

CAROLYN S. TRINIDAD)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DEPARTMENT OF NAVY (MWR))	DATE ISSUED:
)	
and)	
)	
ALEXSIS RISK MANAGEMENT)	
SERVICES)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order of Theodor P. von Brand, Administrative Law Judge, United States Department of Labor.

Robert E. Walsh (Rutter & Montagna), Norfolk, Virginia, for claimant.

Gerard E.W. Voyer (Taylor & Walker, P.C.), Norfolk, Virginia, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (91-LHC-2245) of Administrative Law Judge Theodor P. von Brand 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.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *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).

Claimant worked as a kitchen helper and child care assistant for employer. On April 26, 1992, claimant injured her back while lifting children in and out of a carnival ride called the "moonwalk." Claimant received compensation for temporary total disability from May 2, 1991 through May 6, 1991. Claimant contends that after returning to work on light duty on May 7, 1991, she further aggravated her back injury and was disabled from May 16, 1991 through August 5, 1991. Claimant resigned from her job on May 15, 1991, contending that employer refused to offer light

duty work required by her physical restrictions.

In his Decision and Order denying benefits, the administrative law judge found that employer offered claimant light duty work within her restrictions and that she voluntarily resigned her position, as her assertions that her restrictions were not accommodated are not credible. Accordingly, the administrative law judge denied claimant's claim for temporary total disability compensation.¹

On appeal, claimant contends that she is entitled to temporary total disability benefits from May 16, 1991 through August 5, 1991, and that the administrative law judge failed to consider the medical reports of Drs. Edwards and Byrd advising that claimant remain out of work. Employer responds, urging affirmance of the denial of benefits.

We reject claimant's contention that the administrative law judge erred in finding that claimant was required to work beyond her restrictions when she returned to work on May 7, 1991. The administrative law judge rationally credited the testimony of claimant's co-workers, Ms. Porter and Ms. Griffin, that claimant's restrictions were accommodated. *See generally Todd Shipyard Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1982). Nonetheless, we are unable to affirm the administrative law judge's denial of benefits as he did not discuss the opinions of Drs. Edwards and Byrd. Dr. Edwards diagnosed lumbar strain on April 29, 1991 and allowed claimant to return to light duty work on May 7, 1991. Employer's Exhibit 10. Claimant continued to complain of back pain, telling Dr. Edwards that she had to work outside her restrictions. On May 17, 1991, Dr. Edwards noted that, whether the increase in claimant's pain was due to her return to work or not, objectively, claimant showed increased pain preventing her from working. Employer's Exhibit 11. Dr. Edwards also stated claimant was incapable of working from June 10, 1991 to July 6, 1991. Employer's Exhibits 13-15. Dr. Edwards released claimant for light duty on July 8, 1991. Employer's Exhibit 17. Dr. Byrd, to whom Dr. Edwards referred claimant, diagnosed lumbar strain on June 10, 1991, and advised claimant she should not work at that time. Employer's Exhibit 23. Dr. Byrd released claimant for light duty work on July 8, 1991, and on August 8, released claimant for work without restrictions. Employer's Exhibit 27.

Although the administrative law judge found that claimant was provided with work within the restrictions initially set by Dr. Edwards, the administrative law judge failed to discuss the medical opinions that claimant subsequently presented a significant increase in back pain, with a positive result on a straight leg raise test, and that claimant was disabled on an objective basis.² These opinions support the conclusion that regardless of the suitability of the job provided or

¹Claimant filed a Motion for Reconsideration on March 30, 1992, which was denied as untimely on May 19, 1992.

²The administrative law judge found that claimant's May 17 statement to Dr. Edwards that she was denied light duty work was not plausible, and did not accord it any weight. Decision and Order at 18, n. 11. Nonetheless, as Dr. Edwards found an objective basis for claimant's complaints, claimant's lack of credibility concerning her work duties cannot provide a basis for the denial of benefits.

claimant's reasons for leaving it, she sustained a period of disability after May 15, 1991. We therefore vacate the administrative law judge's denial of benefits, and we remand the case for consideration of claimant's entitlement to disability benefits in light of the opinions of Drs. Edward and Byrd.

Accordingly, the administrative law judge's Decision and Order denying benefits is vacated, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge