BRB No. 00-0881

JOANN BEATY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
AVONDALE INDUSTRIES INCORPORATED	)	DATE ISSUED:
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Larry W. Price, Administrative Law Judge, United States Department of Labor.

William S. Vincent, Jr., New Orleans, Louisiana, for claimant.

Christopher S. Mann (Jones Walker Waechter Poitevent Carrere & Denegre, L.L.P.), New Orleans, Louisiana, for self-insured employer.

Before: SMITH, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (99-LHC-1525) of Administrative Law Judge Larry W. Price 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, an electrician, suffered an injury to her left knee when she struck it against a blower and the deck during the course of her employment with employer on February 16, 1996. She has undergone two surgeries on her left knee and extensive physical therapy. Because employer could provide no light duty work within her physical restrictions, claimant was terminated by employer. Subsequent to the work-related injury to her left knee, claimant began experiencing problems with her right knee, possibly due to a medial

meniscus tear. Claimant filed a claim seeking temporary total disability compensation as well as medical treatment for her right knee.

In his decision, the administrative law judge found that claimant established her *prima facie* case and was therefore entitled to invocation of the Section 20(a) presumption, 33 U.S.C. §920(a). He then found that employer produced substantial evidence rebutting the presumption. Upon weighing all of the medical evidence of record, the administrative law judge concluded that claimant failed to show that her right knee condition is related to her February 16, 1996 work injury. He then found that employer had established the availability of suitable alternate employment, thus limiting claimant to an award under the schedule for her left knee injury. Finally, he accepted as appropriate the compensation paid by employer to claimant for an 8 percent impairment to claimant's left leg.[1]

On appeal, claimant argues that the administrative law judge erred in finding that her right knee condition is unrelated to the work injury to her left knee. She further avers that the administrative law judge erred in finding an award of 8 percent impairment to her lower left leg to be appropriate and argues that a 12 or 15 percent impairment rating is more appropriate. Employer responds, urging affirmance.

Once, as in the instant case, claimant establishes her *prima facie* case, Section 20(a) of the Act provides claimant with a presumption that her condition is causally related to her employment. *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). Upon invocation of the Section 20(a) presumption, the burden shifts to employer to rebut it with substantial countervailing evidence. *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); *O'Kelley v. Dept. of the Army/NAF*, 34 BRBS 39 (2000). 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); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 270 (1990); *see also Director, OWCP v. Greenwich Collieries*, 572 U.S. 267, 28 BRBS 43(CRT)(1994).

[1]In accepting the prior compensation paid by employer for an 8 percent impairment of the lower left leg under the schedule as appropriate, the administrative law judge relied upon the medical opinions of Drs. Levy and Russo and the fact that none of the parties had disputed this percentage of impairment. Decision and Order at 12.

In the instant case, the administrative law judge invoked the Section 20(a) presumption, but found that the record evidence was sufficient to rebut it. In rendering this determination, the administrative law judge noted the lapse of time between the accident and claimant's first complaints regarding her right knee, and further found that the records of Drs. Katz and Russo do not relate claimant's right knee problems to her work-related left knee injury. In addition, both of these physicians opined that there was no causal relationship between claimant's work-related left knee condition and her right knee problems. As these opinions therefore constitute 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).

Next, weighing the evidence as a whole, the administrative law judge discussed the medical evidence supporting claimant's assertion of a work-related right knee condition, but found it to be unpersuasive. Specifically, the administrative law judge noted that both Drs. Katz and Russo opined that the etiology and symptomolgy of claimant's right knee condition are inconsistent with its being related to her left knee work injury. Moreover, the administrative law judge noted that Dr. Levy, claimant's treating physician, had initially opined that claimant's right knee condition was due to overuse resulting from her left knee injury, but upon viewing videotapes of claimant the doctor testified that claimant did not demonstrate the symptoms or gait which could have caused the problems which were thought to have been caused by excessive stress. Based upon this testimony, as well as Dr. Levy's finding that claimant's knees showed evidence of degenerative spurring which most likely pre-existed the original accident, the administrative law judge concluded that Dr. Levy's position was consistent with the opinions of Drs. Katz and Russo regarding the lack of a relationship between claimant's right knee condition and her work-injury. In adjudicating a claim, the administrative law judge is entitled to weigh the medical evidence and draw his own inferences from it, *see Wheeler v. Interocean Stevedoring, Inc*., 23 BRBS 33 (1989), and he is not bound to accept the opinion or theory of any particular witness. *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, and these credited opinions provide substantial evidence in support of his finding that claimant's right knee condition is not work-related. Accordingly, we affirm the administrative law judge's conclusion that causation was not established. *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 618, 33 BRBS 1, 3(CRT)(9th Cir. 1999).

Lastly, claimant argues that the administrative law judge erred in awarding her compensation under the schedule for the 8 percent impairment of her left lower leg contained in Dr. Russo's most recent rating, rather than for the 15 percent impairment assessed by Dr. Levy or the 12 percent impairment initially rated by Dr. Russo. In his decision, the

administrative law judge found that employer had paid claimant for an 8 percent impairment and stated that nothing in the record or parties' briefs indicated that a controversy existed over the percentage of impairment. The administrative law judge thus accepted 8 percent as appropriate. In so doing, he noted the disagreement among the doctors, but found that after studying the explanations given for the ratings, Dr. Russo's use of American Medical Association guidelines was more persuasive. Claimant has not established reversible error in the administrative law judge's conclusion, and it is affirmed.

Accordingly, the administrative law judge's Decision and Order - Denying Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge