U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 18-0311

MANDEL WILLIAMS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 11/16/2018
	)	
CB & I OFFSHORE SERVICES, INCORPORATED	)	
	)	
and	)	
	)	
AMERICAN LONGSHORE MUTUAL ASSOCIATION	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

Edward Moses, Jr. (Moses Law Firm, L.L.C.), Baton Rouge, Louisiana, for claimant.

Kevin A. Marks and Ashley P. Blair (Melchiode Marks King LLC), New Orleans, Louisiana, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2016-LHC-00814) of Administrative Law Judge Patrick M. Rosenow 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*.,

as extended by the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. §1331 *et seq.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law 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).

On March 2, 2015, claimant, a rigger, fell from a personnel basket while being transferred from a rig platform to a boat. Claimant reported a lump on the back of his head and a headache. He immediately returned to the mainland via boat, whereupon he sought medical treatment at Gulf Regional Occupational Medical Center and was released to return to work. That evening, claimant presented himself at the Iberia Medical Center with complaints of head, neck and back pain. Claimant subsequently underwent lumbar and cervical MRIs on January 8 and March 21, 2016, respectively, which revealed bulging discs.[1] Employer voluntarily paid claimant temporary total disability benefits from March 5 through March 30, 2015. 33 U.S.C. §908(b). Claimant has not returned to work for employer, and sought continuing benefits under the Act.

In his Decision and Order, the administrative law judge found that claimant established his prima facie case by showing that he sustained harms, cervical and lumbar bulging discs, and the occurrence of an accident, the fall from a personnel basket, which could have caused these harms. Consequently, the administrative law judge invoked the Section 20(a) presumption linking claimant's harms to work accident. *See* 33 U.S.C. §920(a); Decision and Order at 14. He next found that employer presented substantial evidence to rebut the presumption and, based on the evidence as a whole, that claimant failed to establish a causal relationship between his harms and his work accident. *Id.* at 14 – 16. Accordingly, the administrative law judge denied claimant's claim for compensation and medical benefits.

On appeal, claimant challenges the administrative law judge's finding that employer proffered substantial evidence sufficient to rebut the Section 20(a) presumption. Employer responds, urging affirmance. Claimant has filed a reply brief.

The administrative law judge invoked the Section 20(a) presumption linking claimant's cervical and lumbar disc bulges to his work accident. *See* Decision and Order at 14; *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S.

[1] Claimant's two MRIs revealed bulging discs at L3-4, L4-5, L5-S1, C4-5, C5-6, and C6-7. *See* EXs 5, 7.

608, 14 BRBS 631 (1982). Thus, the burden shifted to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his work accident. *See Ortco Contractors, Inc. v. Charpentier,* 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert. denied*, 540 U.S. 1056 (2003); *Hunter*, 227 F.3d 285, 34 BRBS 96(CRT); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). If the administrative law judge finds that the Section 20(a) presumption is rebutted, he must weigh all of the relevant evidence and resolve the causation issue on the record as a whole, with claimant bearing the burden of persuasion. *See Ceres Gulf, Inc. v. Director, OWCP [Plaisance]*, 683 F.3d 225, 229, 46 BRBS 25, 29(CRT) (5th Cir. 2012); *Santoro v. Maher Terminals Inc.,* 30 BRBS 171 (1996); *see also Director, OWCP v. Greenwich Collieries,* 512 U.S. 267, 28 BRBS 43(CRT) (1994).

Claimant contends the administrative law judge erred in finding Dr. Lindemann's opinion sufficient to rebut the Section 20(a) presumption. Dr. Lindemann, who is board-certified in physical medicine and rehabilitation, examined claimant on May 21, 2015, and October 4, 2016, at which time he reviewed the lumbar MRI performed on January 8, 2016, and the cervical MRI performed on March 21, 2016.[2] Dr. Lindemann opined that claimant did not sustain a traumatic injury to his lumbar spine in the accident, *see* EXs 6 at 8; 21 at 6-8, pp. 24-25, 32, and that claimant's cervical condition was not caused or aggravated by trauma. *See* EX 21 at 9, pp. 34-35. Thus, Dr. Lindemann opined that claimant's lumbar and cervical spinal disc bulges are not related to the work accident. *Id.* at 10, pp. 38-39.

We affirm the administrative law judge's finding that employer presented substantial evidence sufficient to rebut the presumed causal relationship between claimant's cervical and lumbar disc bulges and his work accident. Employer's burden on rebuttal is one of production only, not persuasion. Consequently, in order to rebut the presumption, employer need not "prove the deficiency" in claimant's prima facie case; rather, "all it must do is advance evidence to throw factual doubt on the prima facie case." *Plaisance,* 683 F.3d at 231, 46 BRBS at 29(CRT). Dr. Lindemann's opinion constitutes substantial evidence of the absence of a causal link between claimant's cervical and lumbar disc bulges and his work accident. Therefore, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebutted. *See Plaisance,* 683 F.3d at 231, 46 BRBS at 29(CRT); *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5 (2013); *Sistrunk v. Ingalls Shipbuilding, Inc.,* 35 BRBS 171 (2001); *O'Kelley v. Dep't of the Army/NAF,* 34 BRBS 39

[2] At the time of his initial examination of claimant, Dr. Lindemann opined that claimant should undergo an MRI to address the issue of possible trauma to his cervical spine. *See* EX 6 at 8. Claimant subsequently underwent a lumbar MRI on January 8, 2016, which revealed multi-level lumbar spondylosis, *see* EX 5, and a cervical MRI on March 21, 2016, which revealed congenital cervical stenosis. *See* EX 7.

(2000). As claimant has not challenged the administrative law judge's determination on the record as a whole that claimant failed to establish a causal relationship between his lumbar and cervical conditions and his work accident, we affirm that finding as well. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007). Consequently, we affirm the denial of benefits.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge