BRB No. 06-0858

JAMES BALL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LOGISTEC, INCORPORATED	)	DATE ISSUED: 06/15/2007
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LIMITED	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Stephen L. Purcell, Administrative Law Judge, United States Department of Labor.

James Ball, Tampa, Florida, *pro se*.

Richard P. Salloum (Franke & Salloum, PLLC), Gulfport, Mississippi, for employer/carrier.

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

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order Denying Benefits (2005-LHC-0569) of Administrative Law Judge Stephen L. Purcell 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). In an appeal by a claimant without legal representation, we will review the findings of fact and conclusions of law of the administrative law judge to determine if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). If they are, they must be affirmed.

Claimant, a forklift operator, suffered injuries to his head, neck and back when he was struck on the head by a sea clamp on March 26, 2003. In addition, claimant alleges he sustained an increased hearing loss and psychological problems as a result of the accident. Claimant has not worked since he was injured.[1]

In his decision, the administrative law judge found claimant entitled to invocation of the Section 20(a) presumption, 33 U.S.C. §920(a), with regard to his headaches and neck and back injuries but not in regard to his alleged hearing loss or psychological problems. He further determined that claimant failed to establish that he suffered any disability after June 11, 2003; accordingly, he denied further disability benefits. The administrative law judge also concluded that claimant is not entitled to reimbursement for the costs of any services provided by Drs. Weller and Rashkin or for any other continuing medical expenses. Claimant, without assistance from counsel, seeks review of this decision by the Board. Employer responds, urging affirmance.

Claimant alleged that he suffered disabling injuries to his head, neck and back as a result of the accident on March 26, 2003. Claimant also alleged that he sustained an increased hearing loss and psychological problems from the work injuries. The administrative law judge found that claimant established the "harm" element of his *prima facie* case with regard to the hearing loss and psychological injury claims, but that he did not establish that the accident at work could have caused these conditions. Thus, the administrative law judge found that claimant is not entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption of causation with respect to these conditions.

In determining whether an injury is work-related, a claimant is aided by the Section 20(a) presumption, which may be invoked only after the claimant establishes a *prima facie* case. In order to establish his *prima facie* case, claimant must establish that that he suffered a harm and that an accident occurred or conditions existed at work which could have caused the harm. *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 326, 14 BRBS 631 (1982). Claimant need not establish that the work accident actually caused his harm, but rather only that the accident *could have* caused his harm. *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968). If claimant establishes his *prima facie* case, Section 20(a) applies to relate the injury to the employment. *Port Cooper/T.Smith Stevedoring Co., Inc. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000).

[1] Employer paid claimant temporary total disability benefits from March 27 to June 2, 2003, and from August 4 to September 14, 2003.

The administrative law judge found that claimant had been treated for chronic ear infections, had undergone several surgeries, and had worn hearing aids in both ears for several years prior to the work accident. *See, e.g.*, EX 6, 31; CX 1, 3. After the accident, claimant did not complain to Dr. Martinez about his hearing, but did allege to Dr. Inga in August 2003 that he sustained a "sudden hearing loss on the right side." CX 3. Dr. Inga referred claimant to Dr. Bartels for a hearing consultation, *id.*, but there is no report from the latter physician in the record and there is no other evidence regarding hearing loss which post-dates the accident. The administrative law judge found that claimant did not present any evidence as to the degree of any loss he currently suffers or as to whether the work accident could have aggravated his pre-existing hearing loss. As the administrative law judge rationally found the record devoid of evidence to support claimant's claim that an increased hearing loss could have resulted from the accident, we affirm the administrative law judge's finding that the Section 20(a) presumption is not invoked with regard to claimant's hearing loss and the consequent denial of benefits for this condition. *See generally U.S. Industries/Federal Sheet Metal, Inc*, 455 U.S. 326, 14 BRBS 631; *see also Marinelli v. American Stevedoring, Ltd.*, 34 BRBS 112 (2000), *aff'd*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001).

The administrative law judge also found that claimant failed to establish his *prima facie* case in regard to his psychological problem. The administrative law judge stated that claimant established he has an "actual harm" because Dr. Weller diagnosed depression, anxiety, and chronic pain syndrome due to the work accident. Decision and Order at 14. Nonetheless, the administrative law judge then discredited Dr. Weller's opinion and found that claimant failed to actually establish that he has work-related psychological conditions. *Id.* at 16.

We hold that any error in the administrative law judge's facially inconsistent findings are harmless, as his discrediting of Dr. Weller's opinion is rational. The only evidence of record which addresses any psychological condition is the report prepared by Dr. Weller, a psychiatrist, who diagnosed claimant with a major depressive disorder, as well as anxiety, pain disorders and chronic pain syndrome. CX 2. However, the administrative law judge rejected Dr. Weller's opinion.[2] The administrative law judge found that Dr. Weller examined claimant at the behest of claimant's attorney, with whom

[2] The administrative law judge rejected Dr. Weller's opinion, in part, because he first saw claimant over one year after the work accident; the administrative law judge thus found the absence of a temporal nexus between any psychological condition and the work accident. This is not a rational basis for rejecting the opinion because Dr. Weller stated that claimant's injury led to chronic pain, which in turn led to depression. As the administrative law judge provided a rational basis for rejecting Dr. Weller's opinion, however, any error is harmless.

Dr. Weller has a long-standing relationship. The administrative law judge also found that Dr. Weller seems predisposed to diagnose almost all of his workers' compensation patients with one disorder or another, as he testified that 95 percent of such patients have depression. CX 2 at 57; Decision and Order at 16. Finally, the administrative law judge concluded that claimant was not credible regarding his subjective complaints, as the administrative law judge found them unsubstantiated based on objective medical tests. The administrative law judge also observed claimant at the hearing, finding his movements to be extremely slow and exaggerated. Decision and Order at 16 n. 13. The administrative law judge thus found that that Dr. Weller's diagnosis, based primarily on claimant's subjective complaints, is not creditable.

It is well-established that an administrative law judge is not bound to accept the opinion or theory of any particular witness; rather the administrative law judge is entitled to weigh the evidence and to draw his own inferences therefrom. *See 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 493 (2d Cir. 1961). Moreover, the administrative law judge's assessment of claimant's lack of credibility is rational. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). As the administrative law judge did not err in rejecting Dr. Weller's opinion due to his apparent bias and reliance on claimant's rejected complaints, claimant failed to establish he has any compensable psychological harm. Thus, we affirm the administrative law judge's finding that the Section 20(a) presumption is not invoked and the denial of benefits for this condition. *Mackey v. Marine Terminals Corp.*, 21 BRBS 129 (1988).

We next address the administrative law judge's finding that claimant is not entitled to further compensation for the injuries to his head, neck and back. The administrative law judge found that although claimant established that his head, neck and back injuries arose out of the work injury, claimant was not disabled after June 12, 2003, the date Dr. Martinez, claimant's treating physician and a board-certified neurologist, released him to return to his regular work with no restrictions. EX 28. The administrative law judge found Dr. Martinez's opinion to be well-reasoned and documented, as it was based on multiple examinations and objective tests.[3] He found the opinion to be supported by those of Dr. Newman, board-certified in neurology, who also opined that claimant had reached maximum medical improvement with no evidence of any ongoing disability, EX 33, and by the opinion of Dr. Tesser, a board-certified neurosurgeon, who found no

[3] Claimant's MRI was normal except for probable pre-existing degenerative arthritis, EX 27; an EEG, taken April 29, 2003, was normal; x-rays of the lumbar spine and CAT scan of the cervical spine and brain were unremarkable. EX 33. Dr. Martinez's four neurological examinations of claimant all were normal. EX 74.

impairment arising out of claimant's work injury. EX 43. The administrative law judge gave diminished weight to the opinions of Dr. Rashkin and Dr. Inga, who opined that claimant remained temporarily totally disabled. CX 1, 3. The administrative law judge found that Dr. Rashkin examined claimant only once, and that Dr. Inga failed to provide any rationale for his conclusions other than claimant's own subjective complaints. As the administrative law judge's weighing of the evidence is rational, *see, e.g., Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994), we affirm his finding that claimant could return to his usual work after June 11, 2003, as it is supported by substantial evidence. *Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd in pert. part mem. sub nom. Chong v. Director, OWCP*, 909 F.2d 1488 (9th Cir. 1990).

Next, we address the administrative law judge's denial of reimbursement for the treatments provided by Drs. Weller and Rashkin as well as for any future medical expenses. The administrative law judge found that claimant admittedly never sought authorization for treatment by these physicians and thus, that employer is not liable for their treatment. Tr. at 43; Decision and Order at 22. A claimant's entitlement to medical benefits is governed by Section 7 of the Act. 33 U.S.C. §907. Section 7(d), 33 U.S.C. §907(d), requires that a claimant request his employer's authorization for medical services performed by any physician, including claimant's initial choice, and claimant must request consent from the district director or employer for a change in physicians. 20 C.F.R. §702.406; *see, e.g., Lopez Stevedoring Services of America*, 39 BRBS 85 (2005); *Maguire v. Todd Shipyards Corp.*, 25 BRBS 299 (1992). In this case, the administrative law judge found and claimant conceded, that he did not seek authorization for the treatment provided by Dr. Rashkin or Dr. Weller.[4] Moreover there was no allegation that claimant was refused treatment, which would eliminate the need for claimant to request treatment from additional physicians. *Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112 (1996). As it is rational and supported by substantial evidence of record, we affirm the administrative law judge's finding that employer is not liable for any medical care provided by Dr. Rashkin and Dr. Weller. *See generally Roger's Terminal & Shipping Corp. v. Director, OWCP*, 784 F.2d 687, 18 BRBS 79(CRT) (5th Cir.), *cert. denied*, 479 U.S. 826 (1986).

Finally, we affirm the administrative law judge's finding that employer is not liable for any future medical expenses. Dr. Martinez opined that claimant had reached maximum medical improvement with no evidence of permanent injury and released

[4] In addition, because we have affirmed the administrative law judge's finding that claimant's psychological impairment, if any, is unrelated to his work accident, employer is not liable for any treatment provided by Dr. Weller on this basis as well.

claimant for his usual work with no physical restrictions and a zero percent impairment rating. EX 28. His opinion is supported by that of Dr. Newman, who also opined that claimant had no permanent injury and that claimant could resume his normal work duties. EX 39. As the credited medical opinions of record constitute substantial evidence that claimant's work injury fully resolved, we affirm the administrative law judge's finding that employer is not liable for future medical benefits. *Brooks v. Newport News Shipbuilding & Dry Dock Co.*, 26 BRBS 1 (1992), *aff'd sub nom. Brooks v. Director, OWCP*, 2 F.3d 64, 27 BRBS 100(CRT) (4th Cir. 1993).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge