

BRB No. 07-0612

M.W.)
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 Claimant-Petitioner)
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 v.)
)
 UNIVERSAL MARITIME) DATE ISSUED: 01/29/20082008
 SERVICE)
)
 and)
)
 SIGNAL MUTUAL INDEMNITY)
 ASSOCIATION, LIMITED)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Decision and Order of Kenneth A. Krantz, Administrative Law Judge, United States Department of Labor.

M.W., Chesapeake, Virginia, *pro se*.

F. Nash Bilisoly (Vandeventer Black LLP), Norfolk, Virginia, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (2006-LHC-00742) of Administrative Law Judge Kenneth A. Krantz 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). In an appeal by a claimant without representation by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law to determine 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).

On May 4, 2005, claimant sustained multiple injuries when the hustler which she was driving was lifted into the air and then dropped to the ground by a crane. Claimant was taken to the hospital where, after x-rays were interpreted as being normal, she was diagnosed as having sustained a right foot contusion and lumbo-sacral sprain. After treating with Dr. Wardell, claimant returned to work for employer on June 12, 2006. Employer voluntarily paid claimant temporary total disability benefits from May 5, 2005, through October 18, 2005. 33 U.S.C. §908(b). Claimant thereafter sought temporary total disability benefits for the period of October 19, 2005, through June 11, 2006, as well as medical expenses allegedly related to her work-injury.

While the parties stipulated before the administrative law judge that claimant had sustained work-related injuries to her neck, back, and right foot on May 4, 2005, they disagreed as to the date on which claimant was capable of resuming her usual employment duties with employer. In his Decision and Order, the administrative law judge found that claimant failed to meet her burden of establishing that she remained disabled from October 19, 2005, through June 11, 2006, and he accordingly denied claimant’s claim for compensation and medical benefits during that period of time.

On appeal, claimant, representing herself, challenges the administrative law judge’s denial of her claim for additional benefits under the Act. Employer responds, urging affirmance of the administrative law judge’s decision in its entirety.

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 Marinelli v. American Stevedoring, Ltd.*, 34 BRBS 112 (2000), *aff’d*, 248 F.3d 54, 35 BRBS 41(CRT) (2^d Cir. 2001); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56 (1980). In order to establish a *prima facie* case of total disability, claimant must prove that she is unable to perform her usual work due to the injury. *See Wheeler v. Newport News Shipbuilding & Dry Dock Co.*, 39 BRBS 49 (2005); *Delay v. Jones Washington Stevedoring Co.*, 31 BRBS 197 (1998). In the instant case, the administrative law judge credited the opinion of Dr. Goss over the opinion of Dr. Wardell and the testimony of claimant in concluding that claimant did not meet her burden of establishing that she remained temporarily totally disabled from October 19, 2005, through June 11, 2006. Decision and Order at 9-10.

We affirm the administrative law judge’s decision as he committed no error in weighing the medical evidence and concluding that claimant sustained no compensable impairment subsequent to October 18, 2005. In making this finding, the administrative law judge credited the opinion of Dr. Goss, an orthopedic surgeon, who examined claimant on October 18, 2005, and May 15, 2006. Following his October 18, 2005, examination of claimant, his review of claimant’s post-injury medical records, and claimant’s negative post-injury MRIs and x-rays, Dr. Goss diagnosed claimant with a

contusion of the right foot and thoracic and lumbar spine sprains and concluded, to a reasonable degree of medical certainty, that claimant did not require further medical care and was capable of returning immediately to full duty work. EX 4 at 1-2. Following his May 15, 2006, examination of claimant, Dr. Goss reiterated his opinion that further medical care is unnecessary and that claimant has been capable of full duty employment for quite some time. *Id.* at 5. In contrast, the administrative law judge found claimant to be unnecessarily combative and her testimony not entirely forthcoming; specifically, the administrative law judge found claimant's testimony to be compromised by her tendency to contradict the evidence,¹ her statements regarding her two evaluations by Dr. Goss,² her comment that upon her return to work post-injury she would on occasion sit in her car all day while being paid for a full day's work and, despite her continued subjective complaints of pain, claimant's ability to work post-injury more hours than she did pre-injury. Decision and Order at 9–10. Lastly, in declining to rely upon the opinion of Dr. Wardell, the administrative law judge found that Dr. Wardell relied upon claimant's subjective statements regarding her condition and that the record held no objective tests that would explain claimant's subjective complaints.³ *Id.* at 9. In adjudicating a claim, it is well-established that an administrative law judge is entitled to weigh the medical evidence, and he is not bound to accept the opinion or theory of any particular witness. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th 1962). In this case, the administrative law judge's credibility determinations are rational and within his authority as a factfinder. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). As the administrative law judge acted within his discretion in crediting the opinion of Dr. Goss over the contrary opinion of Dr. Wardell and the testimony of claimant, and as this opinion constitutes substantial evidence to support the administrative law judge's ultimate finding, we affirm the administrative law judge's determination that claimant sustained no impairment subsequent to October 18, 2005. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962); *Donovan*, 300 F.2d 741.

We additionally affirm the administrative law judge's decision to deny claimant medical benefits subsequent to October 18, 2005. Section 7(a) of the Act, 33 U.S.C. §907(a), states that “[t]he employer shall furnish such medical, surgical, and other

¹ In contrast to Dr. Goss's written reports, wherein he found claimant to be fully capable of returning to work, *see* EX 4, claimant testified that at the conclusion of his evaluation Dr. Goss told her that he agreed with Dr. Wardell. Tr. at 30.

² Claimant testified that Dr. Goss did not examine her but, rather, that he merely spoke with her for a period of time. Tr. at 17-20, 27-30; *but see* EX 4 (medical reports of Dr. Goss).

³ Dr. Wardell released claimant to return to work with restrictions on June 12, 2006. *See* EX 3 at 2.

attendance or treatment . . . for such period as the nature of the injury or the process of recovery may require.” See *Brooks v. Newport News Shipbuilding & Dry Dock Co.*, 26 BRBS 1 (1992), *aff’d sub nom. Brooks v. Director, OWCP*, 2 F.3d 64, 27 BRBS 100(CRT) (4th Cir. 1993); *Anderson*, 22 BRBS 20. Medical care must be appropriate for the injury, see 20 C.F.R. §702.402, and claimant must establish that the requested services are reasonable and necessary for the treatment of the work injury. See *Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988). As set forth *supra*, the administrative law judge in the instant case acted within his discretion in crediting the opinion of Dr. Goss who, following both of his examinations of claimant, unequivocally opined that claimant did not require further medical care. See EX 4 at 2, 5. Accordingly, as the administrative law judge’s finding on this issue is supported by substantial evidence, it is affirmed.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge