BRB No. 96-0462

JACK HOLLINGS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ITO CORPORATION, ATLANTIC & GULF STEVEDORING COMPANY	)	DATE ISSUED:
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order on Remand Denying Benefits of Daniel L. Stewart, Administrative Law Judge, United States Department of Labor.

Michael G. Lattof, Sr. (Lattof & Lattof, P.C.), Mobile, Alabama, for claimant.

Robert E. Thomas (Cornelius, Sartin & Murphy), New Orleans, Louisiana, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand Denying Benefits (90-LHC-2294) of Administrative Law Judge Daniel L. Stewart 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).

This case is before the Board for the second time. Claimant, a retired longshoreman, filed a claim under the Act on April 3, 1987, for a 10.3 percent binaural noise-induced hearing loss against his last maritime employer, ITO Corporation,[1] based on the results of a February 27, 1987,

[1]Claimant worked for about seven different stevedoring companies and was assigned jobs from a hiring hall on an as-needed basis. In his last month of employment, December 1985, claimant worked for at least four of these companies and only remembers working for employer on his last day, December 25, 1985. ITO Corporation has stipulated to being claimant's last maritime employer.

audiometric examination. Employer filed its Notice of Controversion on November 13, 1987, and the case was subsequently referred to the Office of Administrative Law Judges. A second audiometric evaluation administered by Jim McDill, Ph.D., on December 4, 1990, revealed a 16.6 percent binaural impairment.

In his Decision and Order Denying Benefits, Administrative Law Judge Kenneth A. Jennings found that claimant was entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption and that employer established rebuttal thereof. Without weighing the relevant evidence to determine whether claimant's hearing loss is work-related, Judge Jennings turned to the responsible employer issue. After consideration of the evidence, he denied the claim, finding that as claimant was not exposed to injurious levels of noise on December 26, 1985, no logical connection existed between any hearing impairment claimant suffered due to noise and the noise to which he was exposed on December 26, 1985.

On appeal, the Board initially determined that Judge Jennings intermixed and equated his causation and responsible employer determinations. *Hollings v. ITO Corp.*, BRB No. 92-1636 (Oct. 31, 1994)(unpub.). Specifically, the Board held that while Judge Jennings properly found that claimant was entitled to invocation of the Section 20(a) presumption, and that employer established rebuttal of the presumption, he did not weigh the relevant medical evidence as a whole to determine whether claimant's hearing loss was caused or aggravated by noise exposure. *Id.* The Board therefore directed the administrative law judge, on remand, to resolve the causation issue independently of the responsible employer issue by weighing the evidence as a whole to determine whether claimant's hearing loss is work-related. *Id.* Additionally, the Board vacated Judge Jennings' responsible employer determination and instructed that if, on remand, the administrative law judge determined that claimant's hearing loss is work-related, he should then reconsider the responsible employer issue in light of all of the relevant evidence, placing the burden of proof on the employer. *Id.* The Board specifically acknowledged that inasmuch as ITO Corporation stipulated that it was claimant's last maritime employer, it could avoid liability only by showing that it did not expose claimant to injurious noise at its facility. *Id.*

In his Decision and Order on Remand Denying Benefits, Administrative Law Judge Daniel L. Stewart (hereafter, the administrative law judge) initially found, after weighing the evidence as a whole, that claimant has not shown that his hearing loss is due to or aggravated by noise exposure at work. The administrative law judge then determined that even if claimant had established a causal relationship between his employment and his hearing loss, employer has shown that it is not liable as the responsible employer since the relevant evidence demonstrates that claimant was not exposed to injurious noise at employer's facility on his last day of work. Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's findings regarding causation and the responsible employer. Employer responds, urging affirmance of the denial of benefits.

Claimant contends that the administrative law judge erred in concluding that claimant has not established that his hearing loss was caused by noise exposure at work. Claimant specifically argues that in finding the absence of a causal relationship, the administrative law judge improperly relied on the opinion of Michael F. Seidemann, Ph.D., particularly since Mr. Seidemann is not a physician and thus is not qualified to render a medical diagnosis. In support of his position, claimant

cites to decisions rendered by three different administrative law judges, wherein Mr. Seidemann's credibility has been rejected.

Contrary to claimant's contention, the administrative law judge is not compelled to follow the credibility determinations of administrative law judges rendered in other cases with regard to the testimony of Dr. Seidemann, *see generally Norwood v. Ingalls Shipbuilding, Inc.*, 26 BRBS 66 (1992)(Stage, C.J., dissenting on other grounds), but rather must make his own determinations based on the specific facts and evidence adduced by the parties in the instant case. Credibility determinations concerning medical testimony fall within the purview of the trier-of-fact and the administrative law judge is free to accept or reject all or any part of any medical testimony according to his judgment. *See, e.g., Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Norwood*, 26 BRBS at 66.

In concluding that claimant failed to establish the causal nexus between his hearing loss and work-related noise, the administrative law judge initially credited the opinions of Dr. Muller and Dr. Seidemann,[2] that any loss of hearing which claimant suffered between 1987 and 1990 was caused by claimant's carotid stenosis noting that claimant had retired in 1985.[3] The administrative law judge additionally relied on Dr. Seidemann's assessment that based on the Occupational Safety and Health Administration age correction tables, the hearing loss evidenced on the 1987 audiogram was entirely attributable to the aging process. In so finding, the administrative law judge credited Dr. Seidemann's evaluation as to the cause of claimant's hearing loss in 1987 over the contrary opinion of Mr. Holston, who noted that the audiological evaluation on February 27, 1987, revealed a moderate degree of hearing loss in the high frequency range which was consistent with the type of loss secondary to noise exposure. Additionally, in crediting Dr. Seidemann's assessment, the administrative law judge implicitly rejected Dr. Muller's statement that the high tone type hearing loss pattern seen in the 1990 audiogram is compatible with noise exposure in the past. In particular, the administrative law judge acknowledged that Dr. Muller could not determine when claimant's carotid stenosis began or became manifest, with any degree of medical certainty and, thus, his opinion regarding the cause of claimant's hearing loss as of 1987 is not affirmative evidence of a causal relationship between noise exposure and claimant's hearing loss. Inasmuch as the administrative law judge's credibility determinations are rational, *Calbeck*, 306 F.2d at 693; *Norwood*, 26 BRBS at 66, and his finding is supported by substantial evidence, we affirm the administrative law judge's determination that the evidence, as a whole, is insufficient to establish that claimant's hearing loss is due to work-related noise.[4] Consequently, the denial of benefits is affirmed.

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[2]The administrative law judge specifically noted that Dr. Seidemann had reviewed the reports of Drs. Muller and McDill, the report of Mr. Holston, the transcript of the interview of claimant, and his own noise level survey of the Alabama State docks, prior to rendering his opinion on causation.

[3]Dr. Muller further opined that it is doubtful that any progression of hearing loss from 1987 to 1990 is attributable to noise exposure.

[4]In light of this finding, we need not address claimant's contentions regarding the administrative law judge's finding on the responsible employer issue.

Accordingly, the Decision and Order on Remand Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge