

BRB No. 93-1428

STEPHEN KAMINSKI )  
 )  
 Claimant-Petitioner )  
 )  
 v. ) DATE ISSUED:  
 )  
 NORTHERN SHIPPING COMPANY )  
 )  
 Employer-Respondent ) DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Frank D. Marden, Administrative Law Judge, United States Department of Labor.

Stephen Kaminski, Philadelphia, Pennsylvania, *pro se*.

Carl H. Delacato, Jr. (Hecker Brown Sherry and Johnson), Philadelphia, Pennsylvania, for employer.

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

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order - Denying Benefits (92-LHC-0434) of Administrative Law Judge Frank D. Marden 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). In reviewing this *pro se* appeal, the Board 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); 20 C.F.R. §§802.211(e), 802.220.

On May 1, 1990, claimant experienced back spasms during the course of his employment with employer as a forklift operator. Transcript at 32. The next day, claimant reported the incident and completed a full day of work. Claimant then began treating with Dr. Muller, an orthopedic specialist, who initially cleared claimant to return to work with restrictions, Claimant's Exhibit 10; on May 22, 1990, Dr. Muller released claimant to return to work without restrictions. Claimant's Exhibit 9. Claimant, thereafter, returned to work, although he continued to complain of back discomfort.

In his Decision and Order, the administrative law judge relied upon the opinions of four

orthopedic specialists in concluding that claimant is not disabled to any degree by the incident of May 1, 1990; accordingly, the administrative law judge denied benefits.

On appeal, claimant, appearing *pro se*, challenges the administrative law judge's denial of his claim for benefits under the Act.<sup>1</sup> Employer responds, urging affirmance.

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 and Construction Co.*, 17 BRBS 56 (1985). In the instant case, after considering all of the medical evidence of record, the administrative law judge relied upon the opinions of four orthopedic specialists, Drs. Muller, Rosenthal, Klinghoffer and Lee,<sup>2</sup> over the contrary opinions of Drs. Zatz and Cooper, in concluding that claimant did not sustain a compensable impairment subsequent to May 1, 1990. The administrative law judge's decision to rely upon the opinions of Drs. Muller, Rosenthal, Klinghoffer and Lee is rational and within his authority as factfinder. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). The credited opinion of Dr. Muller, however, unequivocally released claimant to return to full duty with no restrictions on May 22, 1990; prior to that time, Dr. Muller had placed restrictions on claimant's work duties. *See* Claimant's Exhibits 9, 10. Thus, as the credited opinion of Dr. Muller, supported by the opinions of Drs. Rosenthal, Klinghoffer and Lee, constitutes substantial evidence that claimant sustained no compensable impairment subsequent to May 22, 1990, we affirm the administrative law judge's determination that claimant sustained no impairment subsequent to May 22, 1990. *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). The administrative law judge's denial of compensation benefits for the period May 2, 1990 through May 22, 1990, is reversed, however, as Dr. Muller's opinion establishes that claimant was disabled during this period, and the other credited physicians did not examine claimant until later. The administrative law judge's decision is therefore modified to reflect claimant's entitlement to temporary total disability compensation for the period from May 2 through May 22, 1990. *See* 33 U.S.C. §908(b).

Accordingly, the administrative law judge's Decision and Order - Denying Benefits is reversed insofar as it denied claimant temporary total disability compensation for the period May 2, 1990 through May 22, 1990. In all other respects, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

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<sup>1</sup>Claimant was represented by counsel in the proceeding before the administrative law judge.

<sup>2</sup>Dr. Muller, after initially placing restrictions on claimant's return to work, released claimant to full duty on May 22, 1990. Dr. Rosenthal, on March 11, 1991, found no objective sign of nerve root compression. Dr. Klinghoffer, on April 2, 1991, found no physical abnormality. Lastly, Dr. Lee opined that claimant's present condition is not related to his May 1, 1990, work-incident.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge