BRB Nos. 04-0414 and
04-0414A

GUADALUPE HERNANDEZ	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
NAVY EXCHANGE	)	DATE ISSUED: 12/20/04
	)	
and	)	
	)	
CRAWFORD & COMPANY	)	
	)	
Employer/Adjuster-	)	
Respondents	)	
Cross-Petitioners	)	DECISION and ORDER

Appeals of the Decision and Order of Richard E. Huddleston, Administrative Law Judge, United States Department of Labor.

Herbert J. Chestnut, Marietta, Georgia, for claimant.

R. John Barrett (Vandeventer Black, LLP), Norfolk, Virginia, for employer/adjuster.

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

PER CURIAM:

Claimant appeals, and employer cross-appeals, the Decision and Order (2002-LHC-2924) of Administrative Law Judge Richard E. Huddleston 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.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *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 injured her left ankle and foot on April 18, 2001, when an unhinged door fell on her foot during the course of her employment for employer in Chicago, Illinois. Claimant initially was diagnosed with a left foot contusion. On June 19, 2001, Dr. Zebell opined that claimant sustained a resolved soft tissue injury of the left foot, and he released her for regular duty. Claimant continued working for employer from the date of her injury until July or August 2001, when her husband, who is employed by the Army, was transferred to Fort McPherson, in Atlanta, Georgia. Claimant did not obtain employment in Atlanta, and she continued to experience ankle/foot pain. On July 23, 2002, Dr. D'Auria, who specializes in orthopedic medicine, prescribed a bone scan to evaluate claimant for possible reflex sympathetic dystrophy, and he completed a form authorizing claimant not to work until August 20, 2002. Claimant did not seek further treatment from Dr. D'Auria, since she was unable to pay for his office visits. On October 11, 2002, claimant was authorized by her private insurance carrier to treat with Dr. Doman for left ankle/foot pain. He concurred with Dr. D'Auria's diagnosis of reflex sympathetic dystrophy, notwithstanding a bone scan conducted on October 15, 2002, was interpreted as normal. Dr. Doman treated claimant's pain symptomatology with three sympathetic blocks administered in November and December 2002, and February 2003. Claimant sought compensation under the Act for continuing temporary total disability, 33 U.S.C. §908(b), commencing July 23, 2002, when Dr. D'Auria had opined that claimant was unable to work.

In his decision, the administrative law judge rejected employer's contention that claimant's work injury resolved by June 19, 2001. The administrative law judge credited claimant's testimony that she endured continuing left ankle/foot pain to find claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), linking her pain symptomatology to her April 18, 2001, work injury. The administrative law judge reviewed the medical evidence of record and found that employer did not rebut the presumption. Accordingly, the administrative law judge found that claimant's injury is work-related.

The administrative law judge next addressed claimant's claim for compensation commencing July 23, 2002. He credited the February 13, 2003, report of Dr. Sutton, who examined claimant at employer's request. Dr. Sutton found that claimant's behavior suggested symptom magnification and that claimant was capable of performing all normal activities. The administrative law judge also relied on Dr. Doman's reports, which he found indicate that claimant's left ankle/foot condition had improved from October 2002 to February 2003. The administrative law judge therefore awarded claimant compensation for temporary total disability from July 23, 2002, to February 13, 2003.

On appeal, claimant challenges the administrative law judge's finding that she is not entitled to continuing compensation after February 13, 2003. BRB No. 04-0414. Employer responds, urging affirmance. Employer cross-appeals, contending that claimant's condition and the medical treatment she received after June 19, 2001, are not related to her April 18, 2001, work injury. Employer also contends that the administrative law judge erred in awarding claimant compensation after August 21, 2002. BRB No. 04-0414A. Claimant has not responded to employer's cross-appeal.

We initially address employer's cross-appeal of the administrative law judge's finding that claimant's condition and medical treatment after June 19, 2001, are related to her work injury. Section 802.211(b) of the Board's regulations states, in pertinent part:

> Each petition for review shall be accompanied by a supporting brief . . . which: Specifically states the issues to be considered by the Board; presents . . . an argument with respect to each issue presented with references [to the record]; a short conclusion stating the precise result the petitioner seeks on each issue and any authorities upon which the petition relies to support such proposed result.

20 C.F.R. §802.211(b). The Board has held that a brief filed by a party represented by counsel must address the administrative law judge's decision and discuss the way in which that decision is not supported by substantial evidence or in accordance with law. *Collins v. Oceanic Butler, Inc.*, 23 BRBS 227, 229 (1990); *Shoemaker v. Schiavone & Sons, Inc.*, 20 BRBS 214, 218 (1988). "[M]ere assignment of error is not sufficient to invoke Board review." *Carnegie v. C&P Telephone Co.*, 19 BRBS 57, 58-59 (1986).

In this case, employer's contention ostensibly raising the relationship between claimant's work injury and her condition and medical treatment after June 19, 2001, is taken verbatim from the Post Hearing Brief it submitted to the administrative law judge. Employer fails either to address the administrative law judge's decision with specificity or to identify any error purportedly committed by the administrative law judge in finding the Section 20(a) presumption invoked and not rebutted, and in awarding claimant medical benefits for her condition. Merely filing pages taken from the Post Hearing Brief as the sum of its assertion of error by the administrative law judge is insufficient to satisfy the requirements of the regulation. *Collins*, 23 BRBS at 228-229; *see also Plappert v. Marine Corps Exchange*, 31 BRBS 109 (1997), *aff'g on recon. en banc* 31 BRBS 19 (1997); 20 C.F.R. §802.211(b). As employer has failed to raise a substantial issue for the Board to review in relation to the administrative law judge's finding that claimant's condition after June 19, 2000, is related to her April 18, 2001, work injury, we affirm the administrative law judge's finding and the consequent award of medical benefits. *Collins*, 23 BRBS at 228-229; *Carnegie*, 19 BRBS at 59.

We next address the appeals filed by both parties of the administrative law judge's award of compensation for temporary total disability from July 23, 2002, to February 13, 2003. Claimant argues the administrative law judge erred by crediting Dr. Sutton's opinion to find claimant able to work after February 13, 2003. Employer contends that claimant established entitlement to compensation for temporary total disability only from July 23 to August 20, 2002, when Dr. D'Auria restricted claimant from working, as there is no medical opinion of record after August 20, 2002, stating that claimant was unable to work.

Claimant bears the burden of establishing the 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 & Constr. Co.*, 17 BRBS 56 (1985). In order to establish a *prima facie* case of total disability, claimant must show that she is unable to perform her usual work due to the work injury *See Harmon v. Sea-Land Service*, 31 BRBS 45 (1997); *Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988).

In this case, the administrative law judge found claimant's testimony credible that she continued working in pain after her injury until she moved to Atlanta. Decision and Order at 16. The administrative law judge, however, also credited Dr. Sutton's February 13, 2003, opinion that claimant could perform "all the activities expected of a woman her age, height, and weight." EX 4 at 3. The administrative law judge found that Dr. Sutton's opinion indicates that claimant could have returned to work as of that date. Decision and Order at 17. The administrative law judge determined that claimant's testimony of continuing ankle/foot pain is balanced by Dr. Sutton's finding that claimant's behavior during the examination suggested symptom magnification. EX 4 at 2. The administrative law judge also found that claimant's testimony must be viewed in light of Dr. Doman's examination notes, which indicate that claimant's condition had improved. Decision and Order at 17. Claimant reported to Dr. Doman at her initial visit on October 11, 2002, that she had "significant pain." CX 4 at 3. The administrative law judge found that Dr. Doman's subsequent notes indicate that claimant's injury was resolving with time and the aid of the three sympathetic blocks.[1] Decision and Order at 17.

It is within the administrative law judge's authority to evaluate and to draw inferences from the medical evidence of record. *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 30(CRT) (9th Cir. 1988); *Todd Shipyards Corp. v. Donovan*, 300 F.2d

[1] Specifically, on November 22, 2002, Dr. Doman noted that claimant had good results from a sympathetic block, and on February 14, 2003, he noted that claimant was complaining of "some left leg pain with some pins ands needles sensation." CX 4 at 6.

741 (5th Cir. 1962). In this case, we hold that the administrative law judge acted within his discretion in crediting the reports of Drs. Sutton and Doman to find that claimant's work injury had improved to the extent that she could return to work after February 13, 2003. *See generally Calbeck v. Strachan Shipping* Co., 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). We reject claimant's contention that the administrative law judge mischaracterized Dr. Sutton's opinion to find that claimant was able to work after February 13, 2003. Dr. Sutton stated that claimant is capable of performing all normal activities, and the administrative law judge rationally inferred that this included the ability to return to unrestricted work.[2] *See Gacki v. Sea-Land Service, Inc.*, 33 BRBS 127 (1998); *see also Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd mem. sub nom. Chong v. Director, OWCP*, 909 F.2d 1488 (9th Cir. 1990). We also reject employer's contention that claimant is not entitled to compensation between August 20, 2002, and February 13, 2003, since no doctor restricted claimant from working during this period. The administrative law judge rationally found based on claimant's testimony and Dr. Doman's course of treatment that claimant was unable to work before February 13, 2003. *See Diosdado v. Newpark Shipbuilding & Repair, Inc.*, 31 BRBS 70 (1997).

[2] Claimant also argues that because employer refused to authorize treatment by Dr. D'Auria, she was unable to obtain care from him or an opinion as to the extent of her disability. In a ruling at the hearing, and in an Order issued March 18, 2003, the administrative law judge found that the district director's order authorizing a change of physicians to Dr. D'Auria was binding upon employer. Decision and Order at 2. Employer did not appeal this finding. Claimant may request modification should she subsequently obtain evidence from Dr. D'Auria of continuing disability after February 13, 2003. *See* 33 U.S.C. §922. Accordingly, we reject claimant's contention that she was prejudiced by employer's prior refusal to authorize treatment by Dr. D'Auria.

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge