BRB No. 00-411

BERNARD SHARRON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
UNIVERSAL MARITIME SERVICE CORPORATION	)	DATE ISSUED: Dec. 19, 2000
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Bennett A. Robbins (Baker, Garber, Duffy & Pedersen), Hoboken, New Jersey, for claimant.

Francis M. Womack, III (Weber, Goldstein, Greenberg & Gallagher, LLP), Jersey City, New Jersey, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (98-LHC-2237) of Administrative Law Judge Robert D. Kaplan 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).

Claimant began working as a longshoreman in 1966, and worked for employer as a lane, warehouse and clerk checker from 1981 until his retirement in 1991. Following his voluntarily retirement in 1991, claimant was diagnosed with chronic bronchitis, chronic obstructive pulmonary disease, and small airways disease. In 1997, claimant sought benefits under the Act for his pulmonary conditions.

In his Decision and Order, the administrative law judge found the evidence

sufficient to invoke the Section 20(a), 33 U.S.C. §920(a), presumption that claimant's pulmonary conditions are work-related. However, he found that Dr. Karetzky's opinion was sufficient to rebut the presumption. Therefore, he weighed the evidence as a whole and concluded that claimant failed to establish that his exposure to substances and fumes during the course of his longshore employment caused his pulmonary conditions, and thus benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that employer produced sufficient evidence to establish rebuttal of the Section 20(a) presumption. In addition, claimant contends that the administrative law judge erred in failing to find that his work environment did not, at the least, aggravate or exacerbate his pulmonary disease.

Initially, claimant contends that the administrative law judge erred in finding the evidence sufficient to establish rebuttal of the Section 20(a) presumption that his pulmonary conditions are work-related. Once, as here, the Section 20(a) presumption is invoked, employer may rebut it by producing substantial evidence that claimant's employment did not cause, accelerate, aggravate or contribute to his injury. *Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); *American Grain Trimmers v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999), *cert. denied*, 120 S.Ct. 1239 (2000); *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). If such evidence is produced, the presumption no longer applies, and the administrative law judge must weigh the competing evidence as a whole, with claimant bearing the burden of persuasion. *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).

In the present case, the administrative law judge found that Dr. Karetzky's opinion is sufficient to rebut the Section 20(a) presumption. Dr. Karetzky diagnosed that claimant suffers from chronic bronchitis and chronic obstructive pulmonary disease caused by his long history of smoking. Emp. Ex. 1; H. Tr. at 112. In addition, while Dr. Karetzky agreed that exposure to some substances could affect the pulmonary system, he opined that the description of the exposures as detailed in the instant case did not cause or contribute to the obstructive ventilatory defect from which claimant suffers. Emp. Ex. 1; H. Tr. at 113. Inasmuch as the unequivocal opinion of a physician that no relationship exists between an injury and a claimant's employment is sufficient to rebut the presumption, we affirm the administrative law judge's finding that Dr. Karetzky's opinion is sufficient to establish rebuttal of the Section 20(a) presumption. *See Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615, 33 BRBS 1 (CRT)(9th Cir. 1999).

Claimant also contends that the administrative law judge erred in failing to find

that claimant's occupational exposure to substances and fumes aggravated or exacerbated his pulmonary condition; claimant, however, but does not assign specific error to the administrative law judge's weighing of the evidence. The administrative law judge found that Dr. Lee's opinion was entitled to little if any weight as she relied on a 24 pack year smoking history which was less than the 30 to 60 year history the administrative law judge found more credible, and she failed to explain how she ruled out claimant's prior smoking history in determining a cause of his pulmonary conditions. The administrative law judge found that the opinion of Dr. Hermele is "problematic" as it is based on a history of exposure which was not supported by the evidence. The administrative law judge accorded determinative weight to the opinion and testimony of Dr. Karetzky as he found that it was well-reasoned and it takes into account claimant's complete smoking history, and as neither Dr. Hermele or Dr. Lee indicate they had any knowledge regarding the nature and extent of the exposures to which claimant alleged he was exposed. Decision and Order at 11. In addition, the administrative law judge found that Dr. Karestky's qualifications are superior to those of Dr. Hermele. The administrative law judge also found "[c]laimant's testimony regarding his alleged exposures to be vague and unconvincing." Decision and Order at 11. In adjudicating a claim, it is well-established that an administrative law judge is entitled to evaluate the credibility of all witnesses, including doctors, and is not bound to accept the opinion or theory of any particular medical examiner; rather the administrative law judge may draw his own inferences and conclusions from the evidence. *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

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[1]Dr. Lee diagnosed chronic obstructive airways disease and opined that claimant's pulmonary conditions are caused by his occupational exposures rather than his smoking history. Cl. Ex. 5.

[2]Claimant reported to Dr. Hermele that he was exposed to the following substances: dust, fumes, gases, dirt, acids, alkali, asbestos, carbon monoxide, fiberglass, aerosols, oil mist, chemicals used in plastic products, petroleum products, dyes, paints, sprays, inks, metallic dust, powders, wools, cottons, synthetic materials, welding fumes, solvents, pesticides, silica products, masonry dust, acetone, ammonia, MEK, formaldehyde, alcohol, smoke, cleaning fluids, arsenic, lead glue, TCB, MBK, carbide, vinyl chloride, herbicides, fluorine gas, chlorine gas, coal dust, carbon black, benzene, carbon tetrachloride, paper dust, coolants, ceramic dust, fibrous glass/rock, and sand. In a report dated September 11, 1997, Dr. Hermele diagnosed chronic bronchitis, chronic obstructive pulmonary disease and small airways disease, which he concluded were causally related to and exacerbated by exposure to the listed pulmonary agents while claimant was employed as a longshoreman. Cl. Ex. 2.

[3]Dr. Hermele is board-certified in rheumatology and board-eligible in internal medicine. Dr. Karetzky is board-certified in internal medicine, pulmonary disease, critical care medicine, and geriatric medicine.

741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). Moreover, the Board is not empowered to reweigh the evidence. *See Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78 (CRT)(5th Cir. 1991). Thus, we affirm the administrative law judge's decision to credit the opinion of Dr. Karetzky over the contrary opinions of record. Consequently, we also affirm the administrative law judge's finding that the evidence does not establish that claimant's pulmonary conditions are related to his workplace exposure and the denial of benefits.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge