

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 10 2021

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL AYERS,

No. 20-70550

Petitioner,

BRB Nos. 19-0110

19-0236

v.

KINDER MORGAN, INC., et al.,

MEMORANDUM*

Respondents.

On Petition for Review of an Order
of the Benefits Review Board

Submitted June 7, 2021**
Portland, Oregon

Before: WARDLAW, HURWITZ, Circuit Judges, and BOLTON,*** District
Judge.

Michael Ayers appeals an order of the Benefits Review Board (“BRB”) affirming a decision of an Administrative Law Judge (“ALJ”)’s denial of his claim

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Susan R. Bolton, United States District Judge for the District of Arizona, sitting by designation.

for a permanent partial disability award under the Longshore and Harbor Workers' Compensation Act. We have jurisdiction pursuant to 33 U.S.C. § 921(c) and affirm.

1. The BRB correctly determined that the ALJ stated a reason for the denial that was not "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," *i.e.*, that Ayers failed to carry his burden of establishing an impairment rating. *See Shirrod v. Dir., Off. of Workers' Comp. Programs*, 809 F.3d 1082, 1086 (9th Cir. 2015).

2. Our review confirms that the ALJ's findings were not "contrary to law, irrational, or not supported by substantial evidence." *Id.* The ALJ's finding that Dr. Ballard failed to explain his impairment-rating finding was rational and supported by the record: Dr. Ballard's impairment-rating opinion was short, poorly explained, and contradicted by that of two other doctors. The ALJ correctly found that Ayers failed to carry his burden of establishing an impairment rating, and correctly denied an award for permanent partial disability on that basis. *See* 5 U.S.C. § 556(d); *Dir., Off. of Workers' Comp. Programs, Dep't of Lab. v. Greenwich Collieries*, 512 U.S. 267, 281 (1994).

PETITION FOR REVIEW DENIED.