BRB No. 02-0206

KECIA JERNIGAN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING & DRY DOCK COMPANY	)	DATE ISSUED: Oct. 11, 2002
	)	
	)	
Self-Insured Employer-Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order of Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Montagna, Breit, Klein, Camden, L.L.P.), Norfolk, Virginia, for claimant.

Jonathan H. Walker (Mason, Cowardin & Mason, P.C.), Newport News, Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (2001-LHC-0097) of Administrative Law Judge Fletcher E. Campbell, Jr., 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).

On May 15, 2000, claimant, an insulator, was pulling wire to tie down pads when she felt pain in the middle of her chest, approximately six inches below her chin. As she continued to work, the pain increased. She sought treatment at the shipyard clinic, and was seen by Dr. Tornberg on May 18, when he diagnosed costochrondritis, prescribed anti-inflammatory medication, and placed claimant on restrictions. Dr. Tornberg determined on

June 16, 2000, that claimant's initial, work-related symptoms had resolved and recommended that she seek treatment from her personal physician for any residual complaints. This opinion was based on a normal bone scan. H. Tr. at 34. Employer voluntarily paid claimant temporary total disability benefits through June 15, 2000. Claimant began treatment on June 17, 2000, with Dr. Adcock, her family physician. He diagnosed costochrondritis and recommended physical therapy and anti-inflammatory medication. Claimant's symptoms resolved, and she was released for return to full duty on August 2, 2000. Claimant sought temporary total disability benefits for the period from June 16 to August 2, 2000.

In his decision, the administrative law judge found that claimant suffered pain in her chest and Dr. Adcock opined that it was job related. Thus, the administrative law judge found that the Section 20(a), 33 U.S.C. §920(a), presumption that the injury was work-related is invoked. In addition, the administrative law judge found that Dr. Tornberg's opinion is not sufficient to establish rebuttal of the Section 20(a) presumption. However, in the alternative, the administrative law judge weighed the evidence as a whole and concluded that claimant's costochrondritis episode beginning in May 2000 was work-related. Moreover, the administrative law judge found that the episode had not resolved by June 16 as stated by Dr. Tornberg, and thus temporary total disability benefits were awarded from June 16 through August 1, 2000.

On appeal, employer contends that the administrative law judge erred in finding that claimant's work activity on May 18, 2000, caused her costochronditis to be symptomatic after June 15, 2000. Employer contends that the administrative law judge erred in finding the evidence insufficient to establish rebuttal of the Section 20(a) presumption, and in finding, after weighing the evidence as a whole, that the evidence establishes that claimant's symptomatic costochronditis was work-related after June 15, 2000. Claimant responds, urging affirmance of the administrative law judge's decision.

Employer contends that the administrative law judge erred in finding that claimant's condition after June 15, 2000 is related to her employment. Section 20(a), 33 U.S.C. §920(a), provides claimant with a presumption that her disabling condition is causally related to her employment if claimant establishes a *prima facie* case by proving that she suffered a harm and that working conditions existed which could have caused the harm. *See generally* *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). In the instant case, the administrative law judge's finding that the Section 20(a) presumption is invoked to relate claimant's symptomatic costochronditis to her employment is not contested on appeal.[1]

[1]Contrary to employer's contention on appeal, the administrative law judge did not find that claimant's underlying costochrondritis was caused by her work activity on May 15, 2000, but rather found that she suffered an episode of work-related symptoms through

Once the presumption is invoked, the burden shifts to employer to rebut it with substantial evidence that claimant's disabling condition was not caused or aggravated by her employment. *See American Grain Trimmers v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999), *cert. denied*, 528 U.S. 1187 (2000); *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). The administrative law judge found that Dr. Tornberg's opinion does not "constitute a specific and comprehensive contradiction" of work-relatedness, as Dr. Tornberg's use of the past tense in expressing his opinion leaves doubt as to what his true opinion was at the time of the hearing, and his reasoning that claimant's symptoms were not work-related was unclear in light of his statement that the inflammatory process of costochronditis can wax and wane. Nonetheless, the administrative law judge went on to weigh the conflicting medical evidence of record to determine whether claimant's symptoms through August 1 were work-related.[2] *See generally Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998).

Specifically, the administrative law judge considered the medical opinions of Drs. Tornberg and Adcock in determining whether claimant's condition between June 15 and August 1, 2000, was work-related. Although Dr. Tornberg testified that the symptoms suffered during this period were not work-related, he also testified that there is not a clear understanding as to why costochrondritis occurs, H. Tr. at 57, and he conceded that work can aggravate the symptoms, H. Tr. at 59. Contrary to employer's contention, the administrative

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August 2, 2000. Decision and Order at 9. The underlying disease need not have been caused by the worker's employment because a work-related aggravation of a pre-existing condition constitutes an injury under the Act. *See Crum v. General Adjustment Bureau*, 738 F.2d 474, 16 BRBS 115(CRT) (D.C. Cir. 1984); *Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1989).

[2]The administrative law judge made an alternate finding after finding the evidence insufficient to establish rebuttal, which was not "dicta" as suggested by employer on appeal. *See* Decision and Order at 7.

law judge did not find Dr. Tornberg's opinion to be "reasoned and explained." Rather, the administrative law judge found that it was "difficult to pin down exactly why Dr. Tornberg ever believed that Claimant's costochrondritis symptoms were not work-related." Decision and Order at 6. In addition, the administrative law judge rejected Dr. Tornberg's opinion that any possible work-related symptoms resolved by June 16, given the similar symptoms found by Dr. Adcock on examination on June 17, as well as claimant's positive response to continued to treatment. Decision and Order at 8.

In reviewing the conflicting evidence, the administrative law judge also considered the fact that claimant previously had similar symptoms in 1992 which were determined to be work-related flare-ups of her underlying costochronditis by shipyard physicians, Drs. Hall and Reid. *See* Cl. Exs. 6, 7. As employer contends, the administrative law judge did state that Dr. Adcock's opinion is "unexplained and unreasoned," Decision and Order at 8, apparently because Dr. Adcock did not explicitly explain the relationship between the work activity on May 15 and the costochronditis episode. The administrative law judge, however, did not reject Dr. Adcock's opinion on this basis, nor was he required to do so. *See generally Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963). Moreover, a review of Dr. Adcock's medical reports show that he considered the description of claimant's work activity on the morning of May 15, claimant's previous history and her current symptoms, and concluded that she was suffering from an episode of costochronditis brought on by her duties at work on that day. Cl. Ex. 4. Thus, the administrative law judge could properly credit Dr. Adcock's opinion.

In adjudicating a claim, it is well-established that an administrative law judge is entitled to weigh the evidence. He is not bound to accept the opinion or theory of any particular medical examiner, but may draw his own inferences and conclusions from the evidence.[3] *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). Moreover, Dr. Tornberg testified at the hearing, and the administrative law judge is entitled to assess the weight to be accorded

[3]Furthermore, the administrative law judge is not obligated to rule in favor of a party because his medical experts are more highly trained. *See Avondale Shipyards, Inc. v. Kennel*, 914 F.2d 88, 24 BRBS 46(CRT) (5th Cir. 1990). Therefore, we reject employer's contention that the administrative law judge erred in not giving greater weight to the opinion of Dr. Tornberg based on his credentials as an orthopaedist.

Dr. Tornberg's testimony based on the administrative law judge's observations of his testifying. We affirm the administrative law judge's finding that the opinion of Dr. Adcock that claimant's condition was work-related is entitled to determinative weight under the facts of this case. Thus, as the administrative law judge thoroughly reviewed the evidence of record and his finding is supported by substantial evidence, we affirm the administrative law judge's finding that claimant suffered from a temporary work-related

aggravation of her costochronditis that continued until August 1, 2000, based on the opinion of Dr. Adcock.[4]

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

[4]As we affirm the administrative law judge's finding that evidence is sufficient to establish that claimant's costochrondritis symptoms from June 15, 2000 through August 1, 2000 were work-related, any error by the administrative law judge in finding that the evidence is insufficient to establish rebuttal of the Section 20(a) presumption is harmless. *See Bass v. Broadway Maintenance*, 28 BRBS 11 (1994).