BRB No. 97-1619

WILLIAM WAMES	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
NORTHERN CONTRACTING COMPANY	)	
	)	
	)	
and	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits and the Decision and Order Modifying Former Decision Upon Reconsideration of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Brian R. Steiner (Steiner, Segal, Muller & Donan), Philadelphia, Pennsylvania, for claimant.

John E. Kawczynski (Weber Goldstein Greenberg & Gallagher), Philadelphia, Pennsylvania, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits and the Decision and Order Modifying Former Decision Upon Reconsideration (95-LHC-2248) of Administrative Law Judge Ainsworth H. Brown 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).

Claimant, a master mechanic, was injured on January 19, 1989, when he landed on his head after falling into a five foot deep pit; claimant returned to light duty work in April 1989 and continued in a desk-job position until employer's facility closed. Since that time, claimant has worked as a caddy. Claimant sought compensation under the Act for various injuries, including severe headaches, tinnitus, vertigo, neck pain and strain, and a hearing loss, which he alleged are the result of his work-place fall.

In his Decision and Order, the administrative law judge found that claimant suffers no work-related disability based on his alleged headaches, dizziness and neck pain/strain and that claimant's hearing loss, if any, is the result of the aging process and was not aggravated, accelerated, or exacerbated by the fall. Accordingly, he denied claimant's request for compensation and the payment of claimant's chiropractic treatment.[1]

Claimant appeals, contending that the administrative law judge erred in denying him reimbursement of his chiropractic expenses and in finding that claimant's hearing loss did not arise out of his work accident. Employer responds, urging affirmance of the administrative law judge's decisions.

We will first address claimant's contention that the administrative law judge erred in failing to find employer liable for the medical treatment that he received from Dr. Liebman, a chiropractor. Section 7(a) of the Act, 33 U.S.C. §907(a), states that "[t]he employer shall furnish such medical, surgical, and other attendance or treatment...medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require." *See Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988). In order for a medical

[1]Subsequent to issuing his Decision and Order Denying Benefits, the administrative law judge issued a Decision and Order Modifying Former Decision Upon Reconsideration in which he amended the credentials of Drs. Behrend and Quattrochi, reflecting that they are chiropractic orthopedists. After noting this amendment, the administrative law judge found that this information did not affect his prior decision.

expense to be awarded, it must be reasonable and necessary for the treatment of the injury at issue. *See Pardee v. Army & Air Force Exchange Service,* 13 BRBS 1130 (1981); 20 C.F.R. §702.402. Whether a particular medical expense is necessary is a factual issue within the administrative law judge's authority to resolve. *See Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988).

In his decision, the administrative law judge found that claimant failed to establish that the treatment rendered by Dr. Liebman was reasonable and necessary.[2] In making this determination, the administrative law judge relied on the opinions of Drs. Mandarino, Quattrochi, and Behrend, whom he found to possess superior credentials, rather than that of Dr. Liebman. Given the absence of an objective basis for claimant's complaints, Dr. Mandarino, an orthopedic surgeon, opined that chiropractic treatment was neither medically necessary nor reasonable. Drs. Quattrochi and Behrend, both of whom are chiropractic orthopedists, similarly opined that claimant's ongoing chiropractic treatment is unnecessary. It is well-established that the administrative law judge is entitled to evaluate the credibility of all witnesses, including physicians, and to draw his own inferences from the evidence. *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). It was, therefore, within the administrative law judge's authority as factfinder not to credit Dr. Liebman's testimony regarding the necessity of his treatment of claimant and to rely instead on the contrary opinions of Drs. Mandarino, Quattrochi, and Behrend. *See Cordero v. Triple A Machine Shop,* 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *McGrath,* 289 F.2d at 403. We therefore affirm the administrative law judge's determination that employer is not liable for the medical treatment rendered to claimant by Dr. Liebman, as that finding is rational and in accordance with law. *See generally Wheeler,* 21 BRBS at 35.

Next, claimant contends that the administrative law judge erred in finding that his hearing loss did not arise as a result of his fall at work. In the instant case, the administrative law judge properly invoked the Section 20(a), 33 U.S.C. §920(a), presumption as he found that claimant suffered a harm, specifically a loss of hearing, 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 employ to present specific and comprehensive evidence sufficient to sever the causal connection between the injury and the employment. *See Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 20 (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

[2]Although the term "physician" includes chiropractors, such treatment is reimbursable only to the extent that it consists of manual manipulation of the spine to correct a subluxation shown by x-rays or clinical findings. 20 C.F.R. §702.404.

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); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT)(1994).

Regarding this issue, claimant initially argues 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. Rowe, who opined that claimant did not have an occupational noise-induced hearing loss or a hearing loss secondary to his injury of January 18, 1989. EX 51 at 24-25. 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 Phillip v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

Claimant also challenges the administrative law judge's finding that causation was not established based on the record as a whole; specifically, claimant assigns error to the administrative law judge's decision not to rely upon the testimony of Dr. Wolfson. After considering all of the medical evidence of record, the administrative law judge credited the opinion of Dr. Rowe over the opinion of Dr. Wolfson, stating that Dr. Rowe possessed superior credentials and noting that Dr. Rowe's opinion was more consistent with the underlying objective data. 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 rational; accordingly, we affirm the administrative law judge's determination that claimant's present hearing loss is unrelated to his January 19, 1989, work-accident.

Accordingly, the administrative law judge's Decision and Order Denying Benefits and Decision and Order Modifying Former Decision Upon Reconsideration are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH

Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge