BRB No. 01-0808

ROGER O. FURBEE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
WEAVERTOWN ENVIRONMENTAL GROUP	)	DATE ISSUED: July 15, 2002
	)	
and	)	
	)	
NATIONAL UNION FIRE INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order-Denying Benefits and the Order Denying Motion for Reconsideration of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Joseph P. Moschetta and Stephen P. Moschetta (Joseph P. Moschetta and Associates), Washington, Pennsylvania, for claimant.

John E. Kawczynski (Field Womack & Kawczynski, LLC), South Amboy, New Jersey, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order-Denying Benefits and the Order Denying Motion for Reconsideration (2000-LHC-2920) of Administrative Law Judge Daniel L. Leland 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 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 was injured during the course of his employment on October 24, 1999, while

standing on the banks of the Ohio River. He was struck on the head by a pipe and fell into the water. Claimant was transported to the hospital, where he was diagnosed with a muscle sprain and contusions. On November 1, 1999, claimant was released to return to work. Employer voluntarily paid claimant temporary total disability compensation from October 24, 1999, through November 7, 1999, when claimant returned to his usual employment duties with employer as an environmental technician. On February 9, 2000, claimant was terminated by employer for reasons unrelated to his work-injury. Claimant subsequently complained of back and neck pain, as well as headaches, dizziness, and blurred vision, for which he sought medical treatment.

In his Decision and Order, the administrative law judge determined that claimant failed to establish his *prima facie* case that he is incapable of performing his usual work as an environmental technician as a result of any disability arising out of his work-related injury. Accordingly, the administrative law judge denied the claim for compensation and medical benefits. The administrative law judge thereafter denied claimant's motion for reconsideration.

On appeal, claimant challenges the administrative law judge's finding that he is not entitled to total disability compensation and medical benefits. Employer responds, urging affirmance of the administrative law judge's decisions in their 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 Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1988); *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56 (1985). In this regard, a physical impairment alone is insufficient to support a finding of total disability; rather, in order to establish a *prima facie* case of total disability, a claimant must establish that he is incapable of returning to his regular or usual employment. *See Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988). In concluding in the instant case that claimant did not sustain a compensable impairment subsequent to February 9, 2000, the administrative law judge credited the opinions of Drs. Kasden, Bernstein and Rothenberg, each of whom opined that claimant could return to his usual employment duties with employer.

In challenging the administrative law judge's denial of his claim for ongoing total disability compensation, claimant initially avers that the administrative law judge erred by failing to discuss the presumption at 33 U.S.C. §920(a) when addressing the extent of his alleged work-related disability. The Section 20(a) presumption, however, applies to the issue of whether an injury arises out of and in the course of employment and, thus, is work-related, *see Meehan Service Seaway Co. v. Director, OWCP*, 125 F.3d 1163, 31 BRBS 114(CRT) (8th Cir. 1997), *cert. denied*, 523 U.S. 1020 (1998); *Vitola v. Navy Resale & Services Support Office*, 26 BRBS 88 (1992), and does not apply to the issues of nature and extent of disability. *See Carlisle v. Bunge Corp.*, 33 BRBS 133 (1999), *aff'd*, 227 F.3d 934, 34 BRBS 79(CRT) (7th Cir. 2000). Accordingly, we hold that claimant's contention of error in this

regard is without merit.[1]

[1]We similarly reject claimant's contention that the administrative law judge's failure to discuss the testimony of Mr. Sheldon in his initial decision requires "that the Decision and Order must be overturned in its entirety, and the matter remanded for a hearing before another administrative law judge." *See* Claimant's brief at 5-8. The administrative law judge correctly found that Mr. Sheldon's testimony relates solely to claimant's Section 49, 33 U.S.C. §948a, claim, which was unequivocally withdrawn by claimant on April 16, 2001. Moreover, in his Order on reconsideration, the administrative law judge specifically stated that he had read Mr. Sheldon's testimony, but that this evidence did not affect his assessment of the credibility of the witnesses addressing the issue of the extent of claimant's alleged work-related disability.

We further reject claimant's contention that the administrative law judge erred in relying upon the opinions of Drs. Kasden, Bernstein, and Rothenberg, rather than the contrary opinions of physicians including Drs. Kant, Romano and Liebeskind, in concluding that claimant sustained no compensable impairment subsequent to February 9, 2000.[2] It is well-established that an administrative law judge is not bound to accept the opinion of any particular medical examiner, but rather, is entitled to weigh the credibility of all witnesses and draw his own inferences from the evidence. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *Anderson*, 22 BRBS 20. In the instant case, the administrative law judge rationally found that the opinions of Drs. Kasdan, Berstein and Rothenberg were determinative as to the extent of claimant's disability, finding these physicians were very credible as they provided thorough, well-reasoned reports based upon objective factors. These physicians all opined that claimant was fully capable of returning to his usual employment duties with employer. *See* Clt. Exs. 14, 15, 19. Contrary to claimant's argument on appeal, it was reasonable for the administrative law judge, when evaluating the opinions Drs. Kant and Romano, as well as others who opined that claimant was totally disabled, to reject those opinions based on his findings regarding claimant's false statements to them. The administrative law judge fully evaluated the respective medical opinions relied upon by the parties, declined to rely upon claimant's witnesses due to their acceptance of claimant's misstatements, and rationally credited the opinions of Drs. Kasdan, Bernstein and Rothenberg regarding the extent of claimant's disability.[3] Thus, as the administrative law judge's credibility determinations are rational and within his authority as factfinder, we affirm the administrative law judge's determination that claimant failed to establish that he is incapable of performing his usual

[2]The administrative law judge specifically found claimant was not a credible witness. He rejected claimant's testimony that he was unable to resume his duties as an environmental technician post-injury, as it was contradicted by evidence that he performed work in that capacity post-injury. The administrative law judge also rejected claimant's allegation that he was unable to seek medical treatment during his three months of post-injury work because no physician would take a workers' compensation patient, finding it was belied by the fact that he was able to seek treatment following his termination for cause. The administrative law judge also relied on a physician's observation that claimant did not seem to be in pain when his attention was distracted. Decision and Order at 7.

[3]Claimant's reliance on the decision of the United States Court of Appeals for the Ninth Circuit in *Amos v. Director, OWCP*, 153 F.3d 1051, (9th Cir. 1998), *amended*, 164 F.3d 480, 32 BRBS 144 (9th Cir. 1999), *cert. denied*, 528 U.S. 809 (1999), for the proposition that the opinions of claimant's treating physicians should have been given greater weight is misplaced. While *Amos* held that a treating physician's opinion is entitled to special weight, it did not require that an administrative law judge credit such opinions. Thus, *Amos* does not support a different outcome here where the administrative law judge gave valid and rationale reasons for weighing the medical evidence as he did.

employment duties as an environmental technician as of February 9, 2000. *See Donovan*, 300 F.2d 741.

Claimant's assertion that he remained totally disabled during his period of post-injury employment between November 8, 1999, and February 9, 2000, is similarly rejected. An employee may be found to be totally disabled despite continued employment if he works only through extraordinary effort and in spite of excruciating pain, or is provided a position only through employer's beneficence. *See CNA Ins. Co. v. Legrow*, 935 F.2d 430, 24 BRBS 202(CRT) (1st Cir. 1991); *Haughton Elevator Co. v. Lewis*, 572 F.2d 477, 7 BRBS 838 (4th Cir. 1978); *Ramirez v. Sea-Land Services, Inc.*, 33 BRBS 41 (1999). In his decision, the administrative law judge specifically found claimant's testimony, that he was unable to resume his usual work for employer post-injury, directly contradicted by the credible testimony of Mr. Miller, claimant's supervisor, who testified that claimant returned to his usual duties after four days of office work, Mr. McCloud, claimant's co-worker, who testified that claimant performed heavy lifting post-injury, and Ms. Vulcano, employer's Director of Human Resources, who testified that claimant submitted no medical documentation restricting his work activities post-injury. Moreover, the sole citation by claimant to the record in support of his contention that he worked post-injury only through extraordinary effort and employer's beneficence supports the administrative law judge's finding that claimant returned to and performed his usual employment duties with employer post-injury. *See* Tr. at 122. We therefore reject claimant's contention that he established entitlement to total disability compensation following his return to work for employer on November 8, 1999.

Lastly, claimant contends that the administrative law judge erred in concluding that employer is not liable for his medical treatment resulting from the October 24, 1999, work-incident. For the reasons that follow, we agree with claimant that the administrative law judge's finding on this issue cannot be affirmed.

Section 7(a) of the Act, 33 U.S.C. §907(a), states that "[t]he employer shall furnish such medical, surgical, and other 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. Section 7 does not require that an injury be economically disabling in order for claimant to be entitled to reimbursement of medical expenses, but requires only that the injury be work-related. *Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988). Medical care, however, 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).

In the case at bar, claimant submitted into the record evidence that he incurred medical expenses subsequent to February 9, 2000, which are related to his injury of October 24, 1999. The administrative law judge, however, did not address claimant's proported reimbursable medical expenses; rather, the administrative law judge rejected claimant's request for medical benefits in a single sentence, stating that "[c]laimant is . . . not entitled to the payment of medical expenses after his termination because they were not necessary for the treatment of his work injury. (See Section 7)." *See* Decision and Order at 8. This statement by the administrative law judge does not satisfy the Administrative Procedure Act, which requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record." 5 U.S.C. §557(c)(3)(A). As the administrative law judge did not address the evidence relevant to this issue, we vacate the administrative law judge's conclusory finding regarding employer's liability for claimant's medical expenses. On remand, the administrative law judge must address all of the evidence in order to determine, pursuant to Section 7, whether claimant has accrued compensable medical expenses subsequent to February 9, 2000. *See Ballesteros*, 20 BRBS 184.

Accordingly, the administrative law judge's determination that claimant is not entitled to total disability benefits is affirmed. The administrative law judge's denial of medical benefits to claimant is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge