BRB No. 05-0114

NATHANIEL McKENZIE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
UNIVERSAL MARITIME SERVICES	)	DATE ISSUED: 09/22/2005
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LIMITED	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of Decision and Order of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Myles R. Eisenstein, Baltimore, Maryland, for claimant.

Lawrence P. Postol (Seyfarth Shaw LLP), Washington, D.C., for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (2003-LHC-02387) of Administrative Law Judge Jeffrey Tureck 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).

During the first hour of his eight-hour shift on February 26, 2003, claimant, a groundman for employer, slipped and fell to the ground, striking his buttocks, back and head on the asphalt. Claimant reported no pain due to this incident, and he subsequently

completed his shift and went home. That evening claimant asked his wife to check his head since he felt it was bleeding; claimant's wife did so but found no evidence of bleeding. Rather, claimant's wife reported that the back of claimant's head was soft to the touch. The following day, February 27, 2003, claimant worked his usual shift for employer. The next morning, February 28, 2003, claimant awoke at his normal time and apparently went outside to brush snow from his automobile around 6:00 a.m. Upon returning inside, claimant complained to his wife of a headache. Claimant's condition deteriorated, and he was subsequently taken by an ambulance to Northwestern General Hospital where he was diagnosed with a subdural hematoma. Claimant was immediately transferred to Sinai Hospital, whereupon an acute, traumatic right subdural hematoma was removed via surgery from claimant that same day. Claimant, who was in a coma following his surgery, presently is confined to a wheelchair and is capable of walking only short distances with a cane.

In his Decision and Order, the administrative law judge found that claimant established a *prima facie* case for invocation of the presumption at Section 20(a) of the Act, 33 U.S.C. §920(a). Specifically, the administrative law judge determined that claimant fell at work on February 26, 2003, and that claimant was thereafter diagnosed with an acute subdural hematoma. The administrative law judge further found, however, that employer produced substantial evidence sufficient to rebut the presumption; in this regard, the administrative law judge relied upon the opinion of Dr. Lancelotta, who opined that claimant's acute subdural hematoma was not caused by his February 26, 2003, fall. Thereafter, the administrative law judge addressed the record as a whole and concluded that claimant's condition did not arise out of his employment with employer. Accordingly, the administrative law judge denied the claim for benefits.

On appeal, claimant challenges the administrative law judge's denial of his claim for benefits under the Act. Employer responds, urging affirmance of the administrative law judge's decision in its entirety.

Where, as in the present case, claimant has established entitlement to invocation of the Section 20(a) presumption, *see Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989), the burden shifts to employer to rebut it with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Manship v. Norfolk & W. Railway Co.*, 30 BRBS (1996). It is employer's burden on rebuttal to present substantial evidence sufficient to sever the causal connection between the injury and the employment. *See Swinton v. J. Frank Kelly, Inc.*,554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976); *see also Del Vecchio v. Bowers*, 296 U.S. 280 (1935); *American Grain Trimmers, Inc. v. OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999); *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Bath Iron Works Corp. v. Director, OWCP*, 109 F.3d 53, 31 BRBS 19(CRT) (1st Cir. 1997); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990). In this regard, the testimony of a physician that no relationship exists between an injury and a claimant's employment is sufficient to rebut the presumption. *See Kier v.*

Bethlehem Steel Corp., 16 BRBS 128 (1984). If the administrative law judge finds that the Section 20(a) presumption is rebutted, 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. *See Universal Maritime Corp. v. Moore,* 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); s*ee also Director, OWCP v. Greenwich Collieries,* 512 U.S. 267, 28 BRBS 43(CRT) (1994).

Claimant first asserts that the opinion of Dr. Lancelotta is insufficient to rebut the Section 20(a) presumption since, *inter alia*, his opinion was based on hypothetical probabilities, he did not examine claimant before the initial report or take into consideration claimant's February 26, 2003, fall at work and subsequent tenderness of the head, and he did not state what in fact caused claimant's subdural hematoma. *See* Clt's br. at 22-24. Contrary to the assertions contained in claimant's brief, however, the record indicates that Dr. Lancelotta interviewed claimant for a neurological consultation prior to issuing his July 8, 2003, report and reviewed claimant's records, which included claimant's fall at work on February 26, 2003, and his reported head tenderness that evening. *See* Emp. Exs. 22, 27. Based upon claimant's lack of clinical symptoms for two days following his fall at work and his ability to work during that time, Dr. Lancelotta opined that, within a reasonable degree of medical certainty, claimant's February 26, 2003, fall at work did not cause his acute subdural hematoma. Emp. Ex. 22. Dr. Lancelotta subsequently expounded upon his opinion at the formal hearing, stating that an individual cannot bleed inside of the head for two days and live; based upon that fact coupled with claimant's lack of symptoms following his fall at work, he concluded that claimant's fall was unrelated to his acute subdural hematoma. Tr. at 122-124, 142-144.

Contrary to claimant's argument, the administrative law judge could find this opinion sufficient to rebut the Section 20(a) presumption. In establishing rebuttal of the presumption, proof of another agency of causation is not necessary, s*ee Stevens v. Todd Pacific Shipyards*, 14 BRBS 626 (1982)(Kalaris, J., concurring and dissenting), *aff'd mem.*, 722 F.2d 747 (9th Cir. 1983), *cert. denied*, 467 U.S. 1243 (1984), and Dr. Lancelotta's opinion establishes that claimant's subdural hematoma was not related to his employment. *See generally O'Kelley v. Dept. of the Army/NAF*, 34 BRBS 39 (2000), *pet. for review denied*, No. 02-12758 (11th Cir. Feb. 5, 2003). Accordingly, as the opinion of Dr. Lancelotta severs the causal link between claimant's diagnosed acute subdural hematoma and his employment with employer, we affirm the administrative law judge's finding that employer established rebuttal of the Section 20(a) presumption. *See Moore*, 126 F.3d 256, 31 BRBS 119(CRT); *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171 (2001); *Phillips v. Newport News Shipbuilding & Dry Dock Co.,* 22 BRBS 94 (1988).

Claimant also summarily challenges the administrative law judge's finding that he did not establish causation based upon the record as a whole. We reject claimant's assertions of error in this regard. Once the presumption has been rebutted, the

administrative law judge is required to weigh all of the evidence in the record and resolve the causation issue based on the record as a whole, with claimant bearing the burden of persuasion. *See Moore*, 126 F.3d 256, 31 BRBS 119(CRT); *see also Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT). In this regard, it is well-established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences therefrom, and he is not bound to accept the opinion or theory of any particular medical examiner. *See 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). In the case at bar, the administrative law judge discussed all of the relevant medical evidence of record, and his findings are supported by the record. The administrative law judge rationally credited the opinion of Dr. Lancelotta that claimant's acute subdural hematoma was not related to his employment with employer over the opinions of Drs. Slaughter and Naff.[1] We therefore affirm the administrative law judge's determination that claimant failed to establish that his condition was related to his employment with employer. *See Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT); *Sistruck*, 35 BRBS 171; *Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000); *Rochester v. Geo. Washington Univ.*, 30 BRBS 233 (1997).

[1] In this regard, the administrative law judge found Dr. Slaughter's opinion to be unreliable since his explanation was inconsistent with claimant's medical records. Similarly, the administrative law judge determined that Dr. Naff's opinion was not probative since that physician did not adequately explain why his opinion concerning claimant's condition changed significantly from time to time. *See* Decision and Order at 9.

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge