BRB No. 98-1582

WILLIAM M. COLLINS, JR.	)	
	)	
Claimant-Petitioner	)	DATE ISSUED: Aug. 4, 1999
	)	
v.	)	
	)	
GENERAL SHIP REPAIR	)	
	)	
and	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Gerald F. Gay (Arnold & Gay), Baltimore, Maryland, for claimant.

Robert J. Lynott (Thomas & Libowitz, P.A.), Baltimore, Maryland for employer/carrier.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (96-LHC-1757) of Administrative Law Judge Jeffrey Tureck 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 sustained an injury to his left leg when, in the course of his employment for employer on June 29, 1993, the scaffolding he was climbing collapsed. Claimant went to the hospital, and ultimately had surgery on his left knee in September of 1993. Employer and claimant entered into an agreement and joint stipulations regarding claimant's leg injury in the summer of 1995. An order, issued by the district director on July 7, 1995, awarded accrued compensation benefits for periods of temporary total and permanent partial disability totaling $24,722.50, and medical benefits in the amount of $3,515.

Claimant subsequently filed a claim on April 29, 1996, alleging that he sustained a back injury as a result of his work accident on June 29, 1993. Claimant testified that at the time of the initial treatment for his leg injury he suffered back pain but neglected to get any treatment for such pain because he was mostly concerned with his leg injury. In January 1996, claimant testified that he hurt his back when he fell down some steps in his bedroom. Shortly thereafter he returned to Dr. Alegado, the physician treating his leg injury, complaining of progressive back pain which he alleged began on June 30, 1993, and became worse recently. Dr. Alegado ultimately opined that claimant suffered an injury of the lumbar spine, traumatic spondylolisthesis, as a result of his work accident on June 29, 1993. Dr. Hunt, who evaluated claimant on May 1, 1996, explicitly disagreed with Dr. Alegado's diagnosis, finding that there are no problems with claimant's back and that any back pain is not causally related to the June 1993 work accident.

In his Decision and Order, the administrative law judge found that claimant is not entitled to invocation of the presumption of Section 20(a) of the Act, 33 U.S.C. §920(a). Alternatively, the administrative law judge found that if claimant is entitled to invocation of the Section 20(a) presumption, employer produced sufficient evidence to establish rebuttal. The administrative law judge therefore weighed the evidence as a whole, concluding that claimant's alleged back pain is not work-related. Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's finding that claimant's back pain is not work-related. Employer responds, urging affirmance.

Claimant argues that the administrative law judge improperly relied on Dr. Hunt's medical opinion to find that rebuttal of the Section 20(a) presumption is established. Additionally, claimant argues that the administrative law judge erred in finding that the evidence, when weighed as a whole, establishes that claimant's back pain is not work-related. Specifically, claimant contends that the testimony and

opinions of Dr. Alegado, which are buttressed by the factual record in this case, are more persuasive and thus entitled to greater weight than those of Dr. Hunt. In addition, claimant asserts that Dr. Hunt's opinions are in direct conflict with the radiologist who read the MRI, and with Dr. Alegado's diagnosis of Grade I spondylolisthesis of the lumbar spine, based on that reading.

If claimant establishes his *prima facie* case, by establishing the existence of a bodily harm and an accident or working conditions that could have caused the harm, Section 20(a) of the Act provides claimant with a presumption that his condition is causally related to his employment.[1] *See Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); *see also Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991). Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused, contributed to or aggravated by his employment. *See Universal Maritime Corp. v. Moore,* 126 F.3d 256, 31 BRBS 119 (CRT)(4th Cir. 1997); *Bridier v. Alabama Dry Dock & Shipbuilding Co.*, 29 BRBS 84 (1995). It is employer's burden on rebuttal to present specific and comprehensive evidence to sever the causal connection between the injury and employment. *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976); *see generally Weber v. Seattle Crescent Container Corp.,* 19 BRBS 146 (1986). If the administrative law judge finds that the Section 20(a) presumption is rebutted, he must weigh all the evidence and resolve the causation issue based on the record as a whole. *Universal Maritime*, 126 F.3d at 262-263, 31 BRBS at 123 (CRT); *see also Del Vecchio v. Bowers*, 296 U.S. 280 (1935).

[1]The administrative law judge did not explicitly consider whether claimant established the elements of his *prima facie* case, but merely stated summarily that claimant did not establish a lower back injury causally related to the work accident. Any error in this regard is harmless, as the administrative law judge found that rebuttal is established and he weighed the evidence as a whole. Consequently, we will consider the administrative law judge's alternative findings on causation.

The administrative law judge is entitled to evaluate the credibility of all witnesses, and may draw his own inferences and conclusions from the evidence. *See, e.g., Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963). In the instant case the credibility determinations made by the administrative law judge in resolving the causation issue are rational and within his authority as factfinder. *See generally Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988). First, Dr. Hunt's opinion, that any complaints of back pain alleged by claimant are not related to the June 1993 accident, is legally sufficient to establish rebuttal of the Section 20(a) presumption. *Moore*, 126 F.3d 256, 31 BRBS 119 (CRT). Consequently, the administrative law judge's determination that employer established rebuttal is affirmed. Additionally, the administrative law judge rationally determined that claimant's testimony, that he suffered from back pain since June 1993, is not credible as it is inconsistent with his actions, *i.e.*, although claimant complained of back pain at the time of injury, he did not mention any back pain to Dr. Alegado until after his fall from some stairs almost three years later, during which period he visited Dr. Alegado at least sixteen times. The administrative law judge also found that Dr. Alegado's opinion, diagnosing traumatic lumbar spondylolisthesis and opining that claimant's current back pain is related to the June 29, 1993, accident, is not rational since he did not note any complaints of back pain from June 20, 1993, to January 1996. In contrast, the administrative law judge accorded greatest weight to Dr. Hunt's opinion, that claimant's back is essentially normal and that any back pain is not causally related to the June 1993 accident, as it is well-reasoned and documented. Specifically, the administrative law judge found that Dr. Hunt explained his opinion in detail, including the reasons why he disagreed with Dr. Alegado's opinion.[2] We therefore affirm the administrative law judge's finding that the credible medical evidence of record demonstrates that claimant's back pain is not as a result of his work accident on June 29, 1993. *Universal Maritime*, 126 F.3d at 262-263, 31 BRBS at 123 (CRT).

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

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[2]Dr. Hunt stated that he disagreed with Dr. Alegado's diagnosis of traumatic spondylolisthesis because the x-ray and MRI did not indicate that that condition was present and because he believed it is rare for someone to have that condition where, as in the instant case, a life-threatening type of traumatic accident has not occurred. Dr. Hunt also stated that if something serious happened to claimant's back in 1993, it would have manifested itself prior to 1996.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge