

LEO T. RAINEY )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 ELECTRIC BOAT CORPORATION ) DATE ISSUED: 12/15/2006  
 )  
 Self-Insured )  
 Employer-Respondent ) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Colleen A. Geraghty, Administrative Law Judge, United States Department of Labor.

Amy M. Stone (O'Brien, Shafner, Stuart, Kelly & Morris, P.C.), Groton, Connecticut, for claimant.

Kevin C. Glavin (Cutcliff, Glavin & Archetto), Providence, Rhode Island, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2003-LHC-2251) of Administrative Law Judge Colleen A. Geraghty 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 administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant worked for employer from 1958 through 1967 and 1972 through 1995. He worked as a welder on new and overhauled submarines, and he worked in the vicinity of other trades. He testified that he used asbestos blankets and he was exposed to airborne asbestos particles. In 1980, claimant transferred to the tool crib, and he worked there until he retired in 1995. Claimant smoked cigarettes from an early age until he contracted laryngeal cancer in 1986. He was diagnosed with lung cancer in 2002, and

died in 2005 subsequent to the formal hearing.<sup>1</sup>

The administrative law judge found that Dr. Cherniak's opinion that claimant's asbestos exposure contributed to his tobacco-related lung cancer was sufficient to invoke the Section 20(a), 33 U.S.C. §920(a), presumption. She also found that employer rebutted the presumption by presenting the opinions of Drs. Pulde and Teiger who stated that, absent any asbestos-related changes in claimant's lungs, claimant's lung cancer is the result solely of his cigarette smoking. Decision and Order at 14-16. Despite finding Dr. Cherniak's qualifications superior and his opinion well-reasoned, the administrative law judge was troubled by the lack of objective findings of asbestos-related changes in claimant's lungs, and, relying on Dr. Pulde's opinion, she concluded that claimant failed to establish a causal relationship between his lung cancer and his work-related asbestos exposure. Decision and Order at 15-16. Accordingly, she denied claimant's claim. Claimant appeals, and employer responds, urging the Board to affirm the administrative law judge's denial of benefits.

Claimant contends the administrative law judge erred in finding that employer rebutted the Section 20(a) presumption and in finding that his lung cancer is not related to his employment. Claimant also argues that the administrative law judge substituted her opinion for the medical opinions and that she used an improper standard for determining that claimant did not satisfy his burden of proof in this case. Employer responds, urging affirmance.

Once, as here, the claimant establishes a *prima facie* case, Section 20(a) applies to relate the injury to the employment, and the employer can rebut this presumption by producing substantial evidence that the injury was not related to the employment. *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5<sup>th</sup> Cir. 1999); *see also American Grain Trimmers v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7<sup>th</sup> Cir. 1999) (*en banc*), *cert. denied*, 528 U.S. 1187 (2000). If the employer rebuts the presumption, it no longer controls and the issue of causation must be resolved on the evidence of record as a whole, with the claimant bearing the burden of persuasion. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4<sup>th</sup> Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

The administrative law judge found that employer rebutted the Section 20(a) presumption based on the opinions of Drs. Pulde and Teiger that claimant's lung cancer is not related to his asbestos exposure at work. Decision and Order at 14. Dr. Pulde, who

---

<sup>1</sup>Claimant brought this claim for disability and medical benefits. The hearing was held on December 9, 2003, and July 28, 2004. On April 20, 2005, claimant's attorney informed the administrative law judge that claimant had died on January 21, 2005. Decision and Order at 2.

reviewed claimant's records at employer's request, stated in his report:

Based on a review of the medical records, the literature relating to the pathogenesis of head and neck cancer and lung cancer, and to a reasonable degree of medical certainty, there is no evidence that Mr. Rainey's employment as a welder from 1958 to 1995 by Electric Boat or workplace exposure from 1958 to 1995 contributed to his tobacco-related lung cancer . . . Mr. Rainey's lung cancer was a direct and exclusive consequence of his substantial tobacco abuse.

Emp. Ex. 1 at 6 (emphasis in original omitted).<sup>2</sup> Dr. Pulde also stated that there was no evidence of a co-carcinogen in claimant's lungs and, thus, no evidence that claimant's asbestos exposure contributed to his tobacco-related lung cancer. *Id.* at 15. Although Dr. Pulde discussed asbestos as a promoter of cancers in certain cells, *e.g.*, mesothelial or pleural cells, he stated that, in the lungs, asbestos acts indirectly and depends on the presence of asbestos-induced interstitial fibrosis to develop lung cancer. *Id.* at 20-21. Because claimant had no diagnosis of an asbestos-related disease, Dr. Pulde concluded that claimant's lung cancer was related solely to his tobacco abuse.

Dr. Teiger, who examined claimant at employer's request, diagnosed claimant with mild COPD, Stage I non-small cell lung cancer, and no restrictive lung disease or asbestosis. Although he agreed with Dr. Cherniak that claimant had significant exposure to asbestos, he considered claimant's history of heavy cigarette smoking and stated: "I believe it is the cigarettes entirely that are responsible for his respiratory condition. In my opinion, I do not consider his reduction in pulmonary function to be related to his occupation in any way." Emp. Ex. 2 at 6.

The administrative law judge properly found that the opinions of Drs. Pulde and Teiger constitute substantial evidence sufficient to rebut any causal or contributory connection between claimant's lung cancer and his employment. *Bath Iron Works Corp. v. Director, OWCP [Harford]*, 137 F.3d 673, 32 BRBS 45(CRT) (1<sup>st</sup> Cir. 1998); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000). Both doctors stated, to a reasonable degree of medical certainty, that claimant's asbestos exposure played no role in his development of lung cancer. Emp. Exs. 1-2. Further, in addressing the evidence as a whole in her 18-page decision, the administrative law judge discussed the doctors' opinions as well as the studies they discussed and relied upon in their reports. She found that Dr. Cherniak's credentials are superior to those of the other doctors; however, she found that there are competing views in the medical field regarding the connection between asbestos and lung cancer in the absence of a diagnosis of asbestosis. Decision

---

<sup>2</sup>All three doctors found that claimant had a significant smoking history, approximately 70 or more pack years, though he had quit approximately 10 to 15 years prior to his diagnosis of lung cancer. Cl. Ex. 17 at 4; Emp. Exs. 1 at 15, 2 at 2.

and Order at 15-16. Due to the opposing views, and given the “lack of any objective evidence reflecting a physiologic lung change as a result” of claimant’s asbestos exposure, the administrative law judge found that claimant failed to establish a causal or contributory nexus by a preponderance of the evidence.<sup>3</sup> Decision and Order at 16. Thus, she found that claimant’s lung cancer is not work-related and denied benefits.

It is well established that an administrative law judge is entitled to evaluate the credibility of all witnesses and has considerable discretion in evaluating and weighing the evidence of record. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5<sup>th</sup> Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2<sup>d</sup> Cir. 1961); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). It is equally well established that the Board may not reweigh the evidence. *Miffleton v. Briggs Ice Cream Co.*, 12 BRBS 445 (1980), *aff’d*, No. 80-1870 (D.C. Cir. 1981). In this case, the administrative law judge rationally gave greater weight to the opinions of Drs. Pulde and Teiger that claimant’s lung cancer is not related to his asbestos exposure. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5<sup>th</sup> Cir. 1962); *see also Lennon v. Waterfront Transport*, 20 F.3d 658, 28 BRBS 22(CRT) (5<sup>th</sup> Cir. 1994); *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9<sup>th</sup> Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Claimant has shown no error in the administrative law judge’s weighing of the evidence. As the administrative law judge’s findings are rational and are supported by substantial evidence, we affirm them. *Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff’d*, 169 F.3d 615, 33 BRBS 1(CRT) (9<sup>th</sup> Cir. 1999).

---

<sup>3</sup>Contrary to claimant’s assertions, the administrative law judge did not create her own standard or substitute her opinion for those of the experts. The administrative law judge relied on the medical opinion of Dr. Pulde that evidence of asbestos-related disease is necessary to form the link between asbestos exposure and lung cancer.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

---

NANCY S. DOLDER, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

JUDITH S. BOGGS  
Administrative Appeals Judge