

MANUEL DUARTE)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CAMPBELL INDUSTRIES)	
)	
and)	
)	
EAGLE PACIFIC INSURANCE)	
COMPANY)	DATE ISSUED:
)	
Employer/Carrier-)	
Respondents)	DECISION AND ORDER

Appeal of the Decision and Order and Order On Motion for Reconsideration of Alfred Lindeman, Administrative Law Judge, United States Department of Labor.

Jeffrey Winter (Law Offices of Preston Easley), National City, California, for claimant.

Enrique L. Muñoz (Littler, Mendelson, Fastiff & Tichy), San Diego, California, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order and Decision on Motion For Reconsideration (90-LHC-3195) of Administrative Law Judge Alfred Lindeman 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).

*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 Friday, May 4, 1980, claimant sustained an injury to his right elbow and low back when he slipped and fell while working for employer as a chipper. Claimant was examined that day by Dr. Han, who treated him and released him to return to his regular work on Monday, May 7, 1990.

While undergoing physical therapy, claimant continued to work in his regular job until he was laid off on June 22, 1990, for reasons unrelated to this injury. Claimant has not worked since that time. Claimant sought temporary total disability benefits from June 22, 1990 through September 24, 1990, and permanent total disability benefits thereafter.

The administrative law judge found that although claimant did sustain an injury which resulted in contusions to his right elbow and a mild back strain, he was not entitled to compensation because he had lost no unpaid time from work due to the May 4, 1990 injury, he had been laid off for reasons unrelated to this injury, and the injury caused no impairment or effect on his wage-earning capacity. The administrative law judge also denied claimant future medical benefits. Claimant's motion for reconsideration was summarily denied.

Claimant appeals the denial of benefits, arguing that the administrative law judge erred in finding that he was able to perform his usual work as a chipper. Employer responds, urging affirmance.

In order to establish a *prima facie* case of total disability, claimant must show that he is unable to return to his former employment due to his work injury. *Hawthorne v. Ingalls Shipbuilding, Inc.*, 28 BRBS 74 (1994). In making this determination, questions of witness credibility are for the administrative law judge as the trier-of-fact. *Thompson v. Northwest Enviro Services, Inc.*, 26 BRBS 53 (1992); *Canty v. S.E.L. Maduro*, 26 BRBS 147 (1992).

After careful review of the record, we affirm the administrative law judge's denial of disability benefits in this case, as his finding that claimant is able to perform his usual work as a chipper is rational and supported by substantial evidence. *See O'Keeffe*, 380 U.S. at 359. We reject claimant's contention that the administrative law judge erred in failing to accord determinative weight to the opinion of his treating physician, Dr. Dickinson. It is well-established that the administrative law judge is not bound to accept the opinion of any particular medical expert, but is free to accept or reject all or any part of any medical evidence as he sees fit. *Avondale Shipyards, Inc. v. Kennel*, 914 F.2d 88, 24 BRBS 46 (CRT) (5th Cir. 1990).

In the present case, the administrative law judge considered Dr. Dickinson's opinion that claimant could not do his usual work, but found it outweighed by the contrary opinions of Drs. Han, Maguire, and Freeman, as was within his discretion. *See Thompson*, 26 BRBS at 57. First, the administrative law judge noted that although Dr. Dickinson was the evaluator of choice for claimant's attorney, he was unable to remember claimant at the deposition, even though he last saw him only six months earlier, and appeared to be confused regarding claimant's having worked at his old job without difficulty for seven weeks prior to being laid off. Secondly, the administrative law judge noted that Drs. Han, Maguire, and Freeman agreed that there was no objective evidence that claimant's back condition had been caused by the work injury, or evidence of any neurologic impairment which precluded him from performing his usual job. The administrative law judge found that their assessment was consistent with claimant's testimony that he was able to perform his usual work for seven weeks after the accident prior to being laid off. Finally, the administrative law

judge inferred from the facts that claimant was receiving state disability payments and living in Tijuana, and the "discrepancies" which Dr. Freeman had noted with regard to claimant's range of motion examination, that claimant's back condition is not the reason he is not working.

Claimant also asserts that the administrative law judge erred in concluding that he could perform his usual work because the job analysis for his position, which indicates that he is only required to lift objects weighing 45 pounds, does not accurately reflect the true force exerted on his back and that both Drs. Maquire and Dickinson indicated that claimant should not perform very heavy lifting. We disagree.¹ We note that Dr. Maquire specifically reviewed claimant's job requirements and determined that although claimant could not perform very heavy lifting, he nonetheless could perform this job. Depo. at 6.

The opinions of Drs. Han, Maquire, and Freeman in conjunction with the administrative law judge's negative assessment of claimant's credibility provide substantial evidence to support his finding that claimant is able to perform his usual job as a chipper.² As claimant has failed to raise any reversible error made by the administrative law judge in evaluating the conflicting medical evidence and making credibility determinations, his determination that claimant failed to establish his *prima facie* case is affirmed. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 1335, 8 BRBS 744, 747 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *Uglesich v. Stevedoring Services of America*, 24 BRBS 180, 183 (1991).³ The administrative law judge's determination that claimant is not entitled to disability compensation is therefore affirmed.

Accordingly, the administrative law judge's Decision and Order - Denying Benefits and Order on Motion for Reconsideration are affirmed.

SO ORDERED.

¹Although claimant also asserts that his inability to perform heavy lifting would preclude him from obtaining work as a chipper on the open market, claimant's ability to obtain work on the open market is irrelevant where he is able to perform his usual work.

²The administrative law judge erred in evaluating the evidence relevant to the extent of claimant's disability in terms of the Section 20(a), 33 U.S.C. §920(a), presumption. The Section 20(a) presumption applies only to causation and does not aid claimant in establishing the nature and extent of disability. *See Jones v. Genco, Inc.*, 21 BRBS 12, 15, (1988). This error is harmless, however, on the facts presented because the administrative law judge properly considered and weighed the conflicting medical evidence.

³Although claimant asserts that the administrative law judge erred in failing to resolve factual doubt in his favor, the United States Supreme Court recently determined that the "true doubt rule" is invalid because it conflicts with Section 7(c) of the Administrative Procedure Act, 5 U.S.C. §556(d). *Director, OWCP v. Greenwich Collieries*, U.S. , 114 S.Ct. 2251 (1994).

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge