BRB No. 07-0324

M.B.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CHEVRON, USA, INCORPORATED	)	DATE ISSUED: 09/12/2007
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

M.B., Beaumont, Texas, *pro se*.

Wayne G. Zeringue, Jr., and C. Barrett Rice (Jones, Walker, Waechter, Poitevent, Carrère & Denègre), New Orleans, Louisiana, for self-insured employer.

Before: McGRANERY, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order (2005-LHC-2244) of Administrative Law Judge Richard D. Mills 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). 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 field operator working offshore, alleges he suffered injuries to his neck and left ulnar nerve when a tool locker door struck him on the head on May 9, 2002, and threw him against a workbench. Claimant was sent onshore for treatment of his headaches and neck and back pain; he returned a week later to work without restrictions. On March 10, 2003, claimant sought medical treatment for pain in his left elbow, and Dr.

Taylor performed an ulnar nerve transposition on June 18, 2003. He returned to work in April 2004 but was laid off due to a surplus of workers on July 14, 2004. EX 14; HT at 133-135. Claimant complained to Dr. Taylor of neck pain in July 2004.[1] CX 8 at 26. Claimant sought compensation for injuries to his elbow and neck arising out of the May 9, 2002, work accident. CX 1.

In his Decision and Order, the administrative law judge found that claimant is entitled to invocation of the Section 20(a) presumption, 33 U.S.C. §920(a), linking his injuries to the accident at work. The administrative law judge found, however, that employer rebutted the Section 20(a) presumption, and that, upon weighing the relevant evidence, claimant failed to establish that his neck and elbow conditions are work-related. Accordingly, the administrative law judge denied the claim. Claimant appeals the denial of benefits, and employer responds, urging affirmance of the administrative law judge's decision.

Once, as here, claimant establishes his *prima facie* case, he is entitled to the Section 20(a) presumption that his injuries are causally related to his employment. 33 U.S.C. §920(a); *see Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *see generally U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP,* 455 U.S. 608, 14 BRBS 631 (1982). The burden then shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See, e.g., Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998). If the administrative law judge finds the Section 20(a) presumption rebutted, it drops from the case and the administrative law judge must weigh all of the relevant evidence and resolve the causation issue based upon the record as a whole, with claimant bearing the burden of persuasion. *Universal Maritime Corp. v. Moore,* 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

We affirm the administrative law judge's finding that employer rebutted the Section 20(a) presumption based upon the opinion of Dr. Fulford. Dr. Fulford, an orthopedist, opined that neither claimant's elbow nor cervical condition was caused or aggravated by the work accident. EX 10 at 27, 29. As this opinion constitutes substantial evidence that claimant's injuries are not related to the work accident, the administrative law judge properly found the Section 20(a) presumption rebutted. *See Ortco Contractors, Inc. v. Charpentier,* 322 F.3d 83, 37 BRBS 35(CRT) (5th Cir. 2003), *cert.*

[1] Dr. Taylor, claimant's treating physician, diagnosed cervical stenosis at multiple levels with no obvious myclopathy but with subtle neurological change, multilevel degenerative disc disease in the cervical spine along with developmental stenosis, significant anterior and posterior osteophytes and disc herniation at C5-6. CX 8 at 46, 60.

denied, 540 U.S. 1056 (2003); *Conoco, Inc. v. Director, OWCP,* 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999).

Upon weighing the evidence as a whole, the administrative law judge discussed the opinions of Drs. Taylor and Fulford and found that claimant did not establish that his elbow and neck conditions are work-related. Dr. Fulford stated that claimant's conditions are unrelated to the work accident due to the nine month (elbow) and two year (neck) intervals between the accident and claimant's complaints. EX 10 at 27, 29. The administrative law judge found this opinion to be well-reasoned. Decision and Order at 7. The administrative law judge found Dr. Taylor's opinion to be equivocal, and, therefore, not supportive of claimant's claim. Dr. Taylor stated that it is possible and feasible that the accident was contributive to claimant's elbow and neck conditions, but that due to the intervals between the accident and the complaints it is less likely that there is such a relationship. CX 6 at 11, 15-16, 52, 69, 73; CX 7.

It is well established that the administrative law judge is entitled to determine the weight to be accorded to the evidence of record and that the Board cannot reweigh the evidence. *See Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). The administrative law judge's decision to credit the opinion of Dr. Fulford is rational, as it is supported by claimant's treatment records noting the delayed onset of elbow and neck pain in relation to the accident. *See Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991). As the administrative law judge's finding that claimant's cervical and ulnar conditions are not related to his work accident is supported by substantial evidence, we affirm the administrative law judge's denial of benefits.

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

SO ORDERED.

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REGINA C. McGRANERY
Administrative Appeals Judge

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BRTTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge