifest to employer prior to claimant's October 2, 1986 work-related accident.¹

We disagree. A pre-existing disability will meet the manifest requirement if, prior to the subsequent injury, employer either had actual knowledge of the pre-existing condition or there were medical records in existence prior to the subsequent injury from which the condition was objectively determinable. *Director, OWCP, v. Campbell Industries, Inc.*, 678 F.2d 836, 14 BRBS 974 (9th Cir.

¹The Director does not contest the administrative law judge's findings that the pre-existing permanent partial disability and contribution elements were satisfied by employer.

1982), *cert. denied*, 459 U.S. 1104 (1983); *Lockhart v. General Dynamics Corp.*, 20 BRBS 219 (1988). The medical records need not indicate the severity or precise nature of the pre-existing condition in order for the manifest requirement to be satisfied, so long as there is sufficient, unambiguous and obvious information regarding the existence of a serious lasting physical problem. *See Eymard & Sons Shipyard v. Smith*, 862 F.2d 1220, 22 BRBS 11 (CRT)(5th Cir. 1989); *Armstrong v. General Dynamics Corp.*, 22 BRBS 276 (1989); *Hitt v. Newport News Shipbuilding & Dry Dock Co.*, 16 BRBS 353 (1984).

In the instant case, the administrative law judge determined that employer submitted sufficient evidence to establish the existence of claimant's back problems for approximately 15 years prior to claimant's October 2, 1986, injury; thus, the administrative law judge concluded that claimant's pre-existing degenerative back disease was manifest to employer. Our review of the record reveals that claimant complained of low back pain as early as January 21, 1971. *See* CX-7 at 1. On January 25, 1971, x-rays taken at the Ochsner Clinic were interpreted as showing some narrowing of the T12-L1 interspace, reactive sclerosis with cystic change, and an abnormality involving the posterior bony arch of the second lumbar segment as well as bilateral defects which, the report notes, are an unusual level for spondylolysis.² *See* CX-8 at 9. Subsequently, in February 1971, records prepared by the Ochsner Foundation Hospital indicate that claimant had recently reinjured his back; claimant's condition was diagnosed as spondylolysis at L-2, and it was recommended that claimant present himself to an orthopedic clinic. *See* CX-7 at 7. Lastly, following the occurrence of a December 10, 1980 knee injury, the Ochsner Clinic reported claimant's complaints of chronic low back pain, which it noted appeared to be unchanged from claimant's prior evaluation. *Id.* at 3. The contemporaneous interpretation of claimant's 1971 x-rays revealing a back abnormality, as well as spondylolysis, and the pre-1986 reports prepared by the Ochsner Foundation Hospital which reveal ongoing back complaints, constitute substantial evidence supporting the administrative law judge's determination that employer has submitted sufficient evidence to satisfy the manifest requirement. *See generally Currie v. Cooper Stevedoring Co., Inc.*, 23 BRBS 420 (1990). Accordingly, we affirm the administrative law judge's finding that employer established a manifest pre-existing permanent partial disability, and his subsequent award of Section 8(f) relief to employer.

²*Dorland's Illustrated Medical Dictionary*, 26th ed., defines "spondylolysis" as the "dissolution of a vertebra."

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

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge