BRB No. 96-1614

TOMMY GOLDEN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TURNER MARINE BULK, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
LOUISIANA WORKERS' COMPENSATION CORPORATION	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits and Order Denying Motion for Reconsideration of Quentin P. McColgin, Administrative Law Judge, United States Department of Labor.

Kevin B. Liebkemann, Metairie, Louisiana, for claimant.

Jacqueline L. Egan, Baton Rouge, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits and Order Denying Motion for Reconsideration (94-LHC-3210) of Administrative Law Judge Quentin P. McColgin 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 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 September 30, 1993, claimant, working as a heavy equipment operator for employer, was injured when the front-end loader he was operating suddenly jumped, slamming his back into a piece of steel tubing in the cage of the machine. Claimant was initially treated by employer's physician, Dr. Segura, who placed claimant on light duty work

with no lifting over twenty pounds and no bending. Claimant subsequently visited Dr. Purser who opined by letter dated October 26, 1993, that claimant was temporarily totally disabled.

Following his September 30, 1993, accident employer placed claimant on light-duty work in its guard shack. Claimant worked in this position until October 30, 1993, stating that he had to quit because of back pain and because his prescribed pain medication made him drowsy. Hearing Transcript at 55, 99. Employer voluntarily paid temporary total disability benefits from October 1, 1993, through February 3, 1994, and all medical bills with the exception of certain bills submitted by claimant's physician, Dr. Purser.[1] Claimant thereafter filed a claim seeking an award of continuing temporary total disability benefits, medical benefits and associated mileage expenses.

In his decision, the administrative law judge determined that claimant was temporarily totally disabled from September 30, 1993, until January 7, 1994, with no resulting permanent disability, and thus, concluded that claimant is not entitled to any additional disability compensation. Additionally, the administrative law judge found that claimant is not entitled to further medical benefits or reimbursement of any expenses incurred for the moist heat and electrical stimulation treatment provided by Dr. Purser. Accordingly, benefits were denied. Claimant's motion for reconsideration was denied by Order dated August 7, 1996.

On appeal, claimant challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance.

Claimant contends that the administrative law judge erred in concluding that claimant was capable of returning to work on January 7, 1994, and thus, not entitled to an award of continuing temporary total disability benefits. In particular, claimant argues that the administrative law judge improperly credited the medical report of Dr. Landry over the contrary and better supported opinion of Dr. Purser. Claimant also argues that the administrative law judge erred by rejecting claimant's request for medical benefits and mileage expenses associated with Dr. Purser's treatment. Claimant maintains that contrary to the administrative law judge's finding, Dr. Purser performed the exact rehabilitative therapy program with lumbar exercises and conditioning outlined by Dr. Murphy, and as

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[1]Specifically, all of Dr. Purser's medical bills submitted through July 12, 1994, including seventy-three moist heat and electrotherapy treatments over the five month span immediately preceding that date, Claimant’s Exhibit 11 at 5-9, and mileage expenses submitted through April 28, 1994, have been voluntarily paid by employer.

such is entitled to benefits for this treatment.

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we hold that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error. Evaluating the evidence regarding the nature and extent of claimant's disability, the administrative law judge rationally accorded Dr. Landry's opinion greatest weight since his diagnosis is corroborated by the impartial specialist, Dr. Murphy.[2] The administrative law judge also rationally rejected the contrasting opinion of Dr. Purser since his finding that claimant is temporarily totally disabled is not supported by the diagnostic tests relied upon by Dr. Murphy and thus, is unsupported by the objective medical evidence. Moreover, the administrative law judge relied on Dr. Landry's assessment that claimant could return to his usual level of activity on January 7, 1994, to find that claimant had fully recovered from his September 30, 1993, accident as of that date. As the administrative law judge is entitled to evaluate the credibility of all witnesses, and may draw his own inferences and conclusions from the evidence, *see, e.g., Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963), and his credibility determinations in this case are rational and within his authority as fact finder, *see generally Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988), the administrative law judge's determinations that claimant was capable of returning to his usual employment on January 7, 1994, and that claimant's injury did not result in any permanent disability are affirmed.[3] Consequently, we affirm the administrative law judge's conclusion that claimant is not entitled to any additional compensation.

[2]The administrative law judge specifically acknowledged that as a result of the conflicting opinions of Drs. Landry and Purser the Department of Labor appointed Dr. Murphy to serve as an independent medical examiner pursuant to Section 7(e), 33 U.S.C. §907(e).

[3]In light of our affirmance of these findings, we need not consider claimant's contention that employer has not shown the availability of suitable alternate employment.

Similarly, in weighing the evidence relevant to the claim for medical benefits, the administrative law judge rationally credited the opinions of Drs. Murphy and Landry over the conflicting opinion of Dr. Purser to conclude that Dr. Purser's moist heat and electrical stimulation treatments are unnecessary and unreasonable.[4] *See generally Hunt v. Newport News Shipbuilding & Dry Dock Co.*, 28 BRBS 364 (1994), *aff'd mem.*, 61 F.3d 900 (4th Cir. 1995); *Wheeler*, 21 BRBS at 33. We therefore affirm the administrative law judge's denial of all expenses relating to such treatment beyond those voluntarily paid by employer, *see* n. 1, *infra*, including claimant's claim for mileage expenses, as it is supported by substantial evidence. *Id.*

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

[4]While Dr. Purser testified that his treatments of claimant's back conformed to the course of treatment proscribed by Dr. Murphy, Post-Hearing Deposition of Dr. Purser at 24-26, 31-33, Dr. Murphy repeatedly stated, even after consideration of Dr. Purser's deposition, that the treatment program carried out by Dr. Purser was not the rehabilitative program he had envisioned and/or recommended particularly since it involved the prolonged and repeated use of heat and electrotherapy. Post-Hearing Deposition of Dr. Murphy at 15-27, 55-56, 72-78. Thus, contrary to claimant's contention, Dr. Purser's course of treatment is not the same therapy that was recommended by Dr. Murphy. Moreover, inasmuch as Dr. Purser provided only general, undocumented testimony regarding the additional treatment provided claimant, the administrative law judge rationally concluded that the contested charges involved only moist heat and electrical stimulation treatments, as that finding is supported by Dr. Purser's written records which refer only to those two forms of treatment, through notations MH, for moist heat, and ET, for electrotherapy. Claimant's Exhibit 11, at 10-14.

REGINA C. McGRANERY
Administrative Appeals Judge