

CYNTHIA C. LEWIS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING	)	DATE ISSUED: <u>Nov. 30, 2001</u>
AND DRY DOCK COMPANY	)	
	)	
Self-Insured	)	
Employer-Petitioner	)	DECISION and ORDER

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

Gregory E. Camden (Montagna, Klein & Camden, L.L.P.), Norfolk, Virginia, for claimant.

Christopher R. Hedrick (Mason, Cowardin & Mason, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Employer appeals the Decision and Order and Order on Motions to Reconsider (99-LHC-2777) 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, a welder, suffered injuries to both of her knees on May 16, 1997, while working for employer and subsequently underwent surgeries and physical therapy. Prior to this incident, claimant experienced arthritic-related problems with her knees and had undergone arthroscopic surgery on both knees. Following the subject work injuries, claimant

was unable to resume her usual employment duties; she subsequently underwent a retraining program and commenced non-covered employment. *See* HT at 16-18.

In his Decision and Order, the administrative law judge addressed the medical evidence of record and, relying upon the disability rating of Dr. Stiles, concluded that claimant is entitled to a permanent partial disability award for a 32 percent impairment to each of her knees. Employer's motion for reconsideration was denied by the administrative law judge.

Employer's sole contention on appeal is that the administrative law judge erred in awarding claimant compensation for a 32 percent impairment to her knees. Claimant 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 Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56 (1985). Under the aggravation rule, if an employment-related injury contributes to, combines with, or aggravates a pre-existing disease or underlying condition, the entire resultant condition is compensable. *See Newport News Shipbuilding & Dry Dock Co. v. Fishel*, 694 F.2d 327, 15 BRBS 52(CRT)(4<sup>th</sup> Cir. 1982); *see also Wheatley v. Adler*, 407 F.2d 307 (D.C. 1968); *Clark v. Todd Shipyards Corp.*, 20 BRBS 30 (1987), *aff'd sub nom. Todd Shipyards Corp. v. Director, OWCP*, 848 F.2d 125, 21 BRBS 114(CRT) (9<sup>th</sup> Cir. 1988).

After a review of the record, we affirm the administrative law judge's determination of the degree of compensable disability sustained by claimant to her left and right knees. In the instant case, the record contains the opinions of four physicians who rated claimant's knee condition. Dr. Stiles, claimant's treating physician, reviewed his physical examination notes and claimant's x-rays in concluding that claimant's cartilage intervals and post-traumatic arthritic changes along her medial femoral condyle resulted in a 32 percent impairment to both of claimant's legs as a result of her knee conditions. CX 1. In contrast, Dr. Cohn opined that claimant sustained a 7 percent disability to her right knee and a 5 percent disability to her left knee as a result of her work injury. In addressing the significantly higher rating rendered by Dr. Stiles, Dr. Cohn stated that Dr. Stiles's rating took into consideration claimant's prior knee injury and that, since in his opinion claimant did not suffer a significant injury to the femoral tibial compartments of either knee, claimant's prior knee condition should not apply to her present rating. *See* EX 4. Similarly, Drs. Snyder and Baddar each assigned claimant a 7 percent impairment rating for each knee. *See* EXS 2, 3.

The administrative law judge relied upon the opinion of Dr. Stiles, which he found to be supported by that of Dr. Cohn. Specifically, the administrative law judge initially found that while each of the four physicians who examined claimant were well-qualified, Dr. Stiles's opinion was not as reasoned or explained as the opinions rendered by Drs. Cohn,

Snyder and Baddar. The administrative law judge next determined, however, that while Dr. Stiles considered the totality of claimant's knee condition when rendering his opinion, Drs. Cohn, Snyder and Baddar rendered their respective opinions without factoring into their ratings claimant's underlying and pre-existing knee condition. In this regard, the administrative law judge found that Dr. Cohn specifically acknowledged that Dr. Stiles took a contrary view, *i.e.*, that Dr. Stiles considered the totality of claimant's present knee condition when rendering his ultimately higher disability rating of claimant's knees. *See* Decision and Order at 5-6; EX 4f. Based upon the forgoing, the administrative law judge concluded that the significant difference in ratings rendered by the physicians of record is one of law and not of medical judgment. Therefore, taking into consideration the aggravation rule, the administrative law judge found that the opinion of Dr. Stiles, as further explained by the testimony of Dr. Cohn, is persuasive and adequately reasoned; accordingly, the administrative law judge credited that opinion in determining that claimant is entitled to permanent partial disability compensation for a 32 percent impairment to each of her knees.

Determinations regarding the weight accorded to medical evidence are the province of the administrative law judge. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5<sup>th</sup> Cir. 1962), *cert. denied*, 372 U.S. 954 (1963). In this regard, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has emphasized that an administrative law judge, in considering the medical testimony of record, must examine the logic of a physician's conclusions and evaluate the evidence upon which those conclusions are based. *See Director, OWCP v. Newport News Shipbuilding & Dry Dock Co. [Carmines]*, 138 F.3d 134, 32 BRBS 48(CRT) (4<sup>th</sup> Cir. 1998). Thus, the court's holding in *Carmines* requires the administrative law judge to determine whether there is a reasoned and documented basis for a medical opinion, and to evaluate such an opinion in light of the evidence in the record considered as a whole. *See Carmines*, 138 F.3d at 140-141, 32 BRBS at 52(CRT). In so doing, the administrative law judge may accept or reject all or any part of any testimony according to his judgment. *See Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). In the instant case, the administrative law judge fully evaluated the relevant evidence, properly applied the aggravation rule, *see Fishel*, 694 F.2d 327, 15 BRBS 52(CRT), declined to rely upon the opinions of Drs. Cohn, Snyder and Baddar since those physicians did not take that rule into consideration, and thus relied upon the disability rating of Dr. Stiles, as supported by the testimony of Dr. Cohn, in concluding that claimant established her entitlement to permanent partial disability compensation for a 32 percent impairment to each of her knees. Accordingly, as the administrative law judge's finding is both supported by substantial evidence and is in accordance with law, we affirm the administrative law judge's determination that claimant suffers from a 32 percent impairment to each of her knees.

Accordingly, the administrative law judge's Decision and Order and Order on Motions to Reconsider are affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge