BRB No. 97-0419

DEAN HATVICK	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
HYDRODYNAMICS	)	DATE ISSUED:
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits of Edward C. Burch, Administrative Law Judge, United States Department of Labor.

Jeffrey Winter (Easley & Winter), San Diego, California, for claimant.

Frederick C. Phillips (Phillips, Haskett & Ingwalson, P.C.), San Diego, California, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Awarding Benefits (95-LHC-3072) of Administrative Law Judge Edward C. Burch 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).

The sole issue raised by claimant's appeal is whether the administrative law judge erred in failing to accept an alleged stipulation between the parties regarding the issue of whether claimant's current shoulder impairment is causally related to his employment with employer.

On July 15, 1991, claimant, a shop mechanic, suffered an accident during the course of his employment at employer's facility, but continued performing his usual job until July 17, 1991, when he reported an injury to his back. Claimant returned to his pre-injury work on July 23, 1991, and continued working for employer until he was laid off on August

14, 1991. On November 19, 1991, claimant filed a claim under the California Workers' Compensation Act for injuries not only to his back but also to his arm; claimant subsequently received temporary and permanent disability benefits under the California Act. In January 1995, claimant filed a claim for benefits under the Act seeking permanent total disability compensation based on an alleged injury to his right shoulder.

In his Decision and Order, the administrative law judge concluded that although claimant's back problems arose out of his work incident, his current shoulder condition is not causally related to his employment with employer. Accordingly, the administrative law judge found that claimant suffered temporary total disability arising from his back injury from July 17 through July 22, 1991, from August 15 through August 24, 1991, and from September 4 through September 13, 1991, based on a compensation rate of $448.67, and that employer was entitled to a credit for all sums already paid claimant under the California Act. Having concluded that claimant's current shoulder impairment, if any, was not work-related, the administrative law judge found that claimant was not entitled to compensation for this condition.

On appeal, claimant contends only that the administrative law judge erred in addressing the issue of causation as it relates to claimant's current shoulder impairment because the parties had stipulated that the issue of causation would be decided by Dr. Wieseltier, an agreed-upon medical examiner, who rendered two opinions in this case. Employer responds that not only does such a stipulation not exist, but also that the issue of causation was properly raised prior to the hearing and that claimant neither objected to its inclusion at the hearing, nor requested additional time in which to present evidence on this issue. Claimant replies that the existence of such an agreement is inferred in Dr. Wieseltier's opinion letter; alternatively, claimant requests that the case be remanded to the administrative law judge to allow him to present evidence on this issue.

Pursuant to 29 C.F.R 18.51, parties may enter into stipulations at any stage of the proceedings, but until such time as the stipulations are received into evidence at a hearing or prior thereto, they are not binding on the parties. *See Warren v. National Steel & Shipbuilding Co.,* 21 BRBS 149 (1988). In this regard, the Board has held that an administrative law judge may not reject stipulations without giving the parties prior notice that he will not automatically accept the stipulations. *See Dodd v. Newport News Shipbuilding & Dry Dock Co.,* 22 BRBS 245 (1989). In the instant case, there is no evidence, nor does claimant contend, that the alleged stipulation was ever offered into evidence before the administrative law judge. Moreover, claimant is unable to cite any evidence of record establishing the existence of such a stipulation; rather, claimant asserts that Dr. Wieseltier's opinion **implies** the existence of such a stipulation. However, claimant's own LS-18, filed September 4, 1995, a year after Dr. Wieseltier's second report, states that the parties have not reached an agreement on any issues, thereby belying the existence of such a stipulation. Additionally, employer listed causation as an unresolved issue in its pre-hearing filings, thereby providing claimant with timely notice. Employer's Pre-Trial Statement, June 24, 1996; *see Finch v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 196 (1989). Finally, our review of the record reveals that the administrative

law judge did not mention that such a stipulation was presented to him;[1] to the contrary, the administrative law judge stated that among the issues remaining for adjudication was "(2) whether the injuries for which claimant seeks compensation occurred during the course

[1]In his Decision and Order, the administrative law judge states that the parties stipulated that:

> (1) Claimant suffered an injury on July 15, 1991, during the course and in the scope of his employment with [employer];
>
> (2) Claimant's average weekly wage at the time of his injury was $673.00;
>
> (3) as a result of a successful state claim for worker's compensation benefits, a finding in favor of the Claimant would entitle the employer to a credit of $37,872.00 for temporary disability benefits and $41,526.10 in permanent disability benefits; and
>
> (4) no compensation had been paid under the...Act.

Decision and Order at 1-2. From a review of the Hearing Transcript it appears that the parties, rather than presenting written stipulations, agreed, off the record and prior to the hearing, on the above issues. HT at 4-5.

and in the scope of his employment... ." Decision and Order at 2. Thereafter, claimant did not argue that such a stipulation existed nor did he request additional time to establish its existence or to submit evidence on the issue itself. *See* 20 C.F.R. §702.336. Thus, based upon the record before us, we hold that the administrative law judge did not err in addressing the issue of causation, as there is no evidence that the alleged stipulation relied upon by claimant was presented to the administrative law judge or, for that matter, that such a stipulation was ever contemplated by the parties. As this issue is the sole basis for claimant's challenge to the administrative law judge's causation determination, it is affirmed.

Accordingly, the administrative law judge's Decision and Order - Awarding Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge