BRB No. 96-0331

STANLEY V. KORDONSKI	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BETHLEHEM STEEL CORPORATION	)	DATE ISSUED:
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

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

Bernard J. Sevel (Sevel & Sevel), Baltimore, Maryland, for claimant.

Stan M. Haynes (Semmes, Bowen & Semmes), Baltimore, Maryland, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (94-LHC-1530) of Administrative Law Judge Stuart A. Levin denying benefits 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 administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc*., 380 U.S. 359 (1965).

On September 3, 1991, claimant sustained an injury to his right shoulder as he grabbed a hose that jerked his arm. HT at 28. Claimant returned to light-duty work two days later, and did not lose any time from work. Employer voluntarily paid compensation and medical benefits for claimant's shoulder injury. 33 U.S.C. §§907, 908(c)(2). Claimant subsequently sought medical benefits for surgical treatment recommended by his treating physician, Dr. Naiman, in 1993.

In his Decision and Order, the administrative law judge initially invoked the Section 20(a), 33 U.S.C. §920(a), presumption to link claimant's shoulder injury to the work accident, but he found that employer rebutted the presumption. After considering the record as a whole, the administrative law judge found that claimant's shoulder condition, specifically a possible rotator cuff tear, was not caused by his September 3, 1991 work injury. Accordingly, the claim for medical benefits was

denied.

On appeal, claimant challenges the administrative law judge's finding that the Section 20(a) presumption was rebutted, and the administrative law judge's ultimate finding that claimant failed to establish causation based on the record as a whole. Employer responds, urging affirmance of the denial.

In the instant case, the administrative law judge properly invoked the Section 20(a) presumption as he found that claimant suffered a harm, specifically a shoulder injury, and that an accident occurred which could have caused this condition. *See generally Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991). Upon invocation of the presumption, the burden shifts to employer to present specific and comprehensive evidence sufficient to sever the causal connection between the injury and the employment, and therefore, to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment. *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). The unequivocal testimony of a physician that no relationship exists between an injury and a claimant's employment, if credited by the administrative law judge, 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, the administrative law judge must weigh all of the evidence contained in the record and resolve the causation issue based on the record as a whole. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990).

Claimant initially asserts that the administrative law judge erred in finding the Section 20(a) presumption rebutted. We disagree. In finding rebuttal, the administrative law judge relied upon the opinion of Dr. Wenzlaff, who opined that claimant did not suffer a rotator cuff injury necessitating surgery as a result of the September 3, 1991 work incident, because this opinion is supported by clinical data and constitutes substantial evidence that claimant's current shoulder pain is the result of impingement syndrome due to aging. EX 2. As this opinion constitutes substantial evidence sufficient to rebut the presumption, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebutted. *See generally Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

Claimant next alleges that the administrative law judge erred by failing to find that causation had been established based on the record as a whole. We disagree. After considering all of the medical evidence of record, the administrative law judge credited the opinion of Dr. Wenzlaff over the opinion of Dr. Naiman, stating that Dr. Wenzlaff's opinion is based on the results of an x-ray interpretation, negative EMG results, a negative arthrogram, the MRI results, and physical examination findings. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). The administrative law judge additionally found the medical reports of Eastern Industrial Medical Clinic corroborative of Dr. Wenzlaff's opinion; in particular he noted that by November 26, 1991, Dr. Dollete returned claimant to work with only the restrictions imposed as a result of his prior 1985 injury and stated that his complaints of shoulder pain would subside. CX 2J. Moreover, the administrative law judge found that the record is devoid

of evidence demonstrating that claimant received any medical treatment from November 26, 1991 until April 1993. Lastly, the administrative law judge rejected claimant's testimony regarding his alleged continuing pain because claimant failed to indicate why he did not seek medical attention during the period from November 1991 through April 1993. HT at 35.

It is well established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences therefrom and 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). In the instant case, the administrative law judge's credibility determinations are neither inherently incredible nor patently unreasonable; accordingly, we affirm the administrative law judge's determination that claimant's present shoulder condition is not causally related to his September 3, 1991 work injury.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge