

BRB No.00-0901

DONALD A. KNOWLTON)
)
 Claimant-Respondent)
)
 v.)
)
 ELECTRIC BOAT CORPORATION) DATE ISSUED:
)
 Self-Insured)
 Employer-Petitioner) DECISION and ORDER

Appeal of the Decision and Order- Awarding Benefits of David W. Di Nardi,
Administrative Law Judge, United States Department of Labor.

Diane M. Broderick (Murphy & Beane), Boston, Massachusetts, for self-
insured employer.

Before: SMITH and DOLDER, Administrative Appeals Judges, and NELSON,
Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order (99-LHC-2400) of Administrative Law
Judge David W. Di Nardi 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 the conclusions of law of 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).

The parties stipulated that claimant has work-related bilateral hand/arm vibration
syndrome (HAVS) and/or bilateral carpal tunnel syndrome. The primary issue presented to
the administrative law judge for resolution was the extent of claimant's permanent partial
disability due to his hand injuries. The administrative law judge credited Dr. Browning's
opinion and awarded claimant benefits for a 50 percent permanent impairment of each hand
pursuant to Section 8(c)(3) of the Act, 33 U.S.C. §908(c)(3). On appeal, employer
challenges the administrative law judge's decision to credit Dr. Browning's opinion over that
of Dr. Wainwright that claimant has a 12 percent impairment of each hand. Claimant has

not responded to this appeal.

We reject employer's initial contention that the administrative law judge was required to accept Dr. Wainwright's opinion because he rated claimant's impairment exclusively pursuant to the American Medical Association *Guides to the Evaluation of Permanent Impairment*, 4th ed. 1993 (*AMA Guides*). The administrative law judge correctly stated that he is not required to apply the *AMA Guides* in this case as it involves neither hearing loss nor a post-retirement occupational disease. *See* 33 U.S.C. §§902(10), 908(c)(13)(E), (23); *see generally Pimpinella v. Universal Maritime Services, Inc.*, 27 BRBS 154 (1993). Rather, the administrative law judge is not bound by any particular standard, but may consider a variety of medical opinions and observations, as well as claimant's testimony regarding his symptoms and physical effects of the injury, in assessing the extent of claimant's permanent impairment. *See id.*; *Bachich v. Seatrains Terminals of California*, 9 BRBS 184 (1978). Thus, Dr. Browning's opinion need not be given less weight because he used components of the *AMA Guides* and the Stockholm rating system, as well as his own experience in rating impairments of the hand.¹ CX 5 at 14, 21. The administrative law judge noted that Dr. Wainwright admitted that he did not perform all of the diagnostic tests performed by Dr. Browning, and that employer asked that he rate claimant's impairment under the *AMA Guides*. *See* RX 10 at 23-24. Moreover, the administrative law judge rationally found that Dr. Wainwright intimated that the *Guides* do not necessarily fit those situations where claimant has used air-fed vibratory tools in his employment. *Id.* at 28, 31; Decision and Order at 14 -15.

In crediting Dr. Browning's opinion, the administrative law judge provided several valid reasons. The administrative law judge found that Dr. Browning, a pre-eminent specialist whose practice is limited to orthopedics of the hand, has evaluated over 400 HAVS cases in his practice.² The administrative law judge also found that Dr. Browning gave a

¹The administrative law judge's error in stating that Dr. Browning used only the Stockholm rating system is harmless.

²The administrative law judge also stated, however, that "he is impressed with the professional credentials of Dr. Wainwright," who is Board-certified in orthopedic surgery and hand surgery. *See* Decision and Order at 16; RX 10 at 3-4.

detailed explanation as to the essential components and factors that he considered in determining that claimant's work-related injury had resulted in a 50 percent permanent impairment. Decision and Order at 14. This reasoning supports the administrative law judge's decision to accord greater weight to Dr. Browning.

Nonetheless, we cannot affirm the administrative law judge's decision as he also relied on invalid factors in crediting Dr. Browning's opinion. *See Howell v. Einbinder*, 350 F.2d 442 (D.C. Cir. 1965). As employer correctly argues, the administrative law judge erred in denoting Dr. Browning as claimant's treating physician, and in according deference to him on this basis. *See* Decision and Order at 16. Dr. Browning saw claimant on only two occasions, the first at the behest of claimant's attorney for evaluation purposes, *see* CX 5 at 5, and the second to rate claimant's impairment based on the objective studies performed by Dr. Browning, and by Dr. Alessi, a neurologist. *See* CX 2, 3. Dr. Browning did not provide continuing treatment for claimant, and in fact, noted that claimant's personal physician is Dr. Wilcon. CX 2. Thus, the administrative law judge erred in giving greater weight to Dr. Browning's opinion on the basis that he is the treating physician, as both physicians saw claimant only for the purposes of assigning impairment ratings. *See generally Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 84(CRT) (2^d Cir. 1997); *see also Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir. 1998), *amended*, 164 F.3d 480, 32 BRBS 144(CRT) (9th Cir. 1999), *cert. denied*, 120 S.Ct. 40 (1999).

Moreover, employer correctly argues that it is irrational for the administrative law judge to assign claimant the higher impairment rating on the basis that it takes into account the impact of the injury on "claimant's long-term work capacity," and his "daily chronic pain, a condition which affects his daily living and his residual work capacity." Decision and Order at 14-15. There is no evidence of record that claimant has "daily chronic pain," and Dr. Browning does not state that pain was a factor in the rating he assigned. Furthermore, although Dr. Browning noted that claimant has trouble climbing ladders due to his arm condition, he did not otherwise restrict claimant's work activities or state how the injury affects claimant's ability to work. In fact, in his report issued a day before the hearing, Dr. Wainwright noted that claimant continues to work at the shipyard.³ Thus, the administrative law judge erred in assigning determinative weight to Dr. Browning's opinion on the ground

³Claimant did not testify at the January 25, 2000, hearing, as the administrative law judge excused him after the parties stipulated that claimant sustained a work-related injury. In his report dated January 24, 2000, Dr. Wainwright reported that "claimant is still employed at Electric Boat as a pipefitter. He does use air-powered, vibrating tools for a variable amount of time each day. He tries to avoid this as much as possible." RX 6. Dr. Wainwright stated claimant should be restricted from the use of air-powered, vibrating tools because of his positive vascular study. *Id.*

that it takes into account claimant's pain and work restrictions. Inasmuch as the administrative law judge provided invalid reasons for crediting Dr. Browning's opinion, we must vacate the administrative law judge's award of benefits for a 50 percent impairment to each hand. The case is remanded for the administrative law judge to weigh the evidence of record and to provide valid explanations for discerning the extent of claimant's permanent impairment.

Accordingly, the administrative law judge's Decision and Order-Awarding Benefits is vacated, and the case is remanded to the administrative law judge for a decision consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge