

DONALD MAGEE	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
AVONDALE INDUSTRIES	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits and Order Denying Claimant's Motion for Reconsideration of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

Larry E. Broome, New Orleans, Louisiana, for claimant.

Joseph J. Laventhal, Jr. (Jones, Walker, Wrechter, Poitevent, Carrere & Denegre, L.L.P.), New Orleans, Louisiana, for self-insured employer.

Before: SMITH, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Awarding Benefits and Order Denying Claimant's Motion for Reconsideration (95-LHC-1885) of Administrative Law Judge James W. Kerr, Jr., 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On July 14, 1993, claimant sustained injuries to his back, neck and shoulder while working for employer when he fell from a ladder. Employer voluntarily paid claimant medical benefits as well as temporary total disability compensation from July 15, 1993 through October 3, 1993. See 33 U.S.C. §§907, 908(b). Claimant thereafter sought permanent total disability compensation under the Act.

In his Decision and Order, the administrative law judge determined that if claimant in

fact has fibromyalgia, it is unrelated to the July 14, 1993, work-incident, and that claimant suffered no work-related disability subsequent to October 16, 1993. Accordingly, the administrative law judge awarded claimant temporary total disability compensation from July 15, 1993, until October 16, 1993, as well as medical benefits. See 33 U.S.C. §§907, 908(b). Claimant timely sought reconsideration of this decision by re-filing his post-hearing brief with the administrative law judge. The administrative law judge denied claimant's motion in an Order dated February 24, 1997.

Claimant now appeals the administrative law judge's denial of continuing benefits. Employer responds, urging affirmance of the administrative law judge's Decision and Order.

In the instant case, claimant challenges the administrative law judge's denial of his claim for continuing total disability benefits. In support of his appeal, claimant has submitted as his appellate brief a document essentially identical to the post-hearing and motion for reconsideration memorandum which he filed with the administrative law judge. This document, while setting forth the evidence of record, fails to identify specific errors allegedly committed by the administrative law judge in his decision; moreover, this document fails to demonstrate why substantial evidence does not support the result reached by the administrative law judge. Rather, claimant generally asserts that the evidence of record is sufficient to establish his entitlement to ongoing compensation. The Board, however, is precluded from conducting a *de novo* review of the evidence. See generally *Nelson v. American Dredging Co.*, 30 BRBS 205 (1996); *Shoemaker v. Schiavone & Sons, Inc.*, 20 BRBS 214 (1988).

Claimant thus has failed to demonstrate error in the administrative law judge's decision that claimant sustained no compensable disability subsequent to October 16, 1993. It is well-established that claimant bears the burden of establishing the nature and 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 & Const. Co.*, 17 BRBS 56 (1985). Contrary to claimant's contention before the administrative law judge, a physical impairment alone is insufficient to support a finding of total disability; rather, in order to establish a *prima facie* case of total disability, a claimant must establish that he is incapable of returning to his regular or usual employment due to his work-related injury. See *Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988).

In the instant case, the administrative law judge credited the opinions of Drs. Russo, Sanders and Bourgeois, based upon these physicians superior qualifications, rather than the opinion of Dr. Evans, in concluding that claimant sustained no compensable impairment subsequent to October 16, 1993. Each of these credited physicians opined that claimant exhibited no objective findings which would prohibit his return to work. Thus, as the administrative law judge's credibility determinations are rational and within his authority as a factfinder, and as these credited opinions constitute substantial evidence to support the administrative law judge's ultimate findings, we affirm the administrative law judge's determination that claimant sustained no impairment subsequent to October 16, 1993. See

*generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978),  
*cert. denied*, 440 U.S. 911 (1979).

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge