



BRB No. 18-0214

PAUL THAYER)	
)	
Claimant-Respondent)	
)	
v.)	DATE ISSUED: 11/26/2018
)	
ELECTRIC BOAT CORPORATION)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

Lance Proctor (Lance G. Proctor, LLC), Groton, Connecticut, for claimant.

Robert J. Quigley, Jr. (McKenney, Quigley & Clarkin, LLP), Providence, Rhode Island, for self-insured employer.

Before: BUZZARD, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2016-LHC-00591, 2016-LHC-00322) of Administrative Law Judge Jonathan C. Calianos 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 rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant started working for employer in 1982. His duties required the use of pneumatic tools, including various grinders and burr tools. Tr. at 37-38.

The parties stipulated, *inter alia*, that claimant received benefits in 2003 for an eight percent impairment to his right hand and a five percent impairment to his left hand due to bilateral carpal tunnel syndrome. On January 27, 2014, during a mandatory medical examination, claimant stated he had weakness in his arms, hands and legs, and difficulty bending at the knees and squatting. CX 24 at 5. Claimant has been diagnosed with bilateral carpal tunnel syndrome and bilateral knee osteoarthritis. He has had knee replacements on both knees. CXs 6 at 18; 10. Claimant retired on January 30, 2015. Tr. at 60.

Claimant filed a claim for his bilateral carpal tunnel syndrome.¹ The administrative law judge found that claimant established a *prima facie* case that his carpal tunnel syndrome is related to his employment and that employer did not rebut the Section 20(a) presumption. 33 U.S.C. §920(a); Decision and Order at 12. The administrative law judge reviewed the impairment ratings provided by the medical experts and found them all to be persuasive. He therefore averaged the three ratings to find that claimant has a four percent impairment of his right upper extremity and a 3.66 percent impairment of his left upper extremity. *Id.* at 19. The administrative law judge awarded claimant permanent partial disability benefits under Section 8(c)(1), 33 U.S.C. §908(c)(1), for impairments to his right and left upper extremities. Decision and Order at 21. He also awarded employer a credit in the amount of \$15,810.03 for the permanent partial disability benefits it paid to claimant in 2003 for the impairment of his hands. *Id.* at 22.

Employer appeals, contending the evidence does not support a finding that claimant's work activities aggravated his bilateral carpal tunnel syndrome after 2004. Employer also contends that the administrative law judge erred in awarding benefits under Section 8(c)(1) for impairments to claimant's arms instead of Section 8(c)(3) for impairments to his hands. Because claimant's impairment ratings are lower than those for which he was previously compensated, employer contends that claimant has been fully compensated for his carpal tunnel syndrome and is not entitled to additional benefits. Claimant filed a response brief, urging affirmance of the award.

We reject employer's contention that the evidence does not support the administrative law judge's finding that claimant's work aggravated his bilateral carpal

¹ He also filed a separate claim for his knee injury. The administrative law judge concluded that claimant's knee arthritis is work-related and awarded benefits under Section 8(c)(2), 33 U.S.C. §908(c)(2), for a 31 percent impairment of both the left and right lower extremities. Decision and Order at 20-21. Employer is not appealing this award and filed a motion with the Board to remand the knee injury claim to the Office of Administrative Law Judges, which the Board denied in an Order issued on June 21, 2018, as the case file cannot be bifurcated.

tunnel syndrome after 2004. Claimant's credible testimony and the opinions of Drs. Cherniack, DaSilva, and Gaccione provide substantial evidence supporting the administrative law judge's finding that claimant demonstrated a prima facie case that the injury to his hands and arms is compensable. *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004); Decision and Order at 11. The administrative law judge relied on claimant's testimony that his work duties were largely the same over the course of his 30 years of employment and that he continuously used vibratory and pneumatic tools. Tr. at 37-38. Drs. Silva and Gaccione stated that claimant's work contributed to his carpal tunnel syndrome, and Dr. Cherniack stated that individuals who use power tools have higher rates of carpal tunnel syndrome. EXs 2, 7; CX 8. Thus, Section 20(a) applies to presume that claimant's carpal tunnel syndrome is related to his use of vibratory tools at work. *Preston*, 380 F.3d 597, 38 BRBS 60(CRT).

Employer did not produce any evidence that claimant's carpal tunnel syndrome is not work-related to rebut the Section 20(a) presumption. That a claimant may now have a lower impairment rating does not establish the absence of a later work injury if there is evidence to show that later employment aggravated his pre-existing injury. See *Myshka v. Electric Boat Corp.*, 48 BRBS 79 (2015). The administrative law judge's conclusion that claimant's work continuously aggravated his carpal tunnel syndrome is supported by substantial evidence in the record and is therefore affirmed.² Decision and Order at 12; see *Bath Iron Works Corp. v. Director, OWCP [Shorette]*, 109 F.3d 53, 31 BRBS 12(CRT) (1st Cir. 1997).

Employer next challenges the administrative law judge's determination that claimant is entitled to permanent partial disability benefits for an impairment of his upper extremities under Section 8(c)(1). Employer asserts that claimant's carpal tunnel syndrome affects only his hands and that claimant should therefore be compensated under Section 8(c)(3) for that impairment.

The administrative law judge awarded claimant permanent partial disability benefits under Section 8(c)(1) for a four percent impairment of his right upper extremity, i.e., his arm, and a 3.66 percent impairment of his left upper extremity. Decision and Order at 19, 21. The administrative law judge averaged the impairment ratings assigned by Drs. Cherniack, DaSilva, and Gaccione. Using the American Medical Association *Guides to the Evaluation of Permanent Impairment* (6th ed.) (*AMA Guides*), Dr. Cherniack gave claimant impairment ratings for carpal tunnel syndrome of eight percent of his right upper

² The administrative law judge found claimant does not have small fiber neuropathy or any other upper extremity conditions. This finding is not challenged on appeal.

extremity and seven percent of his left upper extremity.³ CX 6 at 24. Dr. DaSilva gave claimant impairment ratings under the *AMA Guides* of two percent of his right hand or two percent of the right upper extremity and two percent of the left hand or two percent of the left upper extremity. EXs 2; 4 at 31. Dr. Gaccione assigned a two percent impairment “upper extremity rating for each hand,” pursuant to the *AMA Guides*. EX 7.

We affirm the administrative law judge’s award of benefits under Section 8(c)(1) for an impairment to claimant’s arms as it is supported by substantial evidence and in accordance with the law. It is well settled that in assessing the extent of claimant’s disability in a scheduled injury case other than hearing loss, an administrative law judge is not bound by any particular standard or formula; he may rely on medical opinions that rate a claimant’s impairment under the *AMA Guides* as it is a standard medical reference. *See Brown v. Nat’l Steel & Shipbuilding Co.*, 34 BRBS 195 (2001); *Cotton v. Army & Air Force Exch. Svcs.*, 34 BRBS 88 (2000). The Board has held that a claimant is entitled to compensation for the loss of a greater member where an injury to a lesser member affects the greater member. *Brown*, 34 BRBS at 200; *Mason v. Baltimore Stevedoring Co.*, 22 BRBS 413 (1989).

Table 15-11 of the *AMA Guides* states that a two percent impairment of the hand is the equivalent of a two percent impairment of the upper extremity. EX 5. In this case, all three physicians assigned ratings under the *AMA Guides* to claimant on the basis of impairments to his upper extremities. Thus, the administrative law judge’s award for impairments to claimant’s arms under Section 8(c)(1) is supported by substantial evidence and in accordance with law. *See Brown*, 34 BRBS at 200. In addition, the administrative law judge permissibly averaged the ratings of the three physicians to calculate claimant’s impairment. *Id.* We therefore affirm the administrative law judge’s determination that claimant is entitled to benefits for a four percent impairment of his right upper extremity and a 3.66 percent impairment of his left upper extremity, pursuant to Section 8(c)(1).⁴

³ Dr. Cherniack did not give claimant an impairment rating for only his hands.

⁴ We note that the administrative law judge properly awarded employer a credit for its previous payment of scheduled benefits on a dollar-for-dollar basis and not on a percentage of impairment basis. *Director, OWCP v. Bethlehem Steel Corp.*, 868 F.2d 759, 22 BRBS 47(CRT) (5th Cir. 1988).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed. The case is remanded to the Office of Administrative Law Judges on the knee injury claim, pursuant to employer's request.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge