BRB No. 97-0329

BETTIE J. WILLIAMS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DEPARTMENT OF THE ARMY/NAF	)	DATE ISSUED:
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

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

Gregory E. Camden (Rutter & Montagna), Norfolk, Virginia, for claimant.

Lawrence P. Postal (Seyfarth, Shaw, Fairweather & Geraldson), Washington, D.C., for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (95-LHC-1791) 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.,* as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge if they 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 sustained a back injury during the course of her employment with employer on November 5, 1992. In December 1992 she returned to her usual employment with employer as a custodian. On May 8, 1994, claimant sustained a herniated disc while at church. Claimant thereafter filed a claim under the Act alleging that the May 8, 1994, disc herniation was causally related to her November 5, 1992, work injury.

In his Decision and Order, the administrative law judge, after initially finding that claimant was entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption of causation, found that employer produced substantial evidence to rebut the presumption. Next, after considering the totality of the evidence, the administrative law judge concluded that claimant's May 8, 1994, back injury was not causally related to her November 5, 1992, work injury. Accordingly, the administrative law judge denied claimant benefits under the Act.

On appeal, claimant challenges the denial of benefits. Employer responds, urging affirmance.

In the instant case, the administrative law judge properly invoked the Section 20(a) presumption as he found that claimant suffered a harm and that an accident occurred which could have caused that harm. *See generally Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991). Upon invocation of the presumption, the burden shifts to employer to present specific and comprehensive evidence sufficient to sever the causal connection between the injury and the employment, and therefore, to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment.[1] *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990). The unequivocal testimony of a physician that no relationship exists between an injury and a claimant's employment is sufficient to rebut the 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 Hughes v. Bethlehem Steel Corp.,* 17 BRBS 153 (1985).

In finding that employer rebutted the presumption, the administrative law judge relied upon the opinion of Dr. Foer, who opined within a reasonable degree of medical certainty that claimant's May 1994 disc herniation was not related to her November 1992 work injury. CX 14 at 20-21. As Dr. Foer's opinion severs the casual link between claimant's November 5, 1992 work accident and her present back condition, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebuttal. *See generally Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

The administrative law judge next found that claimant failed to establish causation based on the record as a whole. The administrative law judge initially credited the hearing and deposition testimony of claimant and the hearing testimony of her friends, Ms. Mann and Ms. Hines, in determining that claimant sustained intermittent, rather than constant,

[1]Contrary to claimant's contention on appeal, Section 20(a) does not afford her a presumption of disability. *See Jones v. Genco, Inc.*, 21 BRBS 12, 15 (1988).

back pain during the period between her November 5, 1992, work injury and her May 8, 1994, disc injury. He therefore credited the causation opinion of Dr. Foer, that claimant's condition was unrelated to her work accident, over the contrary medical opinion of Dr. Garner, because Dr. Foer based his opinion on a correct patient history, whereas Dr. Garner based his opinion of causation on the premise that claimant's post-November 1992 back pain was constant. The administrative law judge also noted that Dr. Foer's causation opinion is supported by the medical opinions of Dr. Seery and Dr. Flynn, who examined claimant in 1992 and 1993, and who did not diagnose a disc problem.

In adjudicating a claim, it is well-established that an administrative law judge is entitled to evaluate the credibility of all witnesses, including doctors, and is not bound to accept the opinion or theory of any particular medical examiner; rather, the administrative law judge may draw his own inferences and conclusions from the evidence. *See Calbeck v. Strachan Shipping* Co., 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963); *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). In the instant case, the administrative law judge's decision to credit the opinion of Dr. Foer over the contrary opinion of Dr. Garner is neither inherently incredible nor patently unreasonable. *See generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied,* 440 U.S. 911 (1979). We therefore affirm the administrative law judge's determination, based on the record as a whole, that claimant's present back condition is not causally related to her November 5, 1992, work accident. *See, e.g., Rochester v. George Washington University*, 30 BRBS 233 (1997).

Lastly, claimant also asserts that the administrative law judge erred in denying her request for medical benefits. Entitlement to medical benefits is contingent upon a finding of a causal relationship between the injury and employment. *See generally Wendler v. American National Red Cross*, 23 BRBS 408 (1990)(McGranery, J., concurring and dissenting). Thus, in light of our affirmance of the administrative law judge's finding that no causal relationship exists between claimant's employment and her present back condition, we affirm his finding that employer is not liable for medical benefits related to the treatment of claimant's back condition.

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