BRB No. 02-0317

JOHN W. McCULLOUGH	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ELECTRIC BOAT CORPORATION	)	DATE ISSUED: Dec. 23, 2002
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order -Denying Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Melissa M. Olson (Embry & Neusner), Groton, Connecticut, for claimant.

Mark Oberlatz (Murphy & Beane), New London, Connecticut, for self-insured employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order-Denying Benefits (00-LHC-1386) of Administrative Law Judge Thomas F. Phalen, Jr., 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 worked as an outside machinist with employer beginning in 1963, where he was exposed to asbestos from his own work and from work his co-workers performed. Claimant voluntarily retired in March 2000. Claimant sought benefits for a pulmonary condition which he contended is work-related. In his Decision and Order, the administrative law judge found the evidence sufficient to invoke the Section 20(a) presumption, 33 U.S.C. '920(a), that claimant=s pulmonary condition is work-related. However, he found Dr. Pulde=s opinion is sufficient to rebut the presumption. Therefore, he weighed the evidence as a whole, credited Dr. Pulde=s opinion, and concluded that claimant failed to establish

that his exposure to asbestos during the course of his employment caused his pulmonary condition. 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. Claimant also argues that substantial evidence does not support the administrative law judge=s crediting the opinion of Dr. Pulde over the opinion of Dr. Pella. Finally, claimant contends that the administrative law judge erred in not awarding medical benefits.

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 disability is 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 v. Director, OWCP* [*Prewitt]*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); *Bath Iron Works Corp. v. Director, OWCP [Shorette]*, 109 F.3d 53, 31 BRBS 19(CRT) (1st Cir. 1997); *see also American Grain Trimmers v. Director, OWCP* [*Janich*], 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1991)(*en banc*), *cert. denied*, 120 S.Ct.1239 (2000); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998). If employer rebuts the presumption, it no longer controls and the issue of causation must be resolved on the evidence of record as a whole, with claimant bearing the burden of persuasion. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see Director, OWCP v. Greenwich Collieries,* 512 U.S. 267, 28 BRBS 43(CRT)(1994).

We reject claimant=s contention that the administrative law judge erred in finding that employer produced substantial evidence to rebut the presumption. Dr. Pulde stated that claimant does have benign pleural plaques secondary to asbestos exposure, but that he has no evidence of asbestosis, an asbestos-related pulmonary disorder or any occupational pulmonary disability. EX 4, Pulde Dep. at 15-17. Dr. Pulde acknowledged that claimant=s pulmonary function studies showed a mild restrictive component, but stated that these studies were somewhat inconsistent with other objective findings, such as claimant=s CT scan and chest x-rays. Dr. Pulde also noted that claimant had had pneumonia two months before the pulmonary function studies were performed and that this fact could affect the studies= results. EX 3; EX 4 at 13-14. Finally, Dr. Pulde stated that claimant=s mild chronic obstructive pulmonary disease is secondary to tobacco abuse. EX 3. Inasmuch as

[1]Dr. Pulde stated in his report that claimant Amay have@ no ratable impairment under the American Medical Association *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) (AMA *Guides*). EX 3. At his deposition, Dr. Pulde stated claimant may have a 10 percent impairment based solely on the results

Dr. Pulde=s opinion constitutes substantial evidence severing the relationship between claimant=s pulmonary disorder and his asbestos exposure, we affirm the administrative law judge=s finding that the Section 20(a) presumption is rebutted. *See Bath Iron Works Corp. v. Director, OWCP [Harford],* 137 F.3d 673, 32 BRBS 45(CRT) (1st Cir. 1998); *Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff=d,* 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999).

Next, we reject claimant=s contention that the administrative law judge erred in according determinative weight to Dr. Pulde=s opinion that claimant does not suffer from any work-related pulmonary impairment, over Dr. Pella=s opinion that claimant suffers from a mild restrictive pulmonary impairment due to his work-related asbestos exposure. Decision and Order at 10-11. In this regard, the administrative law judge found that Dr. Pulde=s opinion was well reasoned, documented and better supported by the objective medical evidence. In according less weight to Dr. Pella=s opinion, the administrative law judge found it to be undermined by his reliance in part on a CT scan, which was interpreted by the radiologist as revealing no interstitial markings. The administrative law judge also was persuaded by Dr. Pulde=s statement that the pulmonary function results, on which Dr. Pella relied, could have been influenced by claimant=s bout with pneumonia. The administrative law judge also was not convinced by Dr. Pella=s finding that claimant did not have any smoking-related component to his impairment, given that claimant smoked one pack of unfiltered cigarettes a day for 30-35 years. In adjudicating a claim, it is well-settled that an administrative law judge is entitled to evaluate the credibility of all witnesses, including doctors, and is not bound to accept the opinion 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 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

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of the pulmonary function studies. EX 4 at 21.

[2]Dr. Pella stated that claimant has a 15-20 percent work-related respiratory impairment pursuant to the AMA *Guides.* CX 1.

[3]Claimant mischaracterizes the administrative law judge=s basis for according less weight to Dr. Pella=s opinion. Rather than finding that Dr. Pella was unqualified to give an opinion, the administrative law judge found Dr. Pella=s opinion was not well documented and reasoned based on the particular facts and circumstances of this case. Decision and Order at 10.

evidence. *See Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT)(5th Cir.1991). Thus, as it is rational, we affirm the administrative law judge=s decision to credit the opinion of Dr. Pulde over the opinion of Dr. Pella. Thus, we also affirm the administrative law judge=s finding claimant=s pulmonary condition is not related to his workplace exposure, as it is supported by substantial evidence, and the consequent denial of disability benefits.

Finally, we reject claimant=s contention that the administrative law judge erred in not addressing his entitlement to medical benefits. Entitlement to medical benefits is contingent upon a finding of a causal relationship between the injury and employment, *see generally Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988), and we have affirmed the administrative law judge=s finding that claimant=s pulmonary disability is not work-related. In the instant case, claimant has established only that his currently benign pleural plaques are work-related. Claimant has not contended that he has received any necessary treatment for this condition for which employer should be held liable nor has any physician stated that claimant requires periodic monitoring of this condition. *See, e.g., Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989). As a claim for medical benefits is never time-barred, *see Marshall v. Pletz*, 317 U.S. 383 (1943), claimant may seek recovery of medical expenses if his work-related pleural plaques require treatment in the future. *See Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993).

Accordingly, we affirm the administrative law judge=s Decision and Order-Denying Benefits.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.

Administrative Appeals Judge