BRB No. 91-1937

HARVEY WILSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
JONES WASHINGTON STEVEDORING COMPANY	)	DATE ISSUED:
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Henry B. Lasky, Administrative Law Judge, United States Department of Labor.

William D. Hockberg (Levinson, Friedman, Vhugen, Duggan & Bland), Seattle, Washington, for claimant.

Robert H. Madden (Madden & Crockett), Seattle, Washington, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (89-LHC-3581) of Administrative Law Judge Henry B. Lasky 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).

On October 22, 1987, claimant, a hatchtender and winchdriver for employer, sustained injuries to his left rib area, lower back, hands, and left shoulder, when he fell into a container hole, landing on some gear. Dr. Bourne, claimant's family physician, who had treated claimant for various conditions, including chronic low back pain since 1978, allegedly released claimant to return to work on November 25, 1987. Dr. Bourne had last seen claimant for back pain one month prior to the work accident at which time medication containing codeine was prescribed. Emp. Ex. 5. In the latter part of December 1987, claimant participated in a two-month drug rehabilitation program. Following the completion of the program, claimant returned to his former job and continued to work from February 1988 to July 1988. As claimant continued to have back pain, he consulted Dr. Dorey,

an orthopedic surgeon, in August 1988. On October 3, 1988, Dr. Dorey performed a three-level fusion in the lower lumbar spine. Employer voluntarily paid claimant temporary total disability compensation from October 24 to November 24, 1987. Claimant sought additional temporary total disability, temporary partial disability, and permanent partial disability compensation under the Act, arguing that his pre-existing degenerative back condition was aggravated by the work injury.

The administrative law judge denied the claim, finding no credible evidence in the record to support claimant's aggravation theory. Claimant appeals the denial of benefits, arguing that in finding that claimant's pre-existing back condition was not aggravated by the work injury, the administrative law judge erred in failing to resolve all factual doubt in his favor. Claimant asserts that the uncontradicted testimony of Craig Ullom in conjunction with that of his treating physicians, Drs. Bourne and Dorey, establishes the validity of his aggravation claim. Employer responds, urging affirmance of the administrative law judge's denial of benefits.

Section 20(a) of the Act, 33 U.S.C. §920(a), provides claimant with a presumption that his condition is causally related to his employment if he shows that he suffered a harm and that employment conditions existed or a work accident occurred which could have caused, aggravated, or accelerated the condition. *See Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991); *Gencarelle v. General Dynamics Corp.*, 22 BRBS 170 (1989), *aff'd*, 892 F.2d 173, 23 BRBS 13 (CRT)(2d Cir. 1989). Once claimant has invoked the presumption, the burden shifts to employer to rebut the presumption with substantial countervailing evidence. *Merrill*, 25 BRBS at 144. If the presumption is rebutted, the administrative law judge must weigh all the evidence and render a decision supported by substantial evidence. *See Del Vecchio v. Bowers*, 296 U.S. 280 (1935). It is well-established that an employment-related injury need not be the sole cause or primary factor in a disability for compensation purposes. If an employment-related injury contributes to, combines with, accelerates, or aggravates a pre-existing disease or underlying condition, the entire resultant condition is compensable. *See, e.g., Marko v. Morris Boney Co.*, 23 BRBS 353 (1990); *see also Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45 (CRT)(5th Cir. 1986)(*en banc*).

In the present case, the administrative law judge properly found that claimant was entitled to the benefit of the Section 20(a) presumption. Although claimant's description of his injuries varied from account to account, the administrative law judge found it was clear that he received treatment from his family physician and a physical therapist for a contusion of the left foot and ankle, and a contusion of the left ribs, and that there was credible evidence which established that a work-related accident occurred. *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981).

The administrative law judge also properly found the presumption rebutted by Dr. Dunn's opinion that there was no relationship between the October 1987 work accident, claimant's 1988 surgery, and his subsequent disability. *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988). Having found rebuttal established, the administrative law judge proceeded to consider the causation issue based on an evaluation of the evidence as a whole. The administrative law judge found claimant's testimony incredible because it was contradictory on most issues. The

administrative law judge noted that claimant had submitted inconsistent claims, alleging different injuries and different causes at different times, that claimant had given a "grossly incomplete" history to Dr. Dorey and had failed to mention his drug dependency, and that there was evidence that he attempted to have his medical records altered.

The administrative law judge also determined that the hearing testimony of Dr. Bourne, claimant's treating physician, that claimant's low back condition was related to the industrial injury, was not entitled to any weight because it was impeached by his deposition testimony. In so concluding, the administrative law judge noted that although Dr. Bourne testified at the hearing that claimant's failure to complain about low back pain for several months was not unusual, he testified to the contrary at his deposition. Decision and Order at 11; Tr. at 172-173. The administrative law judge also noted that Dr. Bourne had provided conflicting statements on insurance claims forms as to whether claimant's back condition was, or was not, work-related and as to when he had been released to return to work.

Finally, the administrative law judge determined that Dr. Dorey's opinion, that claimant's fall on October 22, 1987, significantly aggravated his lower back condition and led to his need for surgery, was not entitled to any weight because it was based entirely on the "grossly inaccurate" medical history and description of the accident provided by the claimant. Having considered all of the evidence, the administrative law judge concluded that Dr. Dunn's opinion, that claimant's back surgery and current back disability were totally unrelated to the work accident, and were a result solely of his preexisting back problems, was entitled to more weight than any other opinion. The administrative law judge found that Dr. Dunn's opinion was corroborated by other record evidence including the fact that claimant underwent more than two months of drug rehabilitation and several months of marriage counseling without mentioning any back problems. The administrative law judge also observed that claimant returned to his usual work following the accident, worked several months thereafter without complaint, and did not seek a referral to an orthopedist from his doctor, but had consulted Dr. Dorey on his own.

After careful review of the record, we affirm the administrative law judge's denial of benefits because his finding that claimant failed to establish that his back condition was aggravated by the work-injury is rational, supported by substantial evidence, and in accordance with law. *See O'Keeffe*, 380 U.S. at 359. Claimant correctly alleges that in denying the claim the administrative law judge erred in failing to consider the testimony of Craig Ullom, a fellow patient in the drug rehabilitation program, who testified that claimant informed him that he did not participate in the aerobics program due to back problems. We conclude, however, that on the facts presented this error is harmless; Mr. Ullom's testimony was based on information provided to him by claimant whom the administrative law judge found not to be a credible witness. *See generally Thompson v. Northwest Enviro Services, Inc.*, 26 BRBS 53 (1992). Moreover, contrary to claimant's assertions, the administrative law judge acted within his discretion in crediting Dr. Dunn's opinion over that of claimant's treating physicians, Drs. Bourne and Dorey. *Johnson v. Director, OWCP*, 911 F.2d 247, 24 BRBS 3 (CRT)(9th Cir. 1990), *cert. denied*, 111 S.Ct. 1589 (1991). The administrative law judge may accept or reject all or any part of any testimony according to his judgment. *See generally*

Avondale Shipyards, Inc. v. Kennel, 914 F.2d 88, 24 BRBS 46 (CRT)(5th Cir. 1990); *see also Perini Corp. v. Heyde*, 306 F. Supp. 1321 (D.R.I. 1969); *Thompson*, 26 BRBS at 53. Moreover, there is no requirement under the Act that factual doubt be resolved in favor of the party seeking the award. *See Director, OWCP v. Greenwich Collieries*, U.S. , 62 U.S.L.W. 4543 (U.S. 1994).

The opinion of Dr. Dunn provides substantial evidence to support the administrative law judge's finding that claimant's back condition is unrelated to the work injury. As claimant has failed to raise any reversible error made by the administrative law judge in evaluating the conflicting medical evidence and making credibility determinations, we affirm this determination. *See generally Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Uglesich v. Stevedoring Services of America*, 24 BRBS 180, 183 (1991).

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

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge