BRB No. 98-1176

RICHARD C. ROBBINS	)	
	)	
Claimant-Petitioner	)	DATE ISSUED: May 17, 1999
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY	)	
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

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

Melissa Robinson Link (Mason & Mason, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (93-LHC-0423) of Administrative Law Judge Fletcher E. Campbell, Jr., 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 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).

Claimant sustained a back injury while working as a sheet-metal worker with employer on January 16, 1991. After an extended recuperative period, claimant returned to work for employer and thereafter filed a claim for permanent partial disability benefits based on a loss of overtime and alleged loss of night shift differential. Pursuant to the parties' stipulations, as approved by the district director in a Compensation Order dated February 8, 1995, employer paid claimant benefits

for periods of temporary total and permanent partial disability.[1] In addition, employer has furnished claimant with all work-related medical services in accordance with Section 7 of the Act, 33 U.S.C. §907.

Employer subsequently filed a motion for modification of the district director's award of permanent partial disability benefits based on an economic change in condition. 33 U.S.C. §922. In his decision, the administrative law judge determined that claimant no longer has any loss in wage-earning capacity attributable to his work-related injury and therefore terminated the award of permanent partial disability benefits as of March 17, 1995. Moreover, the administrative law judge considered and rejected claimant's request for a *de minimis* award based upon his findings that claimant is a full-time employee and that any loss in wage-earning capacity in the future is speculative at best.

On appeal, claimant challenges the administrative law judge's denial of a *de minimis* award of benefits. Employer responds, urging affirmance.

Claimant asserts that the administrative law judge erred in denying his request for a *de minimis* award as there is substantial evidence in the record demonstrating a significant possibility that he will suffer a wage loss in the future. The United States Supreme Court, in *Metropolitan Stevedore Co. v. Rambo,* 117 S.Ct. 1953, 31 BRBS 54 (CRT)(1997), held that a nominal award may be entered on claimant's behalf upon a showing that there is a significant possibility that a worker's wage-earning capacity will at some future point fall below his pre-injury wages. Thus, a worker is entitled to nominal compensation when his work-related injury has not diminished his present wage-earning capacity under current circumstances, but there is *a significant possibility of future economic harm* as a result of the injury. *Id.*

In denying claimant a *de minimis* award, the administrative law judge found that the letter of rehabilitation counselor Charles DeMark, who opined that claimant would likely be unable to secure comparable employment in the local labor market if he were laid off and that if he did, it would at best be a minimum wage job, was not sufficient to establish a significant possibility that claimant will likely experience a loss in wage-earning capacity in the future, in light of the countervailing record

[1]Specifically, employer paid temporary total disability benefits from January 21, 1992, through April 23, 1993, and from April 24, 1993, through May 17, 1993, and permanent partial disability benefits at the rate of $16 per week from January 21, 1992, to April 23, 1993, and then continuing from May 18, 1993.

evidence. The administrative law judge concluded that Mr. DeMark's letter is of little value because: 1) the possibility that claimant will be laid-off or further disabled as a result of his work-related injuries in the future is speculative at best; and 2) Mr. DeMark's opinion relates only to the labor market as of the date of his letter, September 10, 1997, and cannot be used as a prediction of the labor market which changes frequently. Moreover, the administrative law judge found that there is no evidence of the likelihood that claimant's back will further disable him, at least insofar as his present job is concerned. Specifically, the administrative law judge relied on claimant's acknowledgment that he has not missed any work because of his back since 1993, and the testimony of claimant's supervisors, Donald Ogburn and Michael Roach, who both stated that they know of no plans to lay-off any employees. Because the evidence credited by the administrative law judge demonstrates that claimant's medical condition and prospects for continued employment are stable, it provides substantial evidence to support his finding that claimant failed to establish a significant possibility of future economic harm. *See Buckland v. Dept. of the Army,* 32 BRBS 99, 101 (1997); *Burkhardt v. Bethlehem Steel Corp*., 23 BRBS 272, 278 (1990); *Palmer v. Washington Metropolitan Area Transit Authority*, 20 BRBS 39, 41-42 (1987). We therefore affirm that determination and the consequent denial of a *de minimis* award in this case. *Id.*

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge