



BRB No. 18-0360

ALBERTO PILOTO)	
)	
Claimant-Respondent)	
)	DATE ISSUED: 12/12/2018
v.)	
)	
ELECTRIC BOAT CORPORATION)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits and the Order Denying Employer’s Motion for Reconsideration of Timothy J. McGrath, Administrative Law Judge, United States Department of Labor.

Lance G. Proctor (Attorney Lance G. Proctor, LLC), Groton, Connecticut, for claimant.

Daniel J. Archetto and Conrad M. Cutcliffe (Cutcliffe Archetto & Santilli), Providence, Rhode Island, for self-insured employer.

Before: BUZZARD, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits and the Order Denying Employer’s Motion for Reconsideration (2016-LHC-00157) of Administrative Law Judge Timothy J. McGrath 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’Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant started working for employer in 2003 as a shipfitter and welder. Tr. at 14-15. He uses pneumatic tools such as grinding machines, wire brushes, and the “whirlybird,” for about 20 to 30 hours per week. *Id.* at 16-17. He began noticing symptoms including sensitivity to cold temperatures, pain in his arms and hands when working with tools, weakened grip strength, and a “tingly sensation” in his hands at night during his second or third year with employer. *Id.* at 17-18.

After EMG testing by Dr. L’Europa in 2015, Dr. Cherniack diagnosed claimant with bilateral carpal tunnel syndrome, small fiber neuropathy, and Raynaud’s phenomenon.¹ CXs 5; 8 at 17-18, 23. Dr. Cherniack gave claimant a 14 percent impairment rating of his right upper extremity and a 13 percent impairment rating of his left upper extremity, based on the combined ratings for all of the conditions. CX 8 at 34-36. He further stated claimant has a five percent impairment to each upper extremity for carpal tunnel syndrome alone. CX 8 at 29.

Dr. Gaccione, an orthopedic surgeon, also examined claimant and assigned a two percent impairment rating of each upper extremity for carpal tunnel syndrome. He disagreed with Dr. Cherniack’s diagnosis of small fiber neuropathy and Reynaud’s phenomenon. EX 8 at 10, 12-13, 25. In addition, Dr. DaSilva reviewed claimant’s records. He agreed with Dr. Cherniack’s diagnosis of carpal tunnel syndrome and the assignment of a five percent impairment for each upper extremity. However, he disagreed with the diagnoses of small fiber neuropathy and Reynaud’s phenomenon. EX 3.

Claimant filed a claim for repetitive trauma injuries to his hands and arms. Employer voluntarily paid claimant permanent partial disability benefits for a 3.5 percent impairment of each hand, pursuant to Section 8(c)(3) of the Act, 33 U.S.C. §908(c)(3). CX 3.

The administrative law judge found that the parties agreed that claimant has work-related carpal tunnel syndrome but disputed the extent of claimant’s impairment. The administrative law judge further concluded that claimant did not meet his burden to establish that he has small fiber neuropathy or Raynaud’s phenomenon.² Decision and Order at 17-18, 20. He considered the impairment ratings assigned by Drs. Cherniack, Gaccione, and DaSilva, and found it reasonable to average the impairment ratings of Dr. Cherniack and Dr. Gaccione. Thus, he awarded claimant benefits for a 3.5 percent

¹ Dr. Cherniack explained that Raynaud’s phenomenon results in the fingertips becoming white due to vasoconstrictions of the capillaries.

² This finding is not challenged on appeal.

impairment to each upper extremity for carpal tunnel syndrome, pursuant to Section 8(c)(1) of the Act, 33 U.S.C. §908(c)(1). Decision and Order at 12, 22. He awarded employer a credit for the benefits it voluntarily paid. *Id.* at 21; 33 U.S.C. §914(j).

Employer filed a motion for reconsideration, contending that claimant's award should have been calculated under Section 8(c)(3) for impairments to his hands, rather than his upper extremities. The administrative law judge denied the motion, stating that each doctor assigned impairment ratings to claimant's upper extremities pursuant to Table 15-23 of the American Medical Association *Guides to the Evaluation of Permanent Impairment* (6th ed.) (AMA *Guides*).

On appeal, employer challenges the administrative law judge's award of permanent partial disability benefits based on an impairment to claimant's upper extremities pursuant to Section 8(c)(1), contending the evidence indicates that claimant's carpal tunnel syndrome only affects his hands such that claimant is limited to an award under Section 8(c)(3). Claimant filed a response brief, urging affirmance of the administrative law judge's decision.

In assessing the extent of claimant's disability in a scheduled injury case other than hearing loss, an administrative law judge is not bound by any particular standard or formula and may rely on medical opinions that rate a claimant's impairment under the AMA *Guides* as it is a standard medical reference. See *Brown v. Nat'l Steel & Shipbuilding Co.*, 34 BRBS 195 (2001); *Cotton v. Army & Air Force Exch. Services*, 34 BRBS 88 (2000). The Board has held that a claimant is entitled to compensation for the loss of a greater member where an injury to a lesser member affects the greater member. *Brown*, 34 BRBS at 200. A claimant may be entitled to an award for loss of use of the upper extremity under Section 8(c)(1), even where the injury occurred below the elbow. *Mason v. Baltimore Stevedoring Co.*, 22 BRBS 413 (1989).

The administrative law judge found that all three physicians assigned ratings under Table 15-23 of the AMA *Guides* on the basis of impairments to claimant's upper extremities. Order Denying Recon. at 2. This finding is supported by substantial evidence.³ See EX 5 at 4; CX 4 at 5. Table 15-23 provides a method of rating an impairment to the "upper extremity" due to "entrapment/compression neuropathy."⁴ Thus, the administrative law judge's award for impairments to claimant's arms under Section

³ Dr. DaSilva agreed with Dr. Cherniack's opinion, which was based on Table 15-23. EX 3.

⁴ The AMA *Guides* equate neuropathy with carpal tunnel syndrome.

8(c)(1) is supported by substantial evidence and in accordance with law. *See Brown*, 34 BRBS at 200. In addition, the administrative law judge permissibly averaged the ratings of Drs. Cherniack and Gaccione to calculate claimant's impairment.⁵ *Id.* We therefore affirm the administrative law judge's determination that claimant is entitled to benefits for a 3.5 percent impairment of each upper extremity, pursuant to Section 8(c)(1).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits and his Order Denying Employer's Motion for Reconsideration are affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

⁵ The administrative law judge's exclusion of Dr. DaSilva's impairment assessment from this average is not challenged on appeal.