

FRED RORY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
MAHER TERMINALS,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Julius A. Johnson, Administrative Law Judge, United States Department of Labor.

Philip J. Rooney (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

William M. Broderick, New York, New York, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (90-LHC-1517) of Administrative Law Judge Julius A. Johnson 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).

On December 13, 1988 claimant sustained an injury to his right knee when he slipped and fell on ice, in the course of his employment as a hustler driver for employer. Employer voluntarily paid claimant temporary total disability compensation until October 16, 1989. Claimant sought continuing disability compensation under the Act.

After consideration of the evidence, the administrative law judge denied the claim. Crediting the opinions of Drs. Griefinger and Larkins over the contrary opinion of Dr. Rosa, the administrative law judge concluded that claimant was able to return to his usual work on October 16, 1989 and was not entitled to further compensation because employer paid the appropriate compensation until that date.

On appeal, claimant contends that the administrative law judge erred in refusing to apply the

presumption contained in Section 20 of the Act, 33 U.S.C. §920(a), to his claim, that the administrative law judge failed to consider claimant's testimony, that the administrative law judge failed to consider the applicability of the "true doubt" rule, and that the administrative law judge failed to give appropriate weight to the attending physician's opinion that claimant is disabled. Employer responds, urging affirmance of the denial.

After review of the record, we hold that claimant has failed to raise any reversible error committed by the administrative law judge in weighing the conflicting evidence and making credibility determinations. Contrary to claimant's contention, it is claimant's burden to establish he is unable to perform his usual work without the aid of the Section 20(a) presumption. *Trask v. Lockheed Shipbuilding and Construction Co.*, 17 BRBS 56, 59 (1985). Moreover, in determining that claimant is able to return to his usual work, the administrative law judge considered claimant's testimony and the opinion of Dr. Rosa that claimant could not perform his usual work, but found, within his discretion, that this evidence is outweighed by the contrary opinions of Drs. Griefinger and Larkins that claimant is not disabled and can perform his usual work as a hustler driver.¹ See Tr. I at 166; Cl. Ex 1; Emp. Exs. 10, 20.

In evaluating the evidence, the fact-finder is entitled to weigh the evidence and draw his own inferences from it and is not bound to accept the opinion or theory of any particular witness. *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). It is within the discretion of the administrative law judge to accept or reject all or any part of any testimony according to his judgment. *Perini Corp. v. Heyde*, 306 F. Supp. 1321 (D.R.I. 1969); see also *Poole v. National Steel & Shipbuilding Co.*, 11 BRBS 390 (1979). Thus, as the administrative law judge's credibility determinations are rational and within his authority as factfinder, and the administrative law judge's findings are supported by the opinions of Drs. Griefinger and Larkins, we affirm the denial of benefits.²

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

SO ORDERED.

¹In so finding, the administrative law judge noted the discrepancies in the opinion of claimant's expert, Dr. Rosa, that claimant sustained a permanent total disability from chondromalacia, which his own arthroscopic surgery, as well as other objective examination, showed did not exist.

²Contrary to claimant's contention, the administrative law judge did not apply an incorrect legal standard in analyzing the evidence because there is no indication that the administrative law judge used a preponderance of the evidence standard. See *Strachan Shipping Co. v. Shea*, 406 F.2d 521 (5th Cir. 1969), cert. denied, (1969). Rather, the administrative law judge simply recognized that claimant had the burden of proof on the issue of nature and extent of disability and found that claimant's evidence was outweighed on credibility grounds. Moreover, we note that the "true doubt rule" is no longer applicable to cases arising under the Act. See *Director, OWCP v. Greenwich Collieries*, U.S. , 114 S.Ct. 2251 (1994).

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge