BRB No. 00-0503

JAHTENNEY LEDA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
WILMINGTON STEVEDORES	)	DATE ISSUED:
	)	
and	)	
	)	
U.S. FIRE INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Aloysius J. Staud (Fine and Staud), Philadelphia, Pennsylvania, for claimant.

Josh M. Greenbaum (Cozen and O'Connor), Philadelphia, Pennsylvania, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits of Ainsworth H. Brown (99-LHC-1281) 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'Keefee v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. S359 (1965); 33 U.S.C. §921(b)(3).

Claimant, a diesel mechanic, alleged that he suffered a work-related hearing loss, as evidenced by an audiogram performed on March 3, 1997, which revealed an 11.6 percent

binaural hearing loss. In his Decision and Order, the administrative law judge determined that claimant's claim is not barred by claimant's failure to give timely notice of his injury pursuant to Section 12 of the Act, 33 U.S.C. §912, inasmuch as employer did not establish the lack of timely notice resulted in prejudice to it. *See* 33 U.S.C. §912(d). The administrative law judge found that claimant was entitled to invocation of the presumption pursuant to Section 20(a) of the Act, 33 U.S.C. §920(a), that his hearing loss is work-related, but that employer established rebuttal of the presumption. Weighing the evidence as a whole, the administrative law judge credited the opinion of Dr. Sataloff over the contrary opinions of Drs. Robinson and Valdes, to find that claimant's hearing loss is not work-related. Thus, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's denial of benefits, contending that the administrative law judge erred in crediting the opinion of Dr. Sataloff over those of Drs. Robinson and Valdes. Employer responds, urging affirmance.

Once claimant shows he has a physical harm and that working conditions existed which could have caused the harm, the Section 20(a) presumption applies to link the harm to claimant's employment. The burden then shifts to employer to produce substantial evidence that claimant's injury is not work-related. *See Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59 (CRT) (5th Cir. 1998); *Swinton v. Frank J. Kelly, Inc.*, 554 F.2d 1075, 4 BRBs 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). When employer produces such substantial evidence, the presumption drops out of the case, and the administrative law judge must weigh all the evidence as a whole, with claimant bearing the burden of persuasion. *See Del Vecchhio v. Bowers*, 296 U.S. 290 (1935); *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see generally Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

In the instant case, the administrative law judge invoked the Section 20(a) presumption, and found it rebutted by the opinion of Dr. Sataloff. In weighing the evidence as a whole, the administrative law judge credited Dr. Sataloff's opinion, finding it to be the best reasoned opinion of record. Decision and Order at 5. Dr. Sataloff stated that claimant's hearing loss was neither initiated nor caused by his occupational noise exposure. EX 18. He further stated that it is "impossible" that the kind of work exposure claimant had caused claimant's hearing loss. EX 20 at 16. Dr. Sataloff stated that claimant's noise exposure was intermittent due to his absences from the work force, and that the type of machinery on which claimant worked did not produce sufficient noise at consistently harmful decibel levels. *Id.* at 14-15, 19. He also stated that claimant's hearing loss was not symmetrical as would be expected with a noise-induced hearing loss. *Id.* at 18-19.

The administrative law judge discussed the contrary opinions of Drs. Robinson and Valdes, both of whom referred to claimant's hearing loss as "noise-induced." EX 1, 19. He gave less weight to their opinions, however, as they did not discuss the intermittent nature of

claimant's work history or inquire about the degree of the noise exposure while claimant was working. The administrative law judge further relied on Dr. Sataloff's superior credentials.[1]

In adjudicating a claim, it is well established that an administrative law judge is entitled to weigh the evidence, 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); *Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98, *aff'd*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999). Contrary to claimant's contention, the fact that Dr. Sataloff did not state what the cause of claimant's hearing loss is does not undermine his opinion. *See generally O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000). Rather, once Section 20(a) is rebutted, it is claimant's burden to establish that his hearing loss is work-related by a preponderance of the evidence. *See Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996). In the instant case, the administrative law judge's decision to credit the opinion of Dr. Sataloff over the contrary opinions of Drs. Robinson and Valdes is rational, and as Dr.

[1]The administrative law judge law judge found that Dr. Sataloff's credentials show that he is a preeminent expert in the field of occupational hearing loss, but that the credentials of Drs. Robinson and Valdes had not been supplied for the record. Dr. Sataloff's professional background includes service as a committee member in the writing of the work-place noise exposure standards by the Occupational Safety and Health Administration, and he is the current chairman of the American Medical Association (AMA) committee responsible for determining the AMA formulas for hearing loss. EX 20 at 7-8. The administrative law judge inferred from the stationery of Dr. Valdes that he is an otolaryngologist. *See* EX 19.

Sataloff's opinion supports the administrative law judge's conclusion that claimant's hearing loss is not work-related, we affirm the administrative law judge's denial of benefits.[2] *Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000).

[2]Contrary to claimant's contention, the fact that the administrative law judge did not discuss claimant's testimony in relation to the causation finding is not error in this case, as he sufficiently discussed and weighed the medical evidence as to the cause of claimant's hearing loss.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

J. DAVITT McATEER
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge