

HENRY JAMES	)	
	)	
Claimant-Petitioner	)	DATE ISSUED: _____
	)	
v.	)	
	)	
COOPER / T. SMITH STEVEDORING	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Vivian Schreter-Murray, Administrative Law Judge, United States Department of Labor.

Myles R. Eisenstein, Baltimore, Maryland, for claimant.

J. Stephen Simms and Vincent J. Columbia, Jr. (Greber & Simms), Baltimore, Maryland, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (96-LHC-875) of Administrative Law Judge Vivian Schreter-Murray denying benefits 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant sustained an injury to his upper right side on February 3, 1995, when he was struck by a lashing bar during the course of his employment with employer. Employer voluntarily paid temporary total disability benefits to claimant until claimant returned to his usual employment as a general longshoreman on April 3, 1995. Claimant thereafter sought additional compensation under the Act. See 33 U.S.C. §908(c)(1), (21). At a formal hearing held on November 19, 1996, claimant requested that the administrative law judge recuse herself from the instant case due to judicial bias; specifically, claimant alleged bias due to a complaint filed by claimant's counsel with the Chief Judge of the Office of the Administrative Law Judges because the administrative law judge had granted a

continuance the day before in another case over claimant's attorney's objection.

In her Decision and Order, the administrative law judge initially rejected claimant's recusal motion, reasoning that recusal must be grounded in extra-judicial conduct, that claimant's alleged grounds were based on judicial conduct, and that the facts asserted do not warrant recusal. The administrative law judge next rejected claimant's allegation of an arm injury, finding that the injury sustained by claimant was solely to claimant's right shoulder. The administrative law judge next determined that claimant did not sustain a permanent impairment to the shoulder, nor did he sustain a loss in wage-earning capacity from that injury. Finally, she denied the claim for penalties pursuant to 33 U.S.C. §914(e). Accordingly, the claim for additional compensation was denied.

On appeal, claimant asserts error in the administrative law judge's refusal to recuse herself from the instant case based upon his allegation of bias. Claimant further contends that the administrative law judge's alleged bias is evident by her conduct at the formal hearing and her subsequent findings of fact. Lastly, claimant challenges the administrative law judge's denial of her claim for benefits under the Act. Employer responds, urging affirmation.

Claimant initially challenges the administrative law judge's decision not to recuse herself from the case at bar. Pursuant to Section 18.31 of the Rules of Practice and Procedure Before the Office of Administrative Law Judges, 29 C.F.R. §18.31, a party who deems that the administrative law judge is unqualified for any reason shall file a motion to recuse with the administrative law judge, who shall rule on the motion. In the instant case, claimant's counsel's asserted at the formal hearing that the complaint which he filed against the administrative law judge with the Chief Administrative Law Judge regarding a different claimant in a different case mandated that the administrative law judge recuse herself from the instant case; on appeal, claimant has additionally asserted bias based upon the administrative law judge's subsequent rulings. We hold that claimant has failed to show that the administrative law judge in the instant case was biased against him. Initially, adverse rulings, alone, are insufficient to show judicial bias. See *Olsen v. Triple A Machine Shops, Inc.*, 25 BRBS 40, 45-46 (1991), *aff'd mem. sub nom. Olsen v. Director, OWCP*, 996 F.2d 1226 (9th Cir. 1993). Moreover, trial conduct alone will not support a finding of bias. See *In re Cooper*, 821 F.2d 833, 838-839 (1st Cir. 1987). Rather, judicial bias may be established based on an extrajudicial source that results in an opinion on the merits on some basis other than what the judge learned from her participation in this case. See *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966). Lastly, claimant's reliance on 28 U.S.C. §455 is misplaced, as this statute does not apply to administrative law judges. See *Greenberg v. Board of Governors of the Federal Reserve System*, 968 F.2d 164, 167 (2d Cir. 1992). Accordingly, we affirm the administrative law judge's decision not to recuse herself from this case, as claimant has not affirmatively established that the administrative law judge was biased against him.

Claimant next challenges the administrative law judge's denial of his request for additional compensation benefits; specifically, claimant contends that the administrative law judge erred in finding that claimant did not sustain an arm injury and, furthermore, that he sustained no permanent impairment to the shoulder. We disagree. It is well-established

that claimant bears the burden of establishing the nature and extent of any disability sustained as a result of a work-related injury. See *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding & Const. Co.*, 17 BRBS 56 (1985). In the instant case, the administrative law judge credited the medical reports and opinions of Drs. Phillipe, Pushkin, and Hunt in determining that claimant sustained a temporarily disabling soft tissue injury to the right shoulder, and in subsequently concluding that there is no credible evidence that he directly or indirectly injured his arm.

We hold that the administrative law judge committed no error in crediting these opinions over the opinions of Drs. Riederman and Rosenbaum. Claimant consistently reported that he was struck by a lashing bar on his right shoulder. See, e.g., EXS 1, 2, 4, 5. Dr. Phillipe released claimant to return to work on April 3, 1995, CX 3B, and on that day claimant returned to his usual employment as a general longshoreman. Moreover, Drs. Phillipe and Puskin reported that claimant's shoulder reached maximum medical improvement on April 13, and April 26, 1995, respectively, and neither physician placed restrictions on claimant. See CXS 3B, 4B. Lastly, Dr. Hunt unequivocally opined that claimant did not sustain any residual shoulder impairment. EX 7. In adjudicating a claim, it is well-established that an administrative law judge is entitled to weigh the medical evidence and draw her own inferences from it, see *Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988), and she is not bound to accept the opinion or theory of any particular witness. See *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). In the case at bar, the administrative law judge's credibility determinations are within her authority as a factfinder, and as these credited opinions constitute substantial evidence to support the administrative law judge's ultimate findings, we affirm the administrative law judge's determination that claimant is not entitled to additional permanent partial disability compensation under the Act.<sup>1</sup> See generally *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge

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<sup>1</sup>We note that, as the site of claimant's injury was his shoulder, claimant would not have been entitled to an award under the schedule for any permanent disability to his arm. See *Andrews v. Jeffboat, Inc.*, 23 BRBS 169, 173 (1990).

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REGINA C. McGRANERY  
Administrative Appeals Judge