BRB No. 98-0103

WARREN ROUGEAU	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
FILCO INTERNATIONAL, INCORPORATED	)	
	)	DATE ISSUED:
and	)	
	)	
LOUISIANA WORKERS' COMPENSATION CORPORATION	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeal of the Decision and Order and Decision and Order on Motion for Reconsideration of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

Nicholas Soileau, Mamou, Louisiana, for claimant.

J. Michael Stiltner, Baton Rouge, Louisiana, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order and Decision and Order on Motion for Reconsideration (96-LHC-2363) of Administrative Law Judge Lee J. Romero, 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 platform operator on an offshore oil platform, slipped and fell while descending a ladder, and injured his right knee. Since the work injury, claimant has had two knee surgeries. Employer voluntarily paid claimant temporary total disability benefits from February 19, 1993, through January 10, 1994, and permanent partial disability benefits based on a 20 percent impairment rating to the right leg. Claimant sought additional disability benefits. The administrative law judge found that claimant established his *prima facie* case of total disability and that employer did not establish suitable alternate employment. Consequently, the administrative law judge awarded claimant permanent total disability benefits from January 10, 1994, and continuing, in addition to temporary total disability benefits from February 17, 1993, to January 9, 1994, after finding that maximum medical improvement was established on January 10, 1994. The administrative law judge also awarded medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907, cost-of-living adjustments pursuant to Section 10(f) of the Act, 33 U.S.C. §910(f), an assessment pursuant to Section 14(e) of the Act, 33 U.S.C. §914(e), and interest. The administrative law judge denied employer's motion for reconsideration.

On appeal, employer challenges the administrative law judge's award of total disability benefits. Claimant responds in support of the administrative law judge's award of benefits.

Employer contends that the administrative law judge erred in finding that it did not establish the availability of suitable alternate employment. Specifically, employer contends that the positions of print shop inker and cabinetmaker constitute suitable alternate employment based on the opinions of Ms. Hoover, its rehabilitation counselor, and those of Drs. Schutte, Nason, and Reavill.

Once, as here, claimant establishes that he is unable to perform his usual work, the burden shifts to employer to demonstrate the availability of realistic job opportunities within the geographic area where claimant resides, which claimant, by virtue of his age, education, work experience, and physical restrictions, is capable of performing. *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981). In determining that employer did not establish suitable alternate employment, the administrative law judge discussed the jobs of print shop inker and cabinetmaker as described on Forms CA-66. Emp. Ex. 7 at 18-23. The administrative law judge rationally concluded that the job descriptions on the forms lacked all the details necessary to determine if claimant is capable of performing the jobs in light of his restrictions.[1] *See Manigault v. Stevens Shipping Co.*, 22 BRBS

[1]Dr. Mayer, *inter alia*, allowed claimant to intermittently stand for four hours a day. Emp. Ex. 7 at 7. Dr. Nason, *inter alia*, restricted claimant from a lot of walking and/or standing. Emp. Ex. 6 at 16. The Form CA-66 for each position did not

332 (1989); *Thompson v. Lockheed Shipbuilding & Constr. Co.*, 21 BRBS 94 (1988); Decision and Order at 20. The administrative law judge also discussed the opinions of Drs. Schutte and Nason that claimant could perform these jobs, and he acted within his discretion in discounting Dr. Schutte's opinion because Dr. Schutte based his opinion on a review of Forms CA-66. *See generally Manigault*, 22 BRBS at 332; *Thompson*, 21 BRBS at 94; Decision and Order on Motion for Reconsideration at 3; Decision and Order at 20; Emp. Ex. 4 at 22-23. Similarly, the administrative law judge was not persuaded by Dr. Nason's opinion, as Dr. Nason qualified his opinion by questioning the amount of time claimant would be required to be on his feet in performing these types of jobs.[2] *See generally Hawthorne v. Ingalls Shipbuilding, Inc.*, 28 BRBS 73 (1994), *modified on other grounds on recon.* 29 BRBS 103 (1995); Decision and Order on Motion for Reconsideration at 3; Emp. Ex. 6 at 16, 17. Consequently, the administrative law judge's finding that employer did not establish suitable alternate employment through the job descriptions on Forms CA-66 and the medical opinions of record is affirmed.

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indicate how much standing or walking was involved. Emp. Ex. 7 at 19, 22.

[2]The administrative law judge also noted Dr. Reavill's inability to state whether claimant could perform the jobs as print shop inker and cabinetmaker in that a functional capacity evaluation was not performed. Decision and Order on Motion for Reconsideration at 2; Emp. Ex. 5 at 15-16.

The administrative law judge also discussed the opinion of employer's vocational expert, Ms. Hoover, who testified that claimant could perform both types of jobs. Although Ms. Hoover testified that these positions are within claimant's restrictions, the administrative law judge rationally questioned her opinion as to claimant's ability to perform the job of cabinetmaker after she acknowledged that the cabinetmaker position required a lot of standing which was inconsistent with Dr. Nason's limitation. *See generally Dupre v. Cape Romain Contractors, Inc.*, 23 BRBS 86 (1989); Decision and Order on Motion for Reconsideration at 2; Emp. Ex. 6 at 17; Tr. at 80. The administrative law judge, however, did not consider Ms. Hoover's testimony that claimant could perform the job of print shop inker as it would permit claimant to intermittently sit and stand. Thus, this position may be within claimant's residual restrictions. *See* n.1, *supra*; *see generally Diosdado v. Newpark Shipbuilding & Repair, Inc.*, 31 BRBS 70 (1997); *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991); *Bryant v. Carolina Shipping Co., Inc.*, 25 BRBS 294 (1992); Tr. at 78. We, therefore, vacate the administrative law judge's finding that employer did not establish the availability of suitable alternate employment, and we remand this case to the administrative law judge for further consideration of the suitability of the print shop inker positions.[3] If the administrative law judge on remand finds that employer established suitable alternate employment, he must address employer's contention that claimant did not exercise reasonable diligence in searching for alternate employment. *See generally Roger's Terminal & Shipping Corp. v. Director, OWCP*, 784 F.2d 687, 18 BRBS 79 (CRT) (5th Cir.), *cert. denied*, 479 U.S. 826 (1986).

Accordingly, the administrative law judge's Decision and Order and Decision and Order on Motion for Reconsideration are affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

[3]Ms. Hoover identified more than one opening for a print shop inker and she testified that the jobs paid $250 per week. Tr. at 78; *see generally P & M Crane Co. v. Hayes*, 930 F.2d 424, 24 BRBS 116 (CRT), *reh'g denied*, 935 F.2d 1293 (5th Cir. 1991).

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge