BRB No. 03-0524

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| CHAUNCY D. BOLDEN | ) | |
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| Claimant-Petitioner | ) | |
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| v. | ) | |
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| ZACHRY-PARSONS-SUNDT | ) | DATE ISSUED:April 22, 2004 |
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| and | ) | |
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| ACE USA | ) | |
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| Employer/Carrier-Respondents | ) | DECISION and ORDER |

Appeal of the Decision and Order of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

Chauncy D. Bolden, Moss Point, Mississippi, *pro se*.

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

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order (02-LHC-1633) of Administrative Law Judge Lee J. Romero, 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 Defense Base Act, 42 U.S.C. §1651 *et seq*. (the Act). In an appeal by a claimant without legal representation, we will review the findings of fact and conclusions of law of the administrative law judge to determine if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). If they are, they must be affirmed.

Claimant, a former painter at the United States Embassy in Moscow, Russia, alleges that his current eye condition, specifically cataracts, arose out of his employment, following a chemical burn on January 17, 2000. On that date, while spray painting

overhead in a small unventilated electrical room, claimant got paint in his eyes causing a burn to his corneas. After seeking medical attention for his blurred vision and pain, claimant continued to perform his usual employment duties until his contract expired in March 2000 and he returned to the United States. Upon returning to the United States, claimant was diagnosed with cataracts in both eyes; surgery was performed on his left eye in June 2000. Claimant has been unable to maintain employment because of his uncorrected cataract in his right eye, and he cannot afford additional surgery. Claimant filed a claim for compensation and medical benefits for the cataracts.

In his decision, the administrative law judge found that claimant is entitled to invocation of the Section 20(a) presumption, 33 U.S.C. §920(a), linking his cataracts to his employment and that employer rebutted the presumption. Upon weighing the evidence as a whole, the administrative law judge found that claimant failed to establish that his cataracts are work-related. Accordingly, the administrative law judge denied disability and medical benefits.

Claimant appeals the administrative law judge's denial of benefits.[1] Employer has not responded to this appeal.

Once, as here, the Section 20(a) presumption is invoked, the burden shifts to employer to rebut it with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). In this case, the administrative law judge found rebuttal established based upon the opinion of Dr. Bertucci that claimant's cataracts are unrelated to his employment. HT at 113-114. Dr. Bertucci testified that claimant's eye condition was due to the natural progression of the normal aging process and is unrelated to either any trauma which may have resulted from the paint in claimant's eyes or the use of steroidal spray to treat the temporary inflammation following the accident. EX 4; HT at 96, 114, 135. The administrative law judge properly concluded that Dr. Bertucci's opinion constitutes substantial evidence that

[1] Claimant's attorney, who represented him before the administrative law judge, filed an appeal with the Board. In response to the Board's show cause order why this appeal should not be dismissed for failure to file a timely Petition for Review and brief, 20 C.F.R. §§802.218(b), 802.402(a), claimant's counsel responded that she no longer represented claimant. By Order dated February 6, 2004, the Board stated that since an attorney does not represent claimant, the Board will review this case under its general standard of review. 20 C.F.R. §§802.211(e), 802.220.

claimant's cataracts are not related to his employment. *See Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert. denied*, 124 S.Ct. 825 (2003); *Bath Iron Works v. Director, OWCP [Harford]*, 137 F.3d 673, 32 BRBS 45(CRT) (1st Cir. 1998). We, therefore, affirm the administrative law judge's finding that employer rebutted the Section 20(a) presumption.

Once the Section 20(a) presumption is rebutted, claimant bears the burden of establishing the work-relatedness of his condition upon a weighing of the relevant evidence as a whole. *See Marinelli v. American Stevedoring Ltd.*, 34 BRBS 112 (2000), *aff'd*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001); *Meehan Service Seaway Co. v. Director, OWCP*, 125 F.3d 1165, 31 BRBS 114(CRT) (8th Cir. 1997), *cert. denied*, 523 U.S. 1020 (1998); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 257, 28 BRBS 43(CRT) (1984). In weighing the evidence, the administrative law judge found that the only physicians of record to offer opinions regarding the cause of claimant's cataracts are Drs. Walker and Bertucci.[2] Both physicians agree that claimant suffers from nuclear sclerotic, cortical, and posterior subscapular cataracts. Dr. Walker opined that while the most common cause of cataracts is the aging process, claimant's condition was the result of a combination of steroid use, paint exposure, and inflammation. Dr. Bertucci opined that claimant suffers from cataracts unrelated to the combination of paint exposure, inflammation and steroid use due to the work accident. The administrative law judge found the opinion of Dr. Bertucci better reasoned and more compatible with the underlying facts and that the evidence, at best, was in equipoise; therefore claimant failed to sustain his burden of establishing the work-relatedness of his injury.

In relying upon the opinion of Dr. Bertucci, the administrative law judge first noted that Dr. Bertucci's opinion that claimant's cataracts are not related to steroid use is more consistent with the record evidence showing that nuclear sclerotic and cortical cataracts are always unrelated to steroid use, HT at 102, 136, and that steroids must be used for 18 months to three years to result in posterior subscapular cataracts, which did not occur in this case. HT at 104-105. Claimant was treated for just a brief period of time with steroids and neither Dr. Bertucci nor Dr. Walker found claimant to be suffering with corneal inflammation requiring the use of steroids. Dr. Bertucci also stated that there is no indication that claimant sustained a contusion or blistering or burning of the

[2] The record also contains claimant's treatment report from the European Medical Center to which claimant reported on January 19, 2000, several days after the incident; claimant was treated for inflammation of the ciliary body and hypotony due to exposure to chemicals (paints) and released on medication. EX 1. After his follow-up visit on January 21, 2000, claimant did not seek treatment until his return to the United States in April 2000. CX 2.

corneas which could result in cataracts. HT at 108-109, 136. Finally, Dr. Bertucci stated that claimant's cataracts are not related to his paint exposure. HT at 128.

Dr. Walker believed that claimant's cataracts were probably caused by the severe inflammation resulting from the work injury and prolonged use of steroids. The administrative law judge gave Dr. Walker's opinion less weight because it was based on an incorrect perception of the amount of claimant's steroid use and on notations regarding medication prescribed by the physician treating claimant in Russia. The administrative law judge found that there was no evidence or diagnosis of severe inflammation or of corneal scarring which results from severe inflammation. Moreover, the administrative law judge found that the Russian medical records are unreliable because they contained no test or examination results and the credentials of the treating physician, Dr. Elias, are unknown. Finally, the treatment that claimant received following the injury belies his suffering severe inflammation, which usually requires hospitalization, according to Dr. Bertucci. HT at 108.

It is well established that the administrative law judge has the authority to weigh the evidence. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp., v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). We decline to disturb the administrative law judge's weighing of the evidence as it is rational and supported by the record. Thus, we affirm the administrative law judge's determination that claimant failed to meet his burden of establishing a causal link between his injury and his employment as it is supported by substantial evidence. *Santoro v. Maher Terminals, Inc*., 30 BRBS 171 (1996). Therefore, we affirm the denial of disability and medical benefits.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge