BRB No. 97-0769

CLAUDINE M. BARNES	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MASTER MARINE, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

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

Thomas E. Vaughn (Allen, Vaughn, Cobb & Hood, P.A.), Gulfport, Mississippi, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (95-LHC-1788) of Administrative Law Judge Richard D. Mills 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 was exposed to workplace noise while working as a carpenter at Alabama

Dry Dock from 1944 to 1946, and thereafter for thirty years between 1949 and 1979 while working for employer. Based on the results of an audiogram performed on November 12, 1994, fifteen years after his retirement,[1] claimant sought compensation under the Act for a 34.1 percent noise-induced binaural hearing loss pursuant to Section 8(c)(13), 33 U.S.C. §908(c)(13). In his Decision and Order, the administrative law judge found that claimant's hearing loss was not due to work-related noise exposure, and denied the claim accordingly. Claimant appeals the administrative law judge's finding that his hearing loss is not work-related. Employer responds, urging affirmance.

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).

[1]This is the only audiogram of record.

After consideration of the Decision and Order in light of the record evidence, we affirm the administrative law judge's denial of benefits because his finding that claimant's hearing loss is not causally related to workplace noise is rational, supported by substantial evidence, and in accord with applicable law. *See O'Keeffe*, 380 U.S. at 359. Contrary to claimant's initial argument on appeal, the administrative law judge did not determine that claimant was not exposed to injurious noise levels during the more than 30 years he worked in the shipyard industry. Rather, based on claimant's history of working in a noisy environment for approximately thirty years and the opinion of claimant's audiologist, Mr. Holston, that exposure to loud workplace noise could have contributed to claimant's hearing loss, he specifically found that claimant was entitled to invocation of the Section 20(a) presumption. He then concluded, however, that employer established rebuttal based on Dr. Seidemann's testimony that the pattern on claimant's audiogram, which demonstrated the highest degree of loss at 8,000 hertz levels rather than at the 3,000, 4,000 and 6,000 hertz levels, was not indicative of a noise-induced loss.[2] Thereafter, upon weighing the evidence as a whole, the administrative law judge found Dr. Seidemann's unequivocal opinion more persuasive than Mr. Holston's testimony that noise *could* have been a contributing factor in claimant's hearing loss and determined accordingly that claimant failed to carry his burden of proof on the causation issue.

Claimant also argues on appeal that the administrative law judge erred in finding that Dr. Seidemann's opinion provided substantial evidence to rebut the Section 20(a) presumption, characterizing it as speculative in that it was based on the general assumption that carpenters and insulators working in the shipyards would not receive the 90 decibel 8 hour time-weighted exposure necessary to produce a hearing loss under the Occupational Safety and Health Administration standards. Inasmuch, however, as Dr. Seidemann specifically testified that regardless of whether claimant's exposure was 90,95, 100, 87, or 85 decibels, the pattern of hearing loss he exhibited was not that of someone who has a noise-induced loss, Tr. at 71, claimant's argument is rejected. Moreover, although claimant appears to argue that the pattern on his audiogram can be explained by the fact that he suffers from presbycusis or other unknown factors in addition to a noise-induced loss, the administrative law judge properly relied upon Dr. Seidemann's testimony that noise exposure did not contribute in any way to claimant's hearing loss. Tr. at 71. Inasmuch as claimant has failed to establish that the administrative law judge's decision to credit Dr. Seidemann's testimony is either inherently incredible or patently unreasonable, and his opinion provides substantial evidence sufficient to sever the presumed causal nexus and establish the absence of causation on the record as a whole, both the administrative law judge's finding of rebuttal and his ultimate determination that claimant's

[2]Dr. Seidemann also opined that the fact that claimant reported a progressively decreased hearing sensitivity after leaving his shipyard work, and the extreme severity of his hearing loss were incompatible with hearing loss due to noise exposure. Tr. at 47, 52, 59.

hearing loss is not noise-related based on this testimony are affirmed.[3] *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied,* 440 U.S. 911 (1979); *Holmes v. Universal Maritime Service Corp.*, 29 BRBS 18, 21 (1995).

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

NANCY S. DOLDER
Administrative Appeals Judge

[3]Although claimant also argues that Dr. Seidemann's lack of credibility is a matter of record and cites three Decisions and Orders by three different administrative law judges in support of this argument, credibility determinations are solely within the purview of the trier-of-fact who presides over the particular case. *See generally Wood v. Ingalls Shipbuilding, Inc.*, 28 BRBS 156, *modifying on recon.*, 28 BRBS 27 (1994).