**U.S. Department of Labor**

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 19-0047

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| GEORGE BARRY | ) | |
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| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| LOGISTEC CORPORATION | ) | DATE ISSUED: 04/09/2019 |
| | ) | |
| and | ) | |
| | ) | |
| SIGNAL MUTUAL | ) | |
| | ) | |
| Employer/Carrier-Respondents | ) | DECISION and ORDER |

Appeal of the Decision and Order Denying Benefits of William T. Barto, Administrative Law Judge, United States Department of Labor.

Michael C. Eisenstein, Baltimore, Maryland, for claimant.

Heather H. Kraus (Semmes, Bowen & Semmes), Baltimore, Maryland, for employer/carrier.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2017-LHC-00818) of Administrative Law Judge William T. Barto 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 rational, supported by substantial evidence, and in

accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant injured his left knee on July 11, 2016, during the course of his employment for employer as a longshoreman. His knee reached maximum medical improvement on October 6, 2016, and he returned to his usual employment. Employer paid compensation for temporary total disability from July 12 to October 10, 2016. 33 U.S.C. §908(b). The parties disputed claimant's entitlement to a scheduled award for permanent partial disability of the left knee. *See* 33 U.S.C. §908(c)(2), (19).

In support of their positions, claimant relied on the 24 percent impairment rating of Dr. Franchetti and employer relied on Dr. Cohen's opinion that claimant has no permanent impairment. The administrative law judge gave "Dr. Franchetti's opinion very little weight as it is poorly reasoned." Decision and Order at 6. He also found that the office notes of Dr. Arango, claimant's treating physician, do not support Dr. Franchetti's impairment rating because Dr. Arango did not provide a rating and opined that claimant could return to work without restrictions. *Id*. Based on claimant's physical ability to return to full-time work and the absence of a "well-documented and well-reasoned" medical opinion that claimant has a permanent impairment, the administrative law judge concluded that claimant failed to establish a ratable permanent impairment of the left knee due to the July 11, 2016 work injury. *Id*. at 9.

On appeal, claimant challenges the administrative law judge's finding that he does not have a permanent left knee impairment. Employer responds, urging affirmance.

The administrative law judge stated that Dr. Franchetti's rating is based on claimant's persistent pain and loss of endurance and function. Decision and Order at 6; CX 1 at 2-3. He found that Dr. Franchetti only briefly summarized the medical records and the results of his own examination and did not further explain his 24 percent impairment rating other than to reference the American Medical Association *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). CX 1.

The administrative law judge found that Dr. Arango's last report dated October 19, 2016, states that "[claimant] feels like he is doing much better. He feels like he has progressed." Decision and Order at 6. Dr. Arango concluded claimant can "return to full duty." CX 2 at 2. Dr. Arango noted claimant denied locking, swelling and instability, found no effusion or instability, and stated only that claimant has "occasional pain with flexion and extension." *Id*. at 1. The administrative law judge also summarized claimant's

testimony regarding specific problems at work and his inability to play soccer or golf.[1] Decision and Order at 5.

Although the administrative law judge found Dr. Cohen's opinion merits "little weight,"[2] he explained why it is nevertheless better reasoned and deserving of greater evidentiary weight than Dr. Franchetti's opinion. Decision and Order at 8. He stated that Dr. Cohen noted no swelling, muscle wasting, or ligamentous instability, and testified at his deposition that arthritis, which was noted on an MRI, could explain claimant's sense that his knee might give way. *Id.*; EX 7 at 17-20. The administrative law judge also addressed notes from claimant's final physical therapy appointment at Canton Occupation Medical Services that he had "resolved L knee pain," and "Patient notes that [his knees] are performing at their prior level of function . . . p.t. has helped a lot. No problem, . . . [and] my knee feels great." EX 3 at 1, 4. He noted claimant's testimony that he has not required medical care for his knee since October 2016. Tr. at 29.

It is claimant's burden to establish the extent of his disability. *Pisaturo v. Logistec, Inc.*, 49 BRBS 77 (2015). In determining the degree of permanent impairment for a scheduled injury other than hearing loss, the administrative law judge is not bound by any particular formula. *Id.* The administrative law judge is afforded considerable discretion in determining the weight to be accorded to medical opinions, and the Board must accept the rational inferences and factual findings of the administrative law judge which are supported by substantial evidence. *See, e.g., Newport News Shipbuilding & Dry Dock Co. v. Ward*, 326 F.3d 434, 37 BRBS 17(CRT) (4th Cir. 2003); *Norfolk Shipbuilding & Drydock Corp. v. Faulk*, 228 F.3d 378, 380-81, 34 BRBS 71, 72(CRT) (4th Cir. 2000), *cert. denied*, 531 U.S. 1112 (2001).

Claimant's contentions on appeal amount to little more than a request for the Board to reweigh the evidence, which we are not entitled to do. *See Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 21 BRBS 10(CRT) (4th Cir. 1988). The administrative law judge's conclusion that claimant has no permanent impairment to his left knee is supported by the examination findings of Drs. Arango and Cohen and the

[1] The administrative law judge noted claimant's testimony that his knee gets a lot of use, occasionally gives out, and has fatigue and soreness. Decision and Order at 5; Tr. at 19-20. He also noted claimant's testimony that he has to sit from time to time and be very cautious with it. Tr. at 21.

[2] The administrative law judge found that Dr. Cohen, like Dr. Franchetti, provided "a bare conclusion [for his impairment rating] without any explanation beyond reference to the AMA Guidelines . . . ." Decision and Order at 7.

physical therapy notes.[3] He permissibly gave less weight to the opinion of Dr. Franchetti because it was not sufficiently reasoned. *See Ceres Marine Terminals, Inc. v. Director, OWCP [Jackson]*, 848 F.3d 115, 50 BRBS 91(CRT) (4th Cir. 2016). Moreover, claimant's ability to return to his usual employment and the lack of recent medical care support the finding that claimant does not have a permanent impairment to his left knee. *See Mazze v. Frank J. Holleran, Inc.*, 9 BRBS 1053, 1055 (1978). As the administrative law judge's finding that claimant failed to establish a permanent left knee impairment is supported by substantial evidence, we affirm the denial of permanent partial disability compensation. *See generally Newport News Shipbuilding & Dry Dock Co. v. Winn*, 326 F.3d 427, 37 BRBS 29(CRT) (4th Cir. 2003); *Pittman Mechanical Contractors, Inc. v. Director, OWCP*, 35 F.3d 122, 28 BRBS 89(CRT) (4th Cir. 1994).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

[3] The fact that the administrative law judge found Dr. Cohen's opinion entitled to "little weight," yet to more weight than Dr. Franchetti's, is within his discretion as it is fully explained. Decision and Order at 7-8.