

MABRA HUFF)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
STRACHAN SHIPPING COMPANY)	DATE ISSUED: _____
)	
and)	
)	
TEXAS EMPLOYERS' INSURANCE)	
ASSOCIATION)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Summary Decision on Motion for Modification of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

T. Dwight Wilson (Wilson and Associates), Houston, Texas, for claimant.

Jad J. Stepp and Dennis J. Sullivan (Eastham, Watson, Dale & Forney, L.L.P.), Houston, Texas, for employer/carrier.

Before: SMITH, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Summary Decision on Motion for Modification (87-LHC-1170) of Administrative Law Judge C. Richard Avery 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 if they are rational, supported by substantial evidence, and in accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On March 5, 1986, claimant allegedly injured his ribs, neck, spine, and thigh while working for employer as a longshoreman. Dr. Palm, who treated claimant immediately after the injury, diagnosed a contusion of the left chest and left thigh. Between March 5, 1986 and May 2, 1986, Dr. Palm treated claimant 24 times but claimant did not complain of back pain, and although claimant experienced some leg pain and numbness, an EMG performed on his leg was normal. On May 2, 1986, Dr. Palm released claimant to return to work. Claimant, however, did not return to work but

sought treatment for persistent low back pain from various doctors, and underwent surgery for herniated discs in October 1986 and January 1988. Employer voluntarily paid claimant temporary total disability benefits from March 6, 1986 through May 4, 1986.

In the Decision and Order - Denying Benefits, the administrative law judge denied claimant additional benefits finding that claimant's back injury was not work-related based on the deposition testimony of Drs. Palm and Freeman that the only injuries claimant sustained in March 1986 consisted of bruised ribs and a contusion of the left thigh, and claimant recovered from these on May 2, 1986. Dr. Palm specifically stated that claimant's back condition was not related to the March 1986 injury, and, in October 1986, prior to claimant's surgery, Dr. Freeman found claimant had no back problems and could return to work. The administrative law judge considered the evidence as a whole, and found that claimant offered no opinion attributing his back condition to the March 1986 injury, that claimant tended to exaggerate and lacked credibility, that Drs. Palm and Freeman had a high level of expertise, and that no diagnostic tests showed a herniated disc until November 1987. The administrative law judge therefore denied claimant's claim for benefits, as well as his subsequent motion for reconsideration. Claimant appealed to the Board.

In *Huff v. Strachan Shipping Co.*, BRB No. 88-2871 (July 25, 1991) (unpublished), the Board affirmed the administrative law judge's denial of additional benefits, finding that Dr. Palm's and Freeman's opinions constitute substantial evidence in support of the administrative law judge's finding that claimant's back condition is not work-related. The Board denied claimant's motion for reconsideration.

Claimant subsequently filed a Motion for Modification pursuant to Section 22 of the Act, 33 U.S.C. §922, before the administrative law judge, submitting eleven exhibits in support of his motion. The administrative law judge noted that only two of the exhibits, Dr. Wilde's report dated August 30, 1991, and Dr. Tadros' report dated June 27, 1988, post-date the administrative law judge's last ruling, his denial of claimant's motion for reconsideration dated June 21, 1988. The administrative law judge found that because Dr. Wilde, who began treating claimant in December 1987, performed surgery on claimant in January 1988, claimant could have submitted Dr. Wilde's opinion on causation at the time he filed his motion for reconsideration on May 12, 1988. Further, the administrative law judge found that Dr. Wilde's opinion was not as credible as Drs. Palm's and Freeman's opinions because Dr. Wilde treated claimant nearly two years after the March 1986 injury whereas Drs. Palm and Freeman treated claimant within the first eight months of the injury. The administrative law judge concluded that claimant was seeking to have a redetermination of facts on issues that had already been considered and decided in the initial proceeding, and that it would not be in the interests of justice or of administrative finality to reopen the claim.

On appeal, claimant contends that the 1987 reports of Drs. Wilde and Pallares establish that his current back disability is related to the March 1986 injury.¹ Claimant also contends that he could not have submitted Drs. Wilde's and Tadros' opinions when he filed his motion for reconsideration, as the submission of new evidence would not have been permitted at the time. Employer responds, urging affirmance.

Section 22 allows for modification of a compensation order on the ground of a change in physical or economic conditions or because of a mistake in a determination of fact. 33 U.S.C. §922; *Metropolitan Stevedore Co. v. Rambo*, U.S. , 114 S.Ct. 2251, 28 BRBS 43 (CRT)(1994); *Duran v. Interport Maintenance Corp.*, 27 BRBS 8 (1993); *Dobson v. Todd Pacific Shipyards Corp.*, 21 BRBS 174 (1988). In the instant case, the administrative law judge rationally found that claimant has not presented any credible evidence showing a change of condition or a mistake of fact. Although the regulations do not address whether new evidence may be submitted with a Motion for Reconsideration, 20 C.F.R. §702.338 states that the administrative law judge may reopen the record at any time prior to the filing of a compensation order for the receipt of additional relevant evidence. Thus, claimant could have tried to submit Dr. Wilde's January 1988 operative report as post-hearing evidence, as the administrative law judge's decision was not issued until April 1988. Dr. Pallares' 1987 opinions could have been submitted prior to the January 1988 hearing on the original claim. See *Smith v. Ingalls Shipbuilding Div., Litton Systems, Inc.*, 22 BRBS 46, 50 (1989).

Furthermore, the opinions of Drs. Pallares and Tadros do not address causation but state only that claimant suffers from ongoing back pain, and Dr. Tadros states claimant is unable to perform his usual work due to his back pain. Lastly, and most importantly, the administrative law judge rationally found that Dr. Wilde's 1991 opinion that claimant's back condition is work-related is not as credible as the earlier contrary opinions of Drs. Palm and Freeman because Dr. Wilde did not begin to treat claimant until almost two years after the March 1986 injury. The administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence. *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71, 73 (1996); see also *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). As his finding that claimant failed to establish a basis for modifying the earlier denial of benefits is rational and supported by substantial evidence, we affirm his finding.

¹In his reports dated October 28, 1986 and November 30, 1987, Dr. Pallares states that claimant suffered ongoing back pain after the March 1986 injury.

Accordingly, the administrative law judge's Summary Decision on Motion for Modification denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge