BRB No. 93-0799

CARLOS D. RHODES	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
BETHLEHEM STEEL CORPORATION	)	DATE ISSUED: _____
	)	
	)	
Self-Insured	)	
Employer-Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order Granting Permanent Partial Disability Benefits of Julius A. Johnson, Administrative Law Judge, United States Department of Labor.

Raymond J. Cardillo, Baltimore, Maryland, for claimant.

Michael W. Prokopik (Semmes, Bowen, & Semmes), Baltimore, Maryland, for self-insured employer.

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

PER CURIAM:

Employer appeals the Decision and Order Granting Permanent Partial Disability Benefits (92-LHC-2308) of Administrative Law Judge Julius A. Johnson 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 supported by substantial evidence, are rational, and are in accordance with applicable law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, a burner, sustained an injury to his left foot on December 5, 1990, when he dropped a steel plate onto his toes. In his Decision and Order, the administrative law judge awarded claimant permanent partial disability compensation for a ten percent impairment to his left foot pursuant to Section 8(c)(4) of the Act, 33 U.S.C. §908(c)(4), based upon Dr. Macht's medical opinion. The administrative law judge further found that employer is not entitled to a credit for the amount of benefits paid to claimant as a result of a prior injury to his left ankle.

On appeal, employer argues that the administrative law judge erred in determining the extent

of claimant's disability. Employer additionally challenges the administrative law judge's failure to apply the credit doctrine with respect to claimant's prior foot award. Claimant responds, urging affirmance.

Employer initially contends that the administrative law judge erred in awarding claimant compensation for a ten percent permanent partial disability to his left foot based upon the testimony of Dr. Macht. In awarding claimant compensation, the administrative law judge credited the testimony of Dr. Macht, who opined that claimant suffered a ten percent permanent partial disability to his left foot as a result of the December 1990 work-incident, rather than the opinion of Dr. Wenzlaff. In rendering this credibility determination, the administrative law judge specifically noted that Dr. Macht treated claimant's prior injury to his left ankle in 1974,[1] and therefore, that physician was aware of claimant's history when rendering his disability assessment for the 1990 injury; additionally, the administrative law judge found Dr. Macht's opinion probative because it better comports with claimant's testimony regarding his pain. In adjudicating a claim, it is well-established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences from it, *see Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988), and he is not bound to accept the opinion or theory of any particular witness. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). Thus, as the administrative law judge's credibility determination is rational and within his authority as factfinder, and as this credited opinion constitutes substantial evidence to support the administrative law judge's ultimate findings, we affirm the administrative law judge's determination that claimant suffers from a ten percent permanent partial disability. *See generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *Sam v. Loffland Brothers Co.*, 19 BRBS 228 (1987).

Employer next argues that the administrative law judge erred in failing to award it a credit for payments of compensation made to claimant under the Act for a prior injury to his left foot. Specifically, employer avers that the administrative law judge mischaracterized the holding in *Director, OWCP v. Bethlehem Steel Corp. [Brown]*, 868 F.2d 759, 22 BRBS 47 (CRT) (5th Cir. 1989), and erred as a matter of law by failing to subtract the compensation that claimant received for the 1974 injury from that awarded for the 1990 injury, dollar for dollar, as the credit doctrine mandates.

In his decision, the administrative law judge declined to apply the credit doctrine to this case because he found that claimant's 1974 ankle injury and 1990 toe injury were two separate injuries, albeit affecting the same body part--claimant's left foot. In rendering this finding, the administrative law judge stated that the decision in *Brown* mandates that an offset should be based upon the percentage of loss previously compensated; the administrative law judge thus found that employer is not entitled to a credit for the compensation previously paid for the 1974 ankle injury, which was for a ten percent permanent partial disability to the left foot, and ordered employer to pay benefits for an "additional" ten percent permanent partial disability to claimant's left foot occasioned by the December 1990 work-incident pursuant to Section 8(c)(4).

[1]In December 1974, claimant fractured his left ankle.

It is well-established that the credit doctrine applies where a claimant receives multiple schedule awards for successive injuries to the same part of the body; although the employer at the time of the second injury is liable for the combined effects of both injuries under the aggravation rule, the credit doctrine permits employer to credit the prior compensation *actually received* by the claimant for his prior injury against its subsequent liability. *See Brown*, 868 F.2d at 759, 22 BRBS at 47 (CRT); *Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45 (CRT) (5th Cir. 1986) (*en banc*). Although employer correctly avers that the administrative law judge misstated the holding in *Brown*, this error is harmless inasmuch as the administrative law judge properly declined to apply the credit doctrine based upon his specific findings in this case. The decisions in *Brown* and *Nash* contemplate that the credit doctrine is applicable where a combination or aggravation of a prior injury exists. *See Brown*, 868 F.2d at 761, 22 BRBS at 49 (CRT); *Nash*, 782 F.2d at 518-521, 18 BRBS at 50-54 (CRT). In the case *sub judice*, however, the administrative law judge specifically awarded claimant permanent partial disability compensation solely for the impairment sustained to claimant's left foot as a result of his December 1990 injury to his toes, based on medical evidence rating this impairment. The administrative law judge's disability award, therefore, does not encompass the combined effects of both injuries to claimant's foot. Accordingly, as the administrative law judge's award compensates claimant solely for the disability sustained as a result of his December 1990 work injury, we hold that the administrative law judge committed no error in declining to award employer a credit for any compensation paid to claimant as a result of his 1974 ankle injury.

Accordingly, the Decision and Order Granting Permanent Partial Disability Benefits of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge