BRB No. 10-0100

TIMOTHY PEASLEE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BATH IRON WORKS CORPORATION	)	DATE ISSUED: 08/31/2010
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of Decision and Order Denying Benefits of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

James W. Case (McTeague, Higbee, Case, Cohen, Whitney & Toker, P.A.), Topsham, Maine, for claimant.

Stephen Hessert (Norman, Hanson & Detroy, LLC), Portland, Maine, for self-insured employer.

Before: DOLDER, Chief Administrative Appeals Judge, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2008-LHC-00190) of Administrative Law Judge Daniel F. Sutton 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 supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant worked for employer as a pipefitter from July 1989 until 2000. Claimant's employment duties involved repetitive motions and the use of vibratory tools. While employed by employer, claimant developed neurological symptoms in his upper extremities for which he received medical treatment, including surgery. CX 1. Specifically, claimant underwent ulna nerve transposition surgeries performed by Dr. Kipp on the right elbow in December 1998 and on the left elbow in March 1999. CX 1 at

28, 34. Subsequently, claimant underwent surgery on his right ulna on December 1, 1999, and on his left ulna on March 9, 2000. Employer voluntarily paid for claimant's medical treatment and disability compensation for the time lost from work. Claimant returned to work by August 15, 2000, on restricted duty. After a strike at the shipyard in the fall of 2000 was resolved, there was no restricted work for claimant so he left employer. Claimant underwent vocational training and subsequently obtained work in non-covered employment in the spring of 2002 as an oil burner installer.

In July 2002, claimant began complaining of additional wrist pain and numbness. Dr. Rogers diagnosed bilateral carpal tunnel syndrome. In 2007, claimant underwent bilateral hand surgery for carpal tunnel syndrome, which was performed by Dr. Rogers. Claimant filed a claim for temporary total disability compensation from May 8, 2007 through July 13, 2007, and for medical benefits for the carpal tunnel surgery. Employer controverted the claim.

The administrative law judge accepted the parties' stipulation that claimant sustained an injury on June 30, 1997, while employed by employer. The administrative law judge found that claimant presented sufficient evidence to establish a *prima facie* case that his current carpal tunnel syndrome could have been caused by his work with employer. Therefore, the administrative law judge invoked the Section 20(a) presumption. 33 U.S.C. §920(a). Nonetheless, the administrative law judge found that employer submitted sufficient evidence to establish rebuttal based on the opinion of its expert, Dr. Kolkin, that no causal relationship existed between claimant's carpal tunnel syndrome and his work for employer. On weighing the evidence as a whole, the administrative law judge concluded that claimant's carpal tunnel syndrome is not attributable to his employment with employer. The administrative law judge found that the evidence does not support a finding that claimant's carpal tunnel syndrome is due to the natural progression of the injuries claimant sustained while he worked for employer; rather, he found, it is due to his subsequent employment. Accordingly, the administrative law judge denied claimant's claim for disability and medical benefits.

On appeal, claimant contends that employer remains liable for the consequences of the original work injury, as claimant's subsequent employment was not covered under the Act. In this regard, claimant contends the administrative law judge erred in finding that his carpal tunnel syndrome resulted from his subsequent employment and not from his employment with employer. Claimant avers that the administrative law judge erred in finding that employer presented sufficient evidence to rebut the Section 20(a) presumption and in weighing the evidence on causation as a whole. Employer responds, urging affirmance of the administrative law judge's denial of benefits, to which claimant filed a reply brief.

Claimant's disabling carpal tunnel syndrome was diagnosed at a time in which he was working in non-covered employment. If this condition is due to the natural progression of the injuries sustained while claimant worked for employer, employer remains fully liable for any resulting disability. *Admiralty Coatings Corp. v. Emery*, 228 F.3d 513, 34 BRBS 91(CRT) (4th Cir. 2000). If, however, the carpal tunnel syndrome is due to an intervening cause, then employer is relieved of liability for that portion of the disability attributable to the intervening cause. *Leach v. Thompson's Dairy, Inc.*, 13 BRBS 231 (1981). Moreover, if claimant's carpal tunnel syndrome is not at all related to his employment with employer, the claim is not compensable. 33 U.S.C. §902(2).

The administrative law judge found that claimant produced evidence sufficient to make out his *prima facie* case; thus Section 20(a) of the Act affords him a presumption that his carpal tunnel syndrome is related to his work for employer.[1] *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004); *James v. Pate Stevedoring Co.*, 22 BRBS 271 (1989). The burden then shifted to employer to produce substantial evidence that claimant's carpal tunnel syndrome is not related to his work for employer. *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 44 BRBS 13(CRT) (1st Cir. 2010). Claimant contends the administrative law judge erred in finding that employer produced substantial evidence rebutting the Section 20(a) presumption.

The administrative law judge found that Dr. Kolkin's opinion rebuts the Section 20(a) presumption. Dr. Kolkin, a Board-certified neurologist, examined claimant on two occasions, in 2002 and 2008, and reviewed his medical records. Dr. Kolkin stated that between January 2000 and June 2001, claimant did not exhibit any symptoms of carpal tunnel syndrome, noting that claimant's nerve conduction studies from 1998 were normal. Dr. Kolkin stated that claimant had, at most, mild carpal tunnel syndrome by August 2002. Given the progression of claimant's symptoms after that time, Dr. Kolkin opined that the condition was not the result of claimant's work with employer, but is more likely related to his current work activities, including prolonged driving and the repetitive use of screw drivers. The administrative law judge found that this opinion is the kind of evidence a reasonable person would accept as adequate to support a conclusion that claimant's carpal tunnel syndrome is not related to his work for employer. Decision and Order at 8; *see Rainey v. Director, OWCP*, 517 F.3d 632, 42 BRBS 11(CRT) (2d Cir. 2008); *Sprague v. Director, OWCP*, 688 F.2d 862, 15 BRBS 11(CRT) (1st Cir. 1982). We affirm the administrative law judge's conclusion that this opinion is

[1] Specifically, the administrative law judge found that carpal tunnel syndrome is a "harm" and that Dr. Rogers opined that the repetitive activities in which claimant engaged for employer were a significant contributory factor in the onset of claimant's carpal tunnel syndrome. Decision and Order at 6; *see Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004).

sufficient to rebut the Section 20(a) presumption as the finding is supported by substantial evidence and is in accordance with law. *Bath Iron Works Corp. v. Director, OWCP [Harford]*, 137 F.3d 673, 32 BRBS 45(CRT) (1st Cir. 1998).

After the Section 20(a) presumption is rebutted, the administrative law judge must weigh all the evidence relevant to causation, pro and con, with claimant bearing the burden of persuasion on the issue of whether his condition is related to his employment. *Sprague*, 688 F.2d 862, 15 BRBS 11(CRT); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994); *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). Claimant contends the administrative law judge erred in finding that his carpal tunnel syndrome resulted from an aggravation that occurred in his subsequent non-covered employment. Claimant contends that he had carpal tunnel syndrome before he left employer's employ and that the more persuasive evidence establishes that his current condition is the natural and unavoidable result of his work injury.

On weighing the evidence as a whole, the administrative law judge found that claimant's disabling carpal tunnel syndrome is not related to his work for employer and is due to the conditions of claimant's subsequent non-covered employment. The administrative law judge acknowledged that the record contains evidence that claimant had some indicia of carpal tunnel symptoms and median nerve abnormalities consistent with carpal tunnel syndrome while he was employed with employer. CX 1 at 39; EX 28 at 208. The administrative law judge also discussed the opinion of Dr. Rogers that claimant's work for employer was a significant contributory factor in causing the onset of claimant's disabling carpal tunnel syndrome, and that his subsequent employment was not a significant contributory factor. The administrative law judge, however, relied on Dr. Kolkin's opinion that claimant's test results do not exhibit symptoms of carpal tunnel syndrome during claimant's employment with employer. The administrative law judge found that Dr. Kolkin persuasively explained that carpal tunnel syndrome is not inherently progressive and that the absence of symptoms after claimant left employer demonstrates the likelihood that the carpal tunnel syndrome is not due to that employment. The administrative law judge noted that claimant did not seek any treatment between August 2002 and 2006, and he credited Dr. Kolkin's opinion that claimant's condition was due to his subsequent non-covered employment as an oil burner installer and maintenance worker.[2]

[2] The administrative law judge also noted that Dr. Rogers opined that "any hand activity will aggravate" claimant's underlying condition. CX 1 at 69.

The administrative law judge is entitled to weigh the evidence and draw his own inferences and conclusions therefrom. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir.1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). The Board is not empowered to reweigh the evidence, but must accept the rational inferences and findings of fact of the administrative law judge which are supported by the record. *Sprague*, 688 F.2d 862, 15 BRBS 11(CRT). As the administrative law judge's decision to credit the opinion of Dr. Kolkin is rational and supported by substantial evidence, we affirm the administrative law judge's finding that claimant's disabling carpal tunnel syndrome is not related to his employment with employer. Consequently, we affirm the denial of benefits.

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

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge

_____
JUDITH S. BOGGS
Administrative Appeals Judge