BRB No. 01-0330

NANCY L. SPARKS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY	)	DATE ISSUED: Dec. 6, 2001
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Fletcher E. Campbell, Administrative Law Judge, United States Department of Labor.

John H. Klein (Montagna, Klein & Camden), Newport News, Virginia, for claimant.

Christopher R. Hedrick and Lexine D. Walker (Mason, Cowardin & Mason, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (99-LHC-2253) of Administrative Law Judge Fletcher E. Campbell 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 facts and conclusions of law of the administrative law judge if they 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, a materials supply clerk, sustained a work-related injury on May 19, 1986,

when the chair in which she was sitting caught on a piece of torn carpet. As the chair rolled, it caused claimant to fall backwards and she struck her head on a concrete floor. Claimant was treated unsuccessfully by a number of doctors to relieve pain in her neck and right arm. She underwent surgery for carpal tunnel syndrome on her right side and a right rib resection to alleviate symptoms of thoracic outlet syndrome. Claimant was absent from work from September 19, 1996 through March 3, 1997, allegedly due to symptoms from the work accident. Employer disputed that claimant's disability was causally related to the 1986 accident. At the time of the hearing, claimant was employed as a materials supply clerk with restrictions.

The administrative law judge found that claimant presented sufficient evidence to invoke the Section 20(a) presumption, 33 U.S.C. §920(a), based on the parties' stipulation that claimant suffered a work-related accident on May 19, 1986, and the testimony of Dr. Stiles, a well-qualified orthopedist, that the accident is the cause of claimant's current disability. The administrative law judge found, however, the opinions of Drs. Young, Urquia and Kirven, who are equally or better qualified physicians, that claimant's current disability is not caused by the chair accident, established rebuttal of the Section 20(a) presumption. On weighing the evidence as a whole, the administrative law judge credited the opinions of Drs. Young, Urquia and Kirven over that of Dr. Stiles. The administrative law judge, therefore, denied claimant's claim.

On appeal, claimant contends that the administrative law judge erred in giving greater weight to the opinion of Drs. Young, Urquia and Kirven than to that of Dr. Stiles. Employer responds, urging affirmance.

Where, as in the instant case, claimant has established her *prima facie* case, Section 20(a) of the Act, 33 U.S.C. §920(a), provides her with a presumption that her condition is causally related to her employment. The burden then shifts to employer to rebut the presumption by producing substantial evidence that claimant's condition was neither caused, contributed to, or aggravated by her employment. *See American Grain Trimmers, Inc. v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999)(*en banc*), *cert. denied*, 120 S.Ct. 1239 (2000); *Swinton v. J. Frank Kelley, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). If the administrative law judge finds the Section 20(a) presumption rebutted, it drops from the case. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). The administrative law judge then must weigh all the evidence and resolve the issue of causation on the record as a whole with claimant bearing the burden of persuasion. *Id.; see also Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996); *see generally Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

In this case, the administrative law judge properly found Section 20(a) rebutted, and the issue raised concerns his weighing of the evidence on the record as a whole. We reject

claimant's contention that the administrative law judge erred in not giving determinative weight to the opinion of Dr. Stiles. Specifically, the administrative law judge found that Dr. Stiles, by his own admission, did not possess any advantage in diagnosing claimant's condition. In this regard, the administrative law judge noted that Dr. Stiles acknowledged that a board-certified radiologist had not been able to find an old, improperly healed odontoid fracture on x-ray, which Dr. Stiles identified as the source of claimant's pain. Moreover, Dr. Stiles referred claimant to Dr. Young, a neurologist, and Dr. Young stated that there is no evidence of an improperly healed fracture and that claimant's cervical vertebrae are not the cause of claimant's pain. EX 4. Next, the administrative law judge relied on Dr. Stiles's admission that there is no medical literature supporting his opinion that a healed odontoid fracture could cause head and neck pains more than ten years after the fracture occurred. Tr. at 36-37. The administrative law judge also relied on the fact that the physicians who found no relationship between claimant's fall and her subsequent pain are as qualified as Dr. Stiles. In addition to Dr. Young, Dr. Kirven, an orthopedic surgeon, opined that claimant's pain is not due to the work accident, but to symptom magnification. EX 1. Dr. Urquia, also an orthopedist, stated that claimant's current neck problems are not directly related to claimant's work accident. EX 2. The administrative law judge, therefore, determined that the weight of the evidence is contrary to Dr. Stiles's opinion, and he concluded that claimant had not demonstrated that her fall from the chair in 1986 caused or contributed to claimant's present disability or pain. Consequently, the administrative law judge denied the claim. As the administrative law judge, as trier of fact, is entitled to determine the weight to be accorded to the medical opinions of record, and as the administrative law judge's crediting of the opinions of Drs. Young, Urquia and Kirven over that of Dr. Stiles is rational, we affirm the administrative law judge's denial of benefits as it is supported by substantial evidence. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *see generally Duhagon v. Metropolitan Stevedore Co.,* 31 BRBS 98 (1997), *aff'd,* 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Hice v. Director, OWCP,* 48 F.Supp. 2d 501 (D.Md. 1999).

Accordingly, we affirm the administrative law judge's Decision and Order denying benefits.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge