

BRUCE W. CHRISTENSEN)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
PORT OF PORTLAND)	DATE ISSUED:
)	
and)	
)	
SAIF CORPORATION)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Modifying Award of Alexander Karst, Administrative Law Judge, United States Department of Labor.

Robert K. Udziela (Pozzi, Wilson, Atchison, O'Leary & Conboy), Portland, Oregon, for claimant.

Randolph B. Harris (SAIF Corporation), Portland, Oregon, for employer/ carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Modifying Award (91-LHC-0179) of Administrative Law Judge Alexander Karst 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 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 law. *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant appeals the administrative law judge's decision granting employer's request for modification of claimant's award pursuant to Section 22 of the Act, 33 U.S.C. §922, eliminating claimant's benefits for permanent partial disability. Claimant was injured during the course of his employment on February 23, 1979, when he slipped and fell, causing an injury to his chest. Following a period of recovery, claimant returned to work for employer and, except for a three month period of incapacity in 1989 due to an unrelated injury to his knee, has continued in such

employment. In a Decision and Order dated September 9, 1982, Administrative Law Judge Ellin O'Shea had awarded claimant permanent partial disability compensation in the amount of \$54.36 per week, based upon a finding that claimant's wage-earning capacity had been reduced twenty percent, because his work-related chest injury prevented him from taking certain longshore jobs.

Employer subsequently sought modification of this award under Section 22 of the Act, 33 U.S.C. §922, contending that claimant no longer suffers a loss in wage-earning capacity. In his Decision and Order, the administrative law judge reviewed the extensive testimony and documentation presented by employer's economic expert and found that it supports the conclusion that claimant's average total hours post-injury are the same, if not greater, than those worked prior to the injury, and that claimant's hours spent in activities that his injury previously prevented him from performing following his accident had returned to, if not exceeded, pre-injury levels. Accordingly, the administrative law judge concluded that claimant no longer suffers a loss in wage-earning capacity and modified the Decision and Order of September 9, 1982, to eliminate claimant's compensation benefits for permanent partial disability.

On appeal, claimant challenges the administrative law judge's decision to modify his prior award of permanent partial disability compensation. Employer responds, urging affirmance of the administrative law judge's Decision and Order.

Section 22 of the Act provides the only means for changing otherwise final decisions; specifically, Section 22 provides that an administrative law judge may issue a new compensation order where a party establishes either a change of condition since the prior award or a mistake in a determination of fact. 33 U.S.C. §922 (1988). In the instant case, as noted by claimant in his Supplemental Memorandum of Authorities, "[t]he sole issue before the Board in the case at bar is whether a change in claimant's physical condition is a precondition to modification of claimant's award under Section 22 of the Act." Specifically, claimant contends that, as his physical condition remained unchanged since the date of Judge O'Shea's award of permanent partial disability compensation, the administrative law judge erred in modifying that award based upon a change in claimant's post-injury wage-earning capacity. We disagree.

Subsequent to the filing of claimant's brief on appeal, the United States Supreme Court issued its decision in *Metropolitan Stevedore Co. v. Rambo*, U.S. , 115 S.Ct. 2144 (1995) (Stevens, J., dissenting), in which the Court held that a disability award for a non-scheduled injury may be modified under Section 22 where there is a change in an employee's wage-earning capacity, even without any change in employee's physical condition. The Court declared that the fundamental purpose of the Act is to compensate employees for wage-earning capacity lost because of injury. Thus, where wage-earning capacity has been reduced, restored, or improved, the basis for the award of compensation changes and the statutory scheme provides for modification. 115 S.Ct. at 2148. Accordingly, any change in a claimant's wage-earning capacity, even without a change in his or her physical condition, may provide a basis for modification of the claimant's disability award. 115 S.Ct. at 2150. Thus, for the reasons set forth in *Rambo*, we reject claimant's contention that a change in claimant's physical condition is a precondition to modification pursuant to Section 22, and we affirm the administrative law judge's decision modifying the award based on a change in claimant's wage-earning capacity.

Accordingly, the administrative law judge's Decision and Order Modifying Award is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge