BRB No. 93-1396

MARK MYERS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
DELAWARE RIVER STEVEDORES, INCORPORATED	)	
	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

David M. Linker (Freedman and Lorry, P.C.), Philadelphia, Pennsylvania, for claimant.

Christopher J. Field (Linden, Gallagher & Field), New York, New York, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (90-LHC-0896) of Administrative Law Judge Ralph A. Romano 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 if they 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).

Claimant, a checker, who sustained injury to his head, neck and right leg on January 22, 1988, while working for employer, sought temporary total disability compensation under the Act from August 20, 1988 to December 1, 1988, and permanent total disability commencing May 3, 1989. Claimant was initially diagnosed with a sprained ankle and has not worked since the January 22, 1988, accident. He asserted that as a result of his work injury, he suffers from headaches, visual difficulties, stiffness in his neck, and pain in his lower back and right leg which preclude him from performing any work.[1] In addition, claimant sought medical benefits for the outstanding medical

[1] Employer voluntarily paid temporary total disability benefits from January 23, 1988 to August

bills of Dr. de'Moura, an orthopedist.

19, 1988, and December 2, 1988 to August 9, 1989.

In his Decision and Order, the administrative law judge initially determined that employer was not liable for the outstanding medical bills of Dr. de'Moura.[2] The administrative law judge also denied the disability compensation claim, finding that although claimant was entitled to the Section 20(a) presumption, employer rebutted it based on the medical opinions of Drs. Haase and Bhatt. Crediting the medical opinions of Drs. Haase and Bhatt, as corroborated by the absence of abnormal objective test results except for those relating to claimant's childhood brain surgery, and the opinion of Dr. McCluskey over the opinions provided by Dr. Katz and claimant's treating orthopedist, Dr. de'Moura, the administrative law judge found that claimant failed to establish that his claimed disability is causally-related to the subject work injury.

On appeal, claimant challenges the administrative law judge's finding that the claimed disability is not causally-related to the subject work injury on various grounds. Employer responds, urging affirmance.

After review of the administrative law judge's Decision and Order in light of the evidence of record and claimant's arguments on appeal, we affirm his finding that the claimed disability is not causally-related to the subject work injury because it is rational, supported by substantial evidence, and in accordance with law. *See O'Keeffe*, 380 U.S. 359 (1965). We reject claimant's initial argument that the medical opinions of Drs. Haase and Bhatt cannot properly support the administrative law judge's rebuttal finding because they assessed only his neurological problems and failed to account for his orthopedic complaints of problems with his neck, lower back and right leg. Inasmuch as Drs. Haas and Bhatt did consider claimant's right leg, neck and back complaints in rendering their opinions and claimant does not otherwise dispute the rebuttal finding made by the administrative law judge, we affirm this determination.

Claimant additionally argues that the administrative law judge violated the Administrative Procedure Act (APA), 5 U.S.C. §557(c), because in weighing the evidence as a whole he did not consider the medical report of Dr. Lachman, a neurologist, Cl. Ex. 12, or comments by Dr. Firestone, an impartial medical adviser to the Social Security Administration, that claimant's work-related accident aggravated his disabling symptomatology. We conclude that on the facts presented, claimant has not demonstrated reversible error in the administrative law judge's decision. Inasmuch as Dr. Lachman felt that most of claimant's complaints were soft tissue in nature, but voiced no opinion that they were related to the work injury, and, in addition, indicated that whatever neurological defects are present are related to claimant's initial brain surgery, his opinion does nothing to further claimant's position. With regard to the administrative law judge's alleged failure to consider testimony from Dr. Firestone, we find no merit to claimant's argument as claimant did not introduce specific testimony or any report from Dr. Firestone into the record.

Lastly, we reject claimant's argument that the administrative law judge erred in failing to draw an inference that claimant's disabling condition must be due to his work accident in view of the fact that he was able to work an average of 50 hours per week in the year leading up to the accident. The administrative law judge did not err in this regard, based on the evidence he credited. Inasmuch as the medical opinions of Drs. Haase, Bhatt, and McCluskey provide substantial evidence to

[2]This finding is not challenged on appeal.

support the administrative law judge's finding that the claimed disability is not work-related, and claimant has failed to establish any reversible error in his weighing or crediting of the conflicting evidence, we affirm this determination and, accordingly, the denial of disability compensation in this case. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *Merrill v. Todd Shipyards Corp.*, 25 BRBS 140, 145 (1992); *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.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge