BRB No. 10-0539

RALPH WEBB	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
JEFFBOAT, INCORPORATED	)	DATE ISSUED: 05/17/2011
	)	
Self-Insured	)	
Employer-Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

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

Douglas P. Matthews and Andrew J. Quakenbos (King, Krebs & Jurgens, P.L.L.C.), New Orleans, Louisiana, for self-insured employer.

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

PER CURIAM:

Employer appeals the Decision and Order (2009-LHC-01451) of Administrative Law Judge Donald W. Mosser 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 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 law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant worked for employer as a welder from 1969 to 1973 and from 1989 to 1997. Claimant was exposed to welding fumes, asbestos, and paint fumes during the course of his employment for employer, where he spent the majority of 10 to 12-hour workdays inside enclosed areas on barges. Claimant also smoked cigarettes from 1968 to 1994. He began treating with Dr. Trommler for shortness of breath in February 2008. Dr. Trommler interpreted a February 13, 2008, pulmonary function study and chest x-ray as showing a mild obstructive defect, and he referred claimant to Dr. Howerton for a

pulmonary consultation. Dr. Howerton interpreted the pulmonary function tests as revealing a mild airflow obstruction and the chest x-ray as showing pleural thickening. Claimant sought benefits under the Act for a work-related pulmonary condition. Tr. at 8-10; ALJXs 1, 3. The parties stipulated that claimant's injury became permanent on February 13, 2008, and that, for purposes of this injury, he is a voluntary retiree under Section 8(c)(23) of the Act, 33 U.S.C. §908(c)(23), with a 17 percent whole person impairment rating.[1] ALJX 5.

In his decision, the administrative law judge found claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), that his pulmonary impairment is work-related, and that employer did not establish rebuttal thereof. The administrative law judge then credited the opinion of Dr. DeGraff that claimant's condition is work-related, as supported by the opinions of Drs. Howerton and Broudy that claimant suffers from a mild obstructive pulmonary impairment and their statements that welding smoke and fumes and paint fumes can result in an obstructive impairment, to find that claimant established that his pulmonary injury is due to his work for employer. Decision and Order at 11. The administrative law judge thus found that claimant is entitled to weekly compensation of $65.75 pursuant to Section 8(c)(23) for a 17 percent whole person impairment, commencing February 13, 2008. 33 U.S.C. §§902(10), 908(c)(23), 910(d)(2). The administrative law judge also awarded claimant medical benefits.

On appeal, employer challenges the administrative law judge's findings that it did not establish rebuttal of the Section 20(a) presumption and that claimant established, by a preponderance of the evidence, that his pulmonary injury is due to his work for employer. Claimant responds, urging affirmance.

Once, as here, the Section 20(a) presumption is invoked, the burden shifts to employer to produce substantial evidence that there is no causal relationship between the employee's disabling condition and his employment. *American Grain Trimmers v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999) (*en banc*), *cert. denied*, 528 U.S. 1187 (2000). If the 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 the claimant bearing the burden of persuasion. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

[1]The parties also stipulated that claimant had an average weekly wage of $580.18 and a weekly compensation rate of $65.75. *See* 33 U.S.C. §910(d)(2).

We need not address employer's contention that the administrative law judge erred in finding that employer did not rebut the Section 20(a) presumption because the administrative law judge's finding that claimant's pulmonary impairment is work-related is supported by substantial evidence. *See Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT) (9th Cir. 2010). We reject employer's contention that the administrative law judge erred in crediting Dr. DeGraff's opinion because he erroneously diagnosed centrilobular emphysema. Claimant brought a claim for a work-related pulmonary impairment, Tr. at 8-10; ALJXs 1, 3, and did not specifically allege that he has centrilobulor emphysema. *See* Cl. Post-Trial Brief at 15-16, 29; Cl. Post-Trial Reply Brief at 1. Moreover, it is solely within the discretion of the administrative law judge to accept or reject all or any part of any testimony according to his judgment. *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969); *see also Fox v. West State, Inc.,* 31 BRBS 118 (1997). Therefore, in finding that claimant established that his injury is work-related, based on the record as a whole, the administrative law judge was not required to address whether or not claimant has centrilobulor emphysema or Dr. DeGraff's diagnosis of this condition based on his reading of a CT scan. Claimant's burden was to establish his claim that working conditions caused or contributed to his pulmonary impairment. *See Service Employees Int'l, Inc. v. Director, OWCP [Barrios]*, 595 F.3d 447, 44 BRBS 1(CRT) (2d Cir. 2010); *Flanagan v. McAllister Brothers, Inc.*, 33 BRBS 209 (1999).

Addressing the record as a whole, the administrative law judge found that Dr. DeGraff diagnosed a mild obstructive lung impairment based on two pulmonary function studies and that this diagnosis is supported by the concurring diagnoses of Drs. Howerton and Broudy, who also reviewed these two reports.[2] Decision and Order at 10; *see* CXs 1; 7 at 65-66; EXs 1; 3 at 34, at 3-4; 6 at 13, 39, 7 at 32-34. The administrative law judge found that Dr. DeGraff thoroughly explained that welding smoke and fumes contributed to claimant's lung disease, and that claimant's cigarette smoking synergistically combined with his work exposure to pulmonary irritants to exacerbate his pulmonary condition. Decision and Order at 10-11; *see* CX 7 at 20, 31, 36-37, 46-47, 60-61, 83-88, 94-95, 119. The administrative law judge found Dr. DeGraff's opinion supported by several medical studies of record linking welding fumes to pulmonary impairment and establishing a synergistic relationship between exposure to welding fumes and cigarette smoking to exacerbate decreased pulmonary function. CX 7 at 48-55; *see* CXs 8-16. The administrative law judge found Dr. DeGraff's opinion further bolstered by those of Drs. Howerton and Broudy, who acknowledged that welding smoke and fumes and paint fumes are pulmonary irritants that can result in an obstructive impairment. EXs 6 at 40-41, 50-54; 7 at 22-24, 26-28, 30-32. The administrative law judge thus gave controlling

[2]Drs. Howerton and Broudy, however, attributed their diagnoses of mild obstructive lung impairment to claimant's obesity and cigarette smoking. EXs 6 at 13, 57-58; 7 at 54.

weight to Dr. DeGraff's causation opinion because he provided a thorough basis for it. Decision and Order at 11.

In evaluating the evidence, the fact-finder is entitled to weigh the medical evidence and draw his own inferences from it and is not bound to accept the opinion or theory of any particular medical examiner. *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). As the administrative law judge's crediting of Dr. DeGraff's opinion is rational, we affirm the administrative law judge's conclusion that claimant established that his pulmonary injury is due to his working conditions for employer as the finding is supported by substantial evidence. *See Cooper/T. Smith Stevedoring Co., Inc. v. Liuzza*, 293 F.3d 741, 36 BRBS 18(CRT) (5th Cir. 2002); *Richardson v. Newport News Shipbuilding & Dry Dock Co.*, 39 BRBS 74 (2005), *aff'd mem. sub nom. Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP*, 245 F.App'x 249 (4th Cir. 2007). As employer does not challenge any other aspect of the administrative law judge's decision, we affirm the award of benefits.

Accordingly, the administrative law judge's Decision and Order awarding benefits pursuant to Section 8(c)(23) of the Act is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge