

BRB No. 97-1373

DORIS SATTERFIELD)
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 Claimant-Respondent) DATE ISSUED:
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 v.)
)
 UNITED ENGINEERING AND)
 CONSTRUCTORS, INCORPORATED)
)
 and)
)
 LIBERTY MUTUAL INSURANCE)
 COMPANY)
)
 Employer/Carrier-)
 Petitioners) DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Thomas Schneider, Administrative Law Judge, United States Department of Labor.

Timothy Quinn, Denver, Colorado, for claimant.

Kurt A. Gronau, Brian G.S. Choy and Glenn N. Taga (Gronau Choy & Taga), Honolulu, Hawaii, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (96-LHC-823) of Administrative Law Judge Thomas Schneider 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.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *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 November 30, 1990, while working as an office worker for employer on Johnston Atoll in the South Pacific, claimant slipped on a sidewalk and fell on her left wrist. Claimant sought treatment the next day, but after x-rays were taken she was told there was nothing wrong with her hand. Employer filed its First Report of Injury on December 5, 1990. After claimant returned home to Denver, Colorado, for the Christmas holidays, her primary care physician, Dr. Stuebner, advised claimant that she might have a possible hairline fracture, but gave claimant the impression that it was too late to treat it and reassured her that it was not serious. After the holidays, claimant returned to her position with employer on Johnston Atoll, but was subsequently transferred to employer's Denver office in February 1991. When claimant returned home, she was informed by employer that there were no openings for her. Claimant thereafter commenced a job search, but found that her ability to type had deteriorated due to pain and weakness in her wrist.

In April 1991, claimant returned to Dr. Stuebner, who referred her to Dr. Curran, an orthopedic specialist. Dr. Curran noted that the December 24, 1990 x-rays did not indicate a fracture, and that whatever had occurred had healed so there was no need for immobilization and splinting. Dr. Curran diagnosed a wrist sprain and recommended physical therapy. In July 1993 claimant, who continued to experience pain and discomfort in her wrist, saw Dr. Gehret, who suspected that her wrist may require an exploration, and referred her to Dr. Conyers, a microvascular surgeon. In August 1993, Dr. Conyers performed an arthroscopy and, on September 13, 1993, performed surgery to repair a ligament rupture in claimant's wrist. Dr. Conyers noted in a later report that the delay in the proper diagnosis of claimant's condition was probably due to the complexity of the human wrist and that a significant ligament injury often does not appear on x-ray until after a significant period of time has passed. Claimant filed her claim for benefits under the Act on March 2, 1994, seeking temporary total disability compensation.

The only issue before the administrative law judge was whether the instant claim was timely filed pursuant to Section 13(a) of the Act, 33 U.S.C. §913(a). In his Decision and Order, the administrative law judge found that claimant's condition was initially misdiagnosed by her doctors as not being severe. Thereafter, relying on the holding of the United States Court of Appeals for the Ninth Circuit in *Abel v. Director, OWCP*, 932 F.2d 819, 24 BRBS 130 (CRT)(9th Cir. 1991), the administrative law judge found that claimant was not aware of the full character of the harm done to her until August or September 1993, when she was advised by Dr. Conyers that her wrist would require surgery. Accordingly, the administrative law judge found that the claim, filed within one year of August 1993, was timely filed under Section 13(a) of the Act, and awarded claimant temporary total disability compensation, see 33 U.S.C. §908(b), and medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907. On May 22, 1997, the administrative law judge issued an Order denying

employer's motion for reconsideration.

On appeal, employer contends that the administrative law judge erred in finding that claimant's claim was timely filed pursuant to Section 13 of the Act. Specifically, employer argues that claimant knew that she had sustained a work-related injury, as well as the extent of that injury, and was aware that the injury was affecting her wage-earning capacity, by 1991. Claimant responds, urging affirmance of the administrative law judge's decision. For the reasons that follow, we affirm the administrative law judge's finding that claimant's claim was timely filed under Section 13(a) of the Act.

Section 13(a) of the Act¹ applies in cases involving traumatic injuries and requires that a claimant file her claim for benefits within one year of the time she becomes aware, or with the exercise of reasonable diligence should be aware, of the relationship between her injury and her employment. 33 U.S.C. §913(a). In *Abel*, 932 F.2d at 819, 24 BRBS at 130 (CRT), the United States Court of Appeals for the Ninth Circuit, in whose jurisdiction the instant case arises, followed the standard it enunciated in *Todd Shipyards v. Allan*, 666 F.2d 399, 14 BRBS 427 (9th Cir.), *cert. denied*, 459 U.S. 1034 (1982), in holding that a claimant is not injured for purposes of commencing the Section 13(a) one-year statute of limitations period until the claimant is reasonably aware of the full character, extent and impact of her work-related injury. *See also Stancil v. Massey*, 436 F.2d 274 (D.C. Cir. 1970). Applying this standard, the court held that the claimant did not have an injury for which to file a claim until he was advised that he had a serious knee problem. Prior to that time, based on medical advice he received, the claimant could reasonably believe that his knee condition was not serious and would eventually heal. The court in *Abel* additionally stated that the awareness inquiry does not only concern whether a work-related harm would probably diminish a claimant's capacity to earn a living, but also whether the claimant reasonably believes he is physically disabled. Thus, the court held that even though the claimant's injury caused him to miss some time from work,

¹Section 13(a) states, in relevant part, that:

Except as otherwise provided in this section, the right to compensation for disability or death under this chapter shall be barred unless a claim therefore is filed within one year after the injury or death. . . . The time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment.

33 U.S.C. §913(a).

the Section 13(a) statute of limitations did not commence until a physician indicated that the knee problem was more serious than originally anticipated. See *Abel*, 932 F.2d at 823, 24 BRBS at 136 (CRT).

In the instant case, claimant was aware of the work-related nature of her injury at the time it occurred. Nevertheless, the administrative law judge found that the Section 13 statute of limitations did not begin to run until August 1993, when she learned from Dr. Conyers that her wrist would require surgery. Critical to the administrative law judge's determination was the fact that while claimant knew she was hurt and could not find work, she still could not find a physician to verify her complaints or relate her injury to the work accident;² as a result, claimant's private health insurer paid most of her medical bills. See Tr. at 38; Emp. Ex. C.³ In this regard, the administrative law judge acknowledged claimant's uncontradicted testimony that between her visit to Dr. Curran in 1991 and to Dr. Gehret in 1993, she did not see a specialist because she was not getting any help from the doctors and believed her wrist condition was something with which she would have to live. See Tr. at 54. However, as in *Abel*, claimant relied on medical advice from Drs. Stuebner and Curran that she did not have a serious condition, and furthermore, that she did not have a work-related injury necessary for her workers' compensation claim. Based upon the foregoing, we hold that the administrative law judge's finding that claimant was not aware of the full character, extent and impact of her wrist condition until she saw Dr. Conyers in August 1993, at which time she received an accurate diagnosis of her condition and the opinion that surgery on her wrist would be required, is rational, supported by substantial evidence, and in accordance with the

²Employer's carrier paid for services rendered by Dr. Stuebner on December 24, 1990, and Dr. Curran on April 16, 1991. See Emp. Ex. A. Sometime thereafter in 1991, employer informed claimant that it was administratively closing her file. See Emp. Ex. B at 27-28; Tr. at 42-43.

³In his report of April 19, 1991, Dr. Curran stated that while he suspected claimant's injury could be compensable, he would treat it as a personal injury until he received further documentation. See Emp. Ex. C.

holdings of the Ninth Circuit in *Allan and Abel*. We therefore affirm the administrative law judge's determination that claimant's claim, filed on March 2, 1994, was timely filed pursuant to Section 13(a) of the Act.

Accordingly, the Decision and Order Awarding Benefits of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge