BRB No. 90-809

HENRY ANDERSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
J. YOUNG & COMPANY	)	
	)	DATE ISSUED:_____
and	)	
	)	
EMPLOYERS NATIONAL INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Quentin P. McColgin, Administrative Law Judge, United States Department of Labor.

Aubrey B. Hirsch, Jr. (Locke, Purnell, Rain & Harrell), New Orleans, Louisiana, for claimant.

Thomas W. Thorne, Jr. (Lemle & Kelleher), New Orleans, Louisiana, for employer/carrier.

Before: BROWN and McGRANERY, Administrative Appeals Judges, and LAWRENCE, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Decision and Order on Remand (84-LHC-2015) of Administrative Law Judge Quentin P. McColgin denying benefits 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 applicable law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (1988).

This case is before the Board for a second time. Claimant suffered a stroke on August 16, 1982 while he was working as a flagman for employer. The parties stipulated that as a result of the stroke claimant is permanently totally disabled. After considering the medical opinions of Drs. Antin, Martz, and Ernst, the administrative law determined that employer failed to rebut the Section 20(a), 33 U.S.C. §920(a), presumption linking the stroke to claimant's employment because he found that Drs. Antin and Martz conceded "there *may be* a connection between the stroke and the employment. . . ." Decision and Order at 6 (emphasis in original). Further, the administrative law judge found that the assumed conditions -- heavy exertion, sweating and decreased intake of fluids, which Dr. Ernst stated could have caused the stroke -- were present the day of the stroke. *Id.* Therefore, he awarded claimant permanent total disability benefits. *Id.* at 6-7. Additionally, the administrative law judge awarded employer Section 8(f), 33 U.S.C. §908(f) (1988), relief. *Id.* at 8. Employer appealed the decision.

On appeal, the Board determined the administrative law judge erred in finding that employer failed to rebut the presumption. *Anderson v. J. Young & Co.*, BRB No. 85-2844 (February 20, 1989). Based on Dr. Martz's opinion that claimant's stroke was not caused by his employment, the Board held, as a matter of law, that employer produced substantial evidence to rebut the Section 20(a) presumption. *Anderson*, slip op. at 2. Consequently, it vacated the award of benefits and remanded the case to the administrative law judge for reconsideration of the causation issue based on the evidence as a whole.[1] *Id.*, slip op. at 3.

On remand, the administrative law judge again considered the medical evidence of Drs. Antin, Martz, and Ernst. After this review, he concluded that Drs. Antin and Martz attributed claimant's stroke to his arteriosclerosis and not to his employment. Decision and Order on Remand at 2. He found that Dr. Ernst, when asked to assume that certain conditions were present, stated that those conditions could make claimant susceptible to a stroke. Because Dr. Ernst's opinion was in the minority, the administrative law judge rejected it. *Id.* He also concluded that claimant failed to establish the existence of the conditions on which Dr. Ernst's opinion is based. Therefore, the administrative law judge determined that claimant's stroke was not causally related to his employment, and he denied benefits. Claimant now appeals the administrative law judge's decision denying benefits. Employer responds, urging affirmance.

Claimant makes two principal contentions. First, he argues that the Board impermissibly disturbed the administrative law judge's original findings of fact by drawing its own inferences and factual conclusions. Secondly, he argues that the decision of the administrative law judge on remand is improper because his findings were made without considering the Section 20(a) presumption. First, we note that the Board need not accept the fact-finder's decision if it is unable to conscientiously conclude that the decision is supported by substantial evidence. *Goins v. Noble Drilling Corp.*, 397 F.2d 392 (5th Cir. 1968). A finding which is not supported by substantial evidence is not in accordance with the law and must be set aside. *Director, OWCP v. General*

[1]The United States Court of Appeals for the Fifth Circuit thereafter granted employer's motion to dismiss claimant's appeal. *See* Order dated July 19, 1989.

Dynamics Corp., 787 F.2d 723, 18 BRBS 88 (CRT) (1st Cir. 1986). In this case, the Board determined that the administrative law judge's original finding that employer did not rebut the Section 20(a) presumption was erroneous as a matter of law. Thus, it reversed the administrative law judge's finding and vacated his decision. *See General Dynamics Corp.*, 787 F.2d at 723, 18 BRBS at 88 (CRT); *Anderson*, slip op. at 3.

Further, the issue of whether the Section 20(a) presumption was rebutted in this case was resolved by the Board in the earlier appeal. The Board held that, as a matter of law, employer rebutted the presumption by presenting substantial medical evidence establishing that claimant's stroke was not work-related. *Anderson*, slip op. at 2. Consequently, the Board's previous decision constitutes the law of the case, and the administrative law judge properly weighed the evidence as a whole without considering the presumption, in accordance with the Board's decision. *See generally Doe v. Jarka Corp. of New England*, 21 BRBS 142, 144-145 (1988); 20 C.F.R. §802.405(a).

Moreover, the record contains substantial evidence which supports the administrative law judge's finding that claimant's employment did not cause his stroke. All three doctors clearly indicated that claimant's stroke was due to an occlusion (blockage) as opposed to a hemorrhage. Cl. Ex. 4 at 11-12; Tr. at 30, 105. According to Dr. Antin, claimant's treating physician, claimant probably would have had the stroke regardless of his environment, given that it was caused by a blocked artery. Tr. at 123. Drs. Antin and Martz also clearly stated that claimant's stroke was caused by his pre-existing arteriosclerosis, which was accelerated by his diabetes, and was not due to claimant's employment. Emp. Ex. 3, 5; Tr. at 33-34, 106-107.

Although claimant cites Dr. Ernst's opinion as supportive of his claim, and Dr. Ernst indicated that a certain set of circumstances, such as heavy exertion, sweating and decreased fluid volume, could contribute to a stroke, the administrative law judge determined there was no evidence of record to show that these factors affected claimant on the day of or in the days preceding his stroke. Decision and Order on Remand at 2-3; Cl. Ex. 4 at 17-19. Additionally, Dr. Martz indicated that these factors would not affect an occlusive stroke. Tr. at 42. Because we conclude that the record contains substantial evidence to support the administrative law judge's decision that claimant's stroke is not causally related to his employment, we reject claimant's arguments and affirm the denial of benefits. *See Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

Accordingly, the administrative law judge's Decision and Order on Remand is affirmed.

SO ORDERED.

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JAMES F. BROWN
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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LEONARD N. LAWRENCE
Administrative Law Judge