

JAMES L. BURTON)	
)	
Claimant-Respondent)	
)	
v.)	
)	
STEVEDORING SERVICES)	
OF AMERICA)	DATE ISSUED:
)	
and)	
)	
EAGLE PACIFIC INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits and Order Denying Reconsideration of Henry B. Lasky, Administrative Law Judge, United States Department of Labor.

Donald R. Wilson (Pozzi, Wilson, Atchison, O'Leary & Conboy), Portland, Oregon, for claimant.

Patric J. Doherty and Dennis R. VavRosky (VavRosky, MacColl, Olson, Doherty & Miller, P.C.), Portland, Oregon, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits and Order Denying Reconsideration (92-LHC-2050) of Administrative Law Judge Henry B. Lasky 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 if they 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 sustained an injury to his lower back on November 14, 1989, while working for

employer as a utility or dock man. Employer voluntarily paid temporary total disability compensation from November 15, 1989 until March 12, 1990, when claimant returned to work. Thereafter, claimant sought permanent partial disability compensation under the Act. In his Decision and Order, the administrative law judge found that claimant sustained a loss of wage-earning capacity of 33 1/3 percent, equaling \$385.91 per week, based on claimant's stipulated average weekly wage of \$1,157.72. Consequently, the administrative law judge awarded claimant permanent partial disability compensation at the rate of \$257.27 per week. 33 U.S.C. §908(c)(21), (h).

On appeal, employer contends that the administrative law judge's decision fails to comply with the Administrative Procedure Act (APA), 5 U.S.C. §557(c), and that, therefore, the case must be remanded for further consideration. Employer alternatively contends that the administrative law judge's decision should be reversed because his finding that claimant sustained a loss of wage-earning capacity is not supported by substantial evidence. Claimant responds, urging that the administrative law judge's decisions be affirmed. Employer has submitted a reply brief, reiterating the contentions raised in its Petition for Review and brief.

Decisions rendered under the Longshore Act are required by the APA to include a statement of "findings and conclusions, and the reason or basis therefor, on all material issues of fact, law, or discretion presented in the record." 5 U.S.C. §557(c)(3)(A). The administrative law judge must adequately detail the rationale behind his decision; he must analyze and discuss all relevant evidence of record, and explicitly set forth his reasons as to why he has accepted or rejected such evidence. *See Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380 (1990); *Williams v. Newport News Shipbuilding & Dry Dock Co.*, 17 BRBS 61 (1985).

We agree with employer that the administrative law judge's findings in the instant case fail to comply with the APA. As employer notes, the administrative law judge did not consider the evidence relevant to the issue of claimant's post-injury wage-earning capacity which employer submitted at the hearing as Employer's Exhibit 9. This evidence consists of Pacific Maritime Association (PMA) wage records and a summary of these records which provide a comparison of the types of longshore jobs claimant performed before and after the work injury. In its Proposed Decision and Order below, employer argued that this evidence refutes claimant's testimony and the testimony of his vocational expert, Mr. Ross, as to claimant's post-injury ability to obtain certain longshore jobs, and accordingly, as to claimant's post-injury wage-earning capacity. In his Decision and Order, rather than addressing employer's specific arguments and resolving the conflict between the wage records submitted by employer and the testimonial evidence and wage records submitted by claimant, the administrative law judge concluded that claimant "undisputedly sustained a loss of wage[-]earning capacity of 33 1/3 percent," a finding which was based almost entirely on his *verbatim* adoption of claimant's proposed Findings of Fact, Conclusion of Law, and Order.

We hold that, in failing to independently analyze and discuss all of the evidence of record relevant to the issue of claimant's post-injury wage-earning capacity, the administrative law judge did not provide a reasoned analysis in compliance with the APA. *See Williams*, 17 BRBS at 63. Claimant's proposed Order, which made no mention of employer's evidence, and in particular

Employer's Exhibit 9, presented a view of the evidence biased in support of his claim. The administrative law judge's mere adoption of claimant's proposed Order in this case thus conflicts with the administrative law judge's duty to impartially evaluate the evidence in his role as a neutral adjudicator. *Id.* Remand is necessary for the administrative law judge to make findings of fact and conclusions of law based on his independent review of the record. Since the Board cannot perform its review function until the administrative law judge has performed his factfinding function, we must decline at this time to address the substantive issues alternatively raised by employer. *See Whittington v. The National Bank of Washington*, 8 BRBS 235 (1978).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits and Order Denying Reconsideration are vacated, and the case is remanded for further consideration in accordance with the Administrative Procedure Act.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge