

CARYLON L. DAVIS)	
)	
Claimant-Respondent)	
)	
v.)	
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NORTHROP GRUMMAN SHIPBUILDING, INCORPORATED)	DATE ISSUED: 05/31/2011
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Robert E. Walsh (Rutter Mills L.L.P.), Norfolk, Virginia, for claimant.

Benjamin M. Mason (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Employer appeals the Decision and Order Granting Benefits (2009-LHC-1713) of Administrative Law Judge Richard K. Malamphy 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 administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

On September 8, 2006, claimant sustained an injury to her right arm while working for employer as an outside machinist. Claimant was subsequently treated for a collateral ligament tear of her thumb, an ulnar nerve compression at the elbow, carpal tunnel syndrome, and a medial compression of her wrist. On October 24, 2007, claimant underwent carpal tunnel decompression surgery. She returned to light-duty work with employer in February 2009.

In his Decision and Order, the administrative law judge credited the opinion of Dr. Stiles in determining that claimant is entitled to permanent partial disability compensation pursuant to Section 8(c)(1) of the Act, 33 U.S.C. §908(c)(1), for a 28 percent impairment to her right upper extremity. On appeal, employer challenges the administrative law judge's finding that claimant has a 28 percent impairment to her right upper extremity. Specifically, employer asserts that the administrative law judge erred in crediting the opinion of Dr. Stiles over those of Drs. Apostoles and Swanson. Claimant responds, urging affirmance of the administrative law judge's decision in its entirety.

Dr. Stiles diagnosed claimant with a three percent permanent impairment as a result of her carpal tunnel syndrome and a 25 percent impairment of her right upper extremity as a result of her persistent ulnar nerve symptoms, for a combined 28 percent permanent impairment of her right upper extremity. CX 1 at 55, 57; EX 3. The administrative law judge noted that Dr. Stiles is claimant's treating physician and that he performed claimant's surgery. The administrative law judge concluded that Dr. Stiles had personal knowledge of claimant's condition and provided sufficient information in support of his calculation of claimant's permanent impairment. In declining to rely on the opinions of Drs. Apostoles and Swanson, both of whom rated claimant's permanent impairment at five percent, the administrative law judge noted that these physicians did not examine claimant, did not have the full benefit of reviewing all of Dr. Stiles's treatment notes, and did not account for the possibility of a motor deficiency in calculating claimant's impairment rating.¹ Decision and Order at 8 – 9.

We affirm the administrative law judge's award of benefits for a 28 percent impairment to claimant's right upper extremity. In adjudicating a claim, it is well-established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences from it and is not bound to accept the opinion or theory of any particular physician. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). Moreover, with regard to the calculation of the degree of claimant's permanent physical impairment, the administrative law judge is not bound by any particular standard or formula but may consider a variety of medical opinions and observations in addition to claimant's description of her symptoms and the physical effects of her injury. *See, e.g., Cotton v.*

¹ Dr. Apostoles reviewed Dr. Stiles's objective findings and assigned claimant a three percent impairment rating based on her carpal tunnel syndrome and a 1.75 percent impairment of the upper extremity, which he rounded up to a total impairment of the upper extremity of five percent. EX 4. Dr. Swanson similarly reviewed Dr. Stiles's data; she combined the three percent carpal tunnel impairment with a two percent impairment for the ulnar nerve impairment to conclude that claimant has a five percent upper extremity impairment. EX 6(c).

Army & Air Force Exch. Services, 34 BRBS 88 (2000); *Brown v. National Steel & Shipbuilding Co.*, 34 BRBS 195 (2001); *Pimpinella v. Universal Maritime Serv. Inc.*, 27 BRBS 154 (1993). In this case, the administrative law judge addressed employer's contentions that Dr. Stiles incorrectly calculated claimant's impairment rating under the *AMA Guides*. The administrative law judge found credible Dr. Stiles's explanation that claimant has a 25 percent impairment due to ulnar nerve entrapment, in addition to the three percent impairment from the carpal tunnel syndrome. Dr. Stiles explained that the rating is based on sensory deficit, pain, and motor deficit. The administrative law judge found this opinion supported by claimant's reports of right arm pain and numbness and problems using her hand. CX 1 at 55-56; Tr. at 25-28. Dr. Stiles's opinion thus constitutes substantial evidence in support of the administrative law judge's finding and we, therefore, affirm the administrative law judge's award of benefits under Section 8(c)(1) for a 28 percent impairment. *Wright v. Superior Boat Works*, 16 BRBS 17 (1983).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge