

ROBERT R. POUNDS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
LOCKHEED SHIPBUILDING)	DATE ISSUED:
COMPANY)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Vivian Schreter-Murray, Administrative Law Judge,
United States Department of Labor.

William D. Hochberg (Levinson, Friedman, Vhugen, Duggan & Bland), Seattle,
Washington, for claimant.

Russell A. Metz (Metz, Frol & Jorgensen, P.S.), Seattle, Washington, for self-insured
employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (91-LHC-2435) of Administrative Law Judge Vivian Schreter-Murray denying benefits 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 December 15, 1987, claimant, a retired boilermaker, filed a claim alleging a disability related to asbestos exposure. In her Decision and Order, the administrative law judge determined that claimant is entitled to the presumption that his respiratory impairment is causally related to his employment pursuant to Section 20(a) of the Act, 33 U.S.C. §920(a), but that employer rebutted this presumption. After evaluating the record as a whole, the administrative law judge concluded that claimant does not suffer from asbestosis or any work-related impairment. Accordingly, the administrative law judge denied benefits. The administrative law judge also denied claimant medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907. On appeal, claimant challenges

the administrative law judge's denial of benefits. Employer responds in support of the administrative law judge's denial.

Claimant initially challenges the administrative law judge's crediting of Dr. Cary's opinion over the opinions of Drs. Slaymaker and Casey in her weighing of the evidence pursuant to Section 20(a). Claimant's challenge lacks merit. After finding that Dr. Slaymaker's opinion that claimant suffered from an asbestos-related disease is sufficient to establish invocation of the Section 20(a) presumption, the administrative law judge properly found that Dr. Cary's opinion that claimant does not have asbestosis or asbestos-related lung disease or any pulmonary disability is sufficient to establish rebuttal of the Section 20(a) presumption as it rules out work exposure as a cause of claimant's illness. *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988); *Susoeff v. The San Francisco Stevedoring Co.*, 19 BRBS 149 (1986); Decision and Order at 11; Claimant's Exhibits 3, 10; Employer's Exhibits 4, 5.

Because Dr. Cary's opinion is sufficient to rebut the Section 20(a) presumption, the administrative law judge weighed all evidence relevant to the causation issue. *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 acted within her discretion in relying on Dr. Cary's opinion to find that claimant does not suffer from asbestosis or any work-related injury based on his superior qualifications and because his report is supported by the bulk of the credible medical and other evidence of record, including claimant's testimony.¹ See *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); Decision and Order at 8, 10; Employer's Exhibits 4, 5. Likewise, the administrative law judge acted within her discretion in not relying on Dr. Slaymaker's opinion after finding that Dr. Slaymaker did not provide an adequate rationale for his diagnosis of asbestos-related disease.² *Phillips*, 22 BRBS at 94; Decision and Order at 11; Claimant's Exhibits 3, 10. Lastly, the administrative law judge permissibly rejected Dr. Casey's opinion that claimant suffers from asbestosis, as she found it equivocal and unsupported by objective data. *Phillips*, 22 BRBS at 94; Decision and Order at 6-8, 11; Claimant's Exhibit 5. We, therefore, affirm the administrative law judge's reliance on Dr. Cary's opinion over the opinions of Drs. Slaymaker and Casey and consequently, the finding that claimant does not suffer from

¹The administrative law judge noted that Dr. Cary is Board-certified in internal medicine and pulmonary disease and also is the Director of the Pulmonary Function Laboratory at Swedish Hospital, where he is responsible for the interpretation of all pulmonary function studies. Decision and Order at 10; Employer's Exhibit 5. The administrative law judge also noted that Dr. Cary's opinion was based on a complete history, physical examination including a chest x-ray, pulmonary function studies, CT scan, complete blood and liver function studies and EKG, and a review of claimant's medical records. Decision and Order at 8; Employer's Exhibits 4, 5. Claimant testified that he gets short of breath when climbing a couple of flights of stairs and that he retired because he felt like it and not because of poor health. Decision and Order at 5; Hearing Transcript at 22, 28.

²The administrative law judge noted that Dr. Slaymaker's diagnosis of restrictive impairment was not supported by claimant's lung volumes and diffusing capacity and that Dr. Slaymaker consistently ignored the effects of claimant's marked obesity. Decision and Order at 11; Claimant's Exhibits 3, 10.

asbestosis or any work-related injury.³

Claimant also contends that the administrative law judge erred in denying him medical benefits pursuant to Section 7. We disagree. Based on our affirmance of the administrative law judge's weighing of the evidence pursuant to Section 20(a) and her finding that claimant does not have a work-related injury, claimant is not entitled to continued medical benefits pursuant to Section 7. 33 U.S.C. §907; *Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989); Decision and Order at 12; Employer's Exhibits 4, 5. Although claimant notes that Dr. Cary recognized the need for claimant to have yearly chest x-rays due to the fact that he was exposed to asbestos, medical benefits cannot be awarded in the absence of a work-related injury. *Romeike*, 22 BRBS at 57; Employer's Exhibit 4; Claimant's Brief at 8.

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

³We need not address the administrative law judge's findings regarding the extent of claimant's impairment based on our affirmance of the administrative law judge's findings regarding causation.