

GARY MOUTON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
EPIC DIVERS, INCORPORATED	)	
	)	
and	)	
	)	
CIGNA INSURANCE COMPANIES	)	DATE ISSUED: _____
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Patricia D. Miskewicz (Clyde A. Ramirez & Associates), New Orleans, Louisiana, for claimant.

Peter L. Hilbert, Jr. and Michael J. DeBlanc, Jr. (McGlinchey Stafford Lang, P.C.), New Orleans, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (95-LHC-667) of Administrative Law Judge C. Richard Avery 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant alleged that he injured his head, shoulder, hand, neck, and back on October 15, 1991, while diving for employer in approximately 10 feet of water when a high pressured jet hose he was working with ruptured, hitting him and knocking him unconscious. Prior to claimant's October 1991 work injury, claimant suffered from chronic back, neck, and leg problems due to bends, a joint disease, and multiple automobile accidents. In addition, claimant had previously suffered

decompression illness and had been treated for prescription and illegal drug addiction. Employer voluntarily paid claimant temporary total disability benefits from October 15, 1991 until May 9, 1994. Claimant filed a claim under the Act, contending that he remained temporarily totally disabled due to the effects of the October 15, 1991, work injury.

The administrative law judge denied the claim. He initially found that of the injuries claimed, only claimant's head, neck, and shoulder injuries are causally-related to the 1991 work injury. The administrative law judge further found that although claimant had been diagnosed as suffering from a neuromuscular disorder, chronic bends, traumatic arthritis, and decompression sickness, these conditions, while disabling, were not in any way related to the October 15, 1991, work accident. Finally, the administrative law judge found that inasmuch as claimant's work-related head, neck, and shoulder conditions had fully resolved as of March 30, 1994, they are not the cause of claimant's continuing disability. Accordingly, he awarded claimant temporary total disability from October 15, 1991 until March 30, 1994, the date he found that claimant's work-related head, neck and shoulder injuries reached maximum medical improvement, based on the testimony of Dr. Steiner. EX-27 at 20-24. Claimant appeals the denial of continuing temporary total disability compensation, and employer responds, urging affirmance.

On appeal, claimant asserts that in denying the claim for continuing temporary total disability benefits the administrative law judge erred in that he did not take into account the pre-existing conditions that were caused by previous work-related accidents and were aggravated by the October 15, 1991, accident from which he has yet to reach the date of maximum medical improvement.

The circumscribed scope of the Board's review authority necessarily requires a party challenging the decision below to address that decision and demonstrate why substantial evidence does not support the result reached. A decision contrary to the party's expectations, or contrary to some aspect of the record, is not necessarily an erroneous decision. Where a party is represented by counsel, mere assignment of error or a request to reweigh evidence, is not sufficient to invoke Board review. *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (5th Cir. 1986); *Carnegie v. C & P Telephone Co.*, 19 BRBS 57 (1986); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983); *see also* 20 C.F.R. §802.211. The Board's Rules of Practice and Procedure provide that a Petition for Review shall contain a statement indicating the specific contentions and describing with particularity the substantial questions of law or fact to be raised by the appeal. 20 C.F.R. 802.211. Accordingly, the party's brief in support of its Petition for Review must contain a discussion of the relevant law and evidence.

In the instance case, claimant has failed to meet these threshold requirements. Although claimant asserts that the administrative law judge erred in denying him continuing temporary total disability compensation because he failed to take into account pre-existing conditions that were caused by prior work-related accidents and were aggravated by the October 15, 1991, accident, claimant fails to specifically identify error in the administrative law judge's decision. Mere recitation of favorable medical evidence is insufficient to provide a basis for review. As counsel has failed to adequately raise error in the administrative law judge's evaluation of the evidence or conclusions of law regarding aggravation, we must affirm the decision below.

We note that although claimant in the present case has failed to raise any error for the Board to review with regard to his aggravation claim, he does assert that neither the March 30, 1994, medical report of Dr. Steiner nor the medical opinion of Dr. Martin is sufficient to establish that claimant suffers from myotonia congenita. In addition, claimant points out that neurological examinations conducted in November 1991 and December 1991 showed no evidence of multiple sclerosis or muscular dystrophy. Any error the administrative law judge may have made with regard to this evidence is harmless because in finding that claimant suffered from myotonia congenita the administrative law judge properly relied on the medical opinions of Drs. Chetta and Smith, EXS. 17, 23, 28, which support his finding.

Claimant also contends that the Board should overturn the administrative law judge's decision denying the claim because the hearing officer who conducted the informal proceedings before the Office of Workers' Compensation rendered a judgement in favor of claimant. We find no merit in claimant's assertion. The administrative law judge's hearing is *de novo*, and he is not bound by the district director's or his representatives' recommendations. See 20 C.F.R. §702.317(c); *Raimer v. Willamette Iron & Steel Co.*, 21 BRBS 98, 100 (1988).

In addition, claimant cites Dr. Chetta's medical opinion, diagnosing a cervical and lumbar disc injury which renders claimant incapable of performing any type of work, and the opinion of Dr. Smith, diagnosing ulnar neuropathy and lumbar radiculopathy caused or aggravated by the accident which render claimant incapable of diving. Moreover, claimant summarily contends that the medical and lay evidence establishes that claimant is entitled to reinstatement of his disability benefits and asserts that claimant's medical records clearly show that he has not reached maximum medical improvement. As we have stated, however, the mere recitation of evidence favorable to claimant's position is not sufficient to invoke the Board's review of the administrative law judge's decision. As claimant's counsel fails to cite any relevant law or identify any specific error for the Board to review, the decision below denying benefits subsequent to March 30, 1994, must be affirmed. See *Collins v. Oceanic Butler, Inc.*, 23 BRBS 227, 229 (1990).<sup>1</sup>

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<sup>1</sup>We note that the record in this case is not totally complete. While the record, which is in a state of disarray, does appear to contain the medical exhibits submitted into evidence, the hearing transcript has not been received, despite our best efforts. In light of our determination that claimant's brief fails to raise any error for the Board to review, we do not view anything contained in the missing transcript as germane to our disposition of the case.

Accordingly, the Decision and Order of the administrative law judge denying claimant temporary total disability benefits subsequent to March 30, 1994, is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge