BRB No. 98-0131

LARRY E. LOGAN	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Compensation Benefits After February 14, 1994 and Decision and Order Denying Claimant's Motion for Reconsideration of Administrative Law Judge, Richard K. Malamphy, United States Department of Labor.

George L. Simons, Mobile, Alabama, for claimant.

Paul B. Howell (Franke, Rainey & Salloum, PLLC), Gulfport, Mississippi, for self-insured employer.

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

Claimant appeals the Decision and Order Denying Compensation Benefits After February 14, 1995, and Decision and Order Denying Claimant's Motion for Reconsideration (96-LHC-720) 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 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).

On January 24, 1994, claimant, a sheet metal worker, sustained a work-related low back injury. Employer voluntarily paid disability benefits for various periods. In February 1995, employer offered claimant a modified light duty job in its

facility within his physician's restrictions. Claimant worked a few days over a three week period, and then alleged that he was unable to perform the duties of the modified position because of disabling back pain from his work-related injury. Claimant thereafter filed a claim for permanent total disability benefits under the Act.

In his Decision and Order, the administrative law judge found that claimant is capable of performing the light duty job offered to him by employer, and therefore denied benefits after February 14, 1995. On appeal, claimant contends that the administrative law judge erred in finding that employer established suitable alternate employment. Employer responds, urging affirmance.

Claimant's contention that the administrative law judge erred in concluding that claimant is capable of performing the light duty job offered to him by employer is without merit. Where, as in the instant case, it is undisputed that claimant is unable to perform his usual pre-injury work, the burden shifts to employer to establish the availability of suitable alternate employment. *See New Orleans (Gulfwide) Stevedores, Inc. v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981). One way that employer can meet its burden is by providing claimant with a suitable light duty job performing necessary work within its facility. *See Darby v. Ingalls Shipbuilding, Inc.*, 99 F.3d 685, 30 BRBS 93 (CRT) (5th Cir. 1996);[1] *Darden v. Newport News Shipbuilding & Dry Dock Co.*, 18 BRBS 224 (1986). Claimant's subjective complaints of pain do not preclude an administrative law judge from finding that employer has established suitable alternate employment. *See generally Adam v. Nicholson Terminal & Dry Dock Corp.*, 14 BRBS 735 (1981); *Peterson v. Washington Metropolitan Area Transit Authority*, 13 BRBS 891 (1981).

Claimant's treating physician, Dr. Zarzour, testified that claimant's condition did not require surgery, and that claimant reached maximum medical improvement on October 24, 1994. Dr. Zarzour imposed work restrictions which included prohibitions on regular lifting over 20 pounds, bending while lifting, climbing, working at unprotected heights, and sitting or standing for more than two hours at a time

[1]Contrary to the administrative law judge's statement, *Darby* is factually applicable to the instant case for the proposition that an employer that provides a claimant with a suitable light duty job at its facility meets its burden of establishing the availability of alternate employment.

without breaks. In denying claimant's claim, the administrative law judge, in his original decision and on reconsideration, found that both Dr. Zarzour and Mr. Walker, a vocational consultant, concluded that the modified position with employer was within Dr. Zarzour's restrictions. CX 1 at 24; EX 15 at 39, 19 at 23. Moreover, claimant testified that his supervisors, who were aware of his stated restrictions, encouraged him to work within those restrictions. Tr. at 82.

The administrative law judge, within his discretion as the trier-of-fact, rejected claimant's description of the modified job as requiring frequent bending, and found that claimant's subjective complaints of pain are not credible. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). The administrative law judge found, consistent with the record, that Dr. Zarzour did not impose any additional work restrictions on claimant as a result of claimant's complaints of pain, or because of claimant's use of medication and receipt of injections for treatment of the pain.[2] Inasmuch as the administrative law judge's finding that claimant can perform the light duty position in employer's facility is rational and supported by substantial evidence as it is within the restrictions imposed by claimant's physician, we reject claimant's contention of error, and we affirm the denial of benefits. *Darby*, 99 F.3d at 685, 30 BRBS at 93(CRT).

Accordingly, the Decision and Order Denying Compensation Benefits After February 14, 1995 and Decision and Order Denying Claimant's Motion for Reconsideration are affirmed.

SO ORDERED.

BETTY JEAN HALL
Chief Administrative Appeals Judge

[2]The administrative law judge found that the only change in claimant's restrictions from 1994 was Dr. Zarzour's reducing, in March 1995, the amount claimant could lift from 40 pounds to 20 pounds as a result of claimant's complaint after performing the modified job.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. MCGRANERY
Administrative Appeals Judge