BRB No. 96-1717

FRANCIS BRYAN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
GLOBAL ASSOCIATES	)	DATE ISSUED:
	)	
and	)	
	)	
NATIONAL UNION FIRE INSURANCE COMPANY	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Medical Benefits and Decision and Order Denying Motion for Reconsideration of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Margaret M. Koral (Koral, Kahn & Koral, P.C.), Philadelphia, Pennsylvania, for claimant.

Richard N. Held (Post & Schell, P.C.), Philadelphia, Pennsylvania, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Awarding Medical Benefits and Decision and Order Denying Motion for Reconsideration (95-LHC-0177) of Administrative Law Judge Paul H. Teitler 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. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant sustained an injury to his back on July 15, 1992, when he fell and landed on several nuts and bolts. Upon his release for light duty work, claimant returned to

employer's facility for one day, July 17, 1992; claimant was subsequently terminated in October 1992 for job abandonment.

In his Decision and Order, the administrative law judge found that claimant suffered no economic disability after July 17, 1992, the date upon which employer established the availability of suitable alternate employment in its own facility through its light duty program, and that claimant's injury had fully resolved as of June 9, 1994. Accordingly, the administrative law judge found claimant entitled to no compensation, but awarded claimant medical benefits under Section 7 of the Act, 33 U.S.C. §907. Claimant's motion for reconsideration was denied by the administrative law judge.

Claimant now appeals, contending that the administrative law judge erred in denying him total disability compensation from July 15, 1992, until March 10, 1993, the date on which employer voluntarily began paying compensation, and from June 9, 1994, the date employer terminated these benefits, and continuing. Employer responds, urging affirmance.

Claimant contends that the administrative law judge erred in finding that employer had established the availability of suitable alternate employment within its own facility.[1] Where, as in the instant case, claimant has established that he is unable to perform his usual employment duties due to a work-related injury, the burden shifts to employer to demonstrate the availability of specific jobs within the specific geographic area where claimant resides, which claimant, by virtue of his age, education, work experience, and physical restrictions is capable of performing, and for which he can compete and reasonably secure. *See New Orleans (Gulfwide) Stevedores, Inc. v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981); *see also Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 21 BRBS 10 (CRT)(4th Cir. 1988); *Roger's Terminal & Shipping Corp. v. Director, OWCP*, 784 F.2d 687, 18 BRBS 79 (CRT)(5th Cir. 1986). Employer may meet this burden by offering claimant a job in its facility. *See Darby v. Ingalls Shipbuilding, Inc.*,

[1]Initially, we note that claimant's contention that he remains totally disabled as he has not been released to return to his pre-injury work and was released only to light duty work in October 1994 is unsupported by the record and claimant's own concessions. Dr. Perkins released claimant to return to sedentary work on July 17, 1992, EX 1 at 12; Dr. Lee released claimant to return to his usual job on June 9, 1994. EX 2. Moreover claimant, in his brief, concedes Dr. Perkins released him to return to sedentary work on July 17, 1992. *See* Claimant's brief at 5.

99 F.3d 685, 30 BRBS 93 (CRT)(5th Cir. 1996); *Darden v. Newport News Shipbuilding & Dry Dock Co.*, 18 BRBS 224 (1986). In order to meet its burden by offering a job in its facility, the job must be actually available to claimant. *See Mendez v. National Steel & Shipbuilding Co.,* 21 BRBS 22 (1988).

In the instant case, the administrative law judge found that employer had established the availability of suitable alternate employment within its own facility based upon the testimony of Ms. Marion Murphy, employer's Administrative Assistant to the Project Coordinator, and Mr. Booker Hankerson, who is in charge of employer's Budget Analysis. Both of these witnesses testified that suitable alternate employment within claimant's physical restrictions was available or would have been tailored for claimant as part of employer's light duty program upon claimant's return to work on July 18, 1992. *See* HT at 123-24, 154, 181. Specifically, Ms. Murphy testified that it was employer's policy, as part of its light duty program, to place each injured employee at their full salary in a position within their physical restrictions. Mr. Hankerson similarly testified that he would have placed claimant in the position of brow watch, a seated position, on the *U.S.S. Wisconsin* had he returned to work on July 18, 1992, as instructed by employer. It is well established that, in arriving at his decision, the administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences from the evidence. *See John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988). In case at bar, the administrative law judge's decision to rely upon the testimony of Ms. Murphy and Mr. Hankerson regarding the availability of specific suitable alternate employment within employer's facility, specifically the seated brow watch position, is not inherently incredible or patently unreasonable. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Accordingly, we affirm the administrative law judge's determination that, as of July 18, 1992, employer established the availability of suitable alternate employment at its facility within claimant's restrictions, and his consequent denial of disability compensation to claimant as of that date.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Law Judge

NANCY S. DOLDER,
Administrative Appeals Judge

REGINA C. McGRANERY,
Administrative Appeals Judge