

BRB No. 08-0498

G.M.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ELECTRIC BOAT CORPORATION	)	DATE ISSUED: 12/18/2008
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Daniel F. Sutton,  
Administrative Law Judge, United States Department of Labor.

Scott N. Roberts (Law Offices of Scott Roberts), Groton, Connecticut, for  
claimant.

Conrad M. Cutliffe (Cutliffe 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 (2007-LHC-01702) of  
Administrative Law Judge Daniel F. Sutton 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 began working for employer in 1977. On July 19, 2006, claimant  
resigned for "personal reasons." Thereafter, claimant filed a claim for benefits alleging  
that stress from this employment aggravated his pre-existing, non-work related  
psychological condition and caused his resignation. Claimant sought temporary total  
disability benefits until early October 2006 when he secured alternate employment with  
another employer. 33 U.S.C. §908(b). Additionally, claimant sought continuing

temporary partial disability from October 2006 for his loss of wage-earning capacity. 33 U.S.C. §908(e), (h).

Claimant has been diagnosed with anxiety and an adjustment disorder with depressed mood, dating from 2001 due to family problems. He alleged that this condition was aggravated by stress on the job, consisting of a new supervisor watching him closely, accusing him of sleeping on the job, and making negative comments to other employees about claimant's use of family leave. In his Decision and Order, the administrative law judge found that claimant established a *prima facie* case entitling him to invocation of the Section 20(a) presumption that his psychological condition is work-related. 33 U.S.C. §920(a). The administrative law judge found that Terrence Kimper, Ph.D., who is claimant's treating psychologist, opined that claimant's condition was exacerbated by his employment. The administrative law judge found, however, that the opinion of employer's expert, Dr. Stewart, a Board-certified psychiatrist, that claimant's condition was not caused or aggravated by his employment, rebutted the Section 20(a) presumption. On weighing the evidence as a whole, the administrative law judge credited Dr. Stewart's opinion over that of Dr. Kimper and found that claimant did not establish by a preponderance of the evidence that his adjustment disorder was caused, aggravated or accelerated by his employment with employer. Therefore, the administrative law judge denied the claim.

On appeal, claimant challenges the administrative law judge's crediting of Dr. Stewart's opinion. Employer responds, urging affirmance of the denial of benefits.

Once, as here, the Section 20(a) presumption is invoked and rebutted, it falls from the case. *Sprague v. Director, OWCP*, 688 F.2d 862, 15 BRBS 11(CRT) (1<sup>st</sup> Cir. 1982). Claimant then bears the burden of establishing, based on the record as a whole, that his condition was caused or aggravated by his employment. *See, e.g., 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).

We reject claimant's contention of error. The administrative law judge acted within his discretion in deciding to credit the opinion of Dr. Stewart because of his superior credentials and the better reasoning of his opinion. *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). Contrary to claimant's contention, the evidence does not establish that Dr. Stewart's opinion is based on a faulty premise. Although Dr. Stewart was not initially aware that claimant's supervisor had indeed reported to his supervisors his suspicions about claimant's work habits and allegedly sleeping on the job, Dr. Stewart was made aware of these facts at his depositions. *See* EX 10 at 10-11, 23-25. He stated, after viewing this information, that

his opinion that claimant's psychological condition was not caused or aggravated by the incidents at work had not changed. *Id.* at 22–27.

The administrative law judge is entitled to determine the weight to be accorded to the evidence of record, and the Board is not empowered to reweigh it. *Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994); *Volpe v. Northeast Marine Terminal Corp.*, 671 F.2d 697, 14 BRBS 538 (2<sup>d</sup> Cir. 1982). In this case, the administrative law judge provided a rational basis for according greater weight to Dr. Stewart's opinion and it constitutes substantial evidence supporting the conclusion that claimant did not establish the work-relatedness of his psychological condition. *Sprague*, 688 F.2d 862, 15 BRBS 11(CRT). As claimant has raised no reversible error in the administrative law judge's consideration of the evidence, the denial of benefits is affirmed.

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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ROY P. SMITH  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge