



BRB No. 15-0325

GREGORY HAVENS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED: <u>Feb. 26, 2016</u>
ELECTRIC BOAT CORPORATION)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

Gary Huebner (Law Office of Gary Huebner, LLC), New London, Connecticut, for claimant.

Edward W. Murphy (Morrison Mahoney, LLP), Boston, Massachusetts, for self-insured employer.

Before: BOGGS, BUZZARD and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2013-LHC-01436) of Administrative Law Judge Jonathan C. Calianos 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 rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O’Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant began working for employer as an armed shipyard security guard in August 2010. In September 2010, the Department of Veterans Affairs (VA) granted claimant a 30 percent disability for “service-connected major depressive

disorder.”¹ EX 2; EX 11 at ex. 4. In December 2010, claimant began seeing a VA staff psychologist, Dr. Amatruda, and a staff psychiatrist, Dr. Lin, for depression and anxiety. Claimant subsequently claimed that his psychological conditions were caused or aggravated by his constant concerns over employer’s security procedures, the abilities of his co-workers to perform their jobs, and incidents with his supervisors.² Tr. at 43-55. In August 2011, claimant was admitted to the hospital for blood clots in his lungs. EX 7. Thereafter, claimant attempted to return to work until October 10 or 11, 2011, but, feeling “overwhelmed in general” and increasingly anxious, claimant informed Dr. Amatruda that he had filed paperwork for short-term disability leave from work. EX 1 at 422. Initially, claimant was denied the leave, and an incident involving a case worker’s misinterpretation of claimant’s statements prompted claimant to declare he would not work for employer again. He ultimately received the leave for a limited duration. Although claimant never returned to work, it is unclear from the record when or how his employment officially terminated. In September 2012, the VA increased claimant to 100 percent service-connected disability. Post-H JX B.

The parties stipulated that the alleged date of claimant’s psychological injury was October 12, 2011, and that his claim for benefits under the Act was timely filed. As it relates to this appeal, the administrative law judge found that claimant established a prima facie case that his psychological condition is related to his work, based on the opinion of Dr. Amatruda. Decision and Order at 11. The administrative law judge then found that employer rebutted the Section 20(a), 33 U.S.C. §920(a), presumption with Dr. Stewart’s opinion, and, on the record as a whole, he found that claimant did not establish that his employment with employer caused or aggravated his psychological condition. *Id.* at 11-15. Thus, the administrative law judge denied benefits. Decision and Order at 15-16. Claimant appeals, contending that the administrative law judge erred in finding the Section 20(a) presumption rebutted and in weighing the evidence as a whole. Employer urges affirmance, asserting that the decision is supported by substantial evidence. Claimant filed a reply brief.

Claimant first contends the administrative law judge erred in finding that Dr. Stewart’s opinion rebuts the Section 20(a) presumption. He argues that Dr. Stewart’s deposition testimony is equivocal and internally inconsistent, and that his opinion was not based on a proper medical foundation. Further, claimant asserts that Dr. Stewart did not demonstrate an understanding of claimant’s job duties or address whether there was a

¹ Claimant also had a 10 percent service-connected disability for tinnitus. EX 2; EX 11 at ex. 4.

² No incident reports were filed; no concerns were documented. *See also* Tr. at 94-100, 117-118, 123 (supervisors testified that claimant did not report concerns to them).

work-related aggravation of claimant's pre-existing condition. Employer responds that Dr. Stewart's opinion constitutes substantial evidence to rebut the Section 20(a) presumption.

In determining whether an injury is work-related, a claimant is aided by the Section 20(a) presumption which is invoked after he establishes that he sustained a harm and conditions existed or an accident occurred at his place of employment which could have caused or aggravated the harm. *Rainey v. Director, OWCP*, 517 F.3d 632, 42 BRBS 11(CRT) (2d Cir. 2008); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); see also *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). Once the claimant establishes a prima facie case, as here, the burden is on the employer to rebut this presumption by producing substantial evidence that the injury was not caused or aggravated by the conditions of employment. *C&C Marine Maintenance Co. v. Bellows*, 538 F.3d 293, 42 BRBS 37(CRT) (3d Cir. 2008). The employer's burden on rebuttal is one of production, not persuasion, but the employer cannot satisfy its burden of production simply by submitting any "evidence" whatsoever; it must be that which a reasonable mind would accept as evidence of the non-work-relatedness of the injury. *Rainey*, 517 F.3d 632, 42 BRBS 11(CRT); *American Grain Trimmers v. Director, OWCP [Janich]*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999), cert. denied, 528 U.S. 1187 (2000). Further, an employer need not "rule out" the workplace conditions as a cause of the injury in order to rebut the Section 20(a) presumption. See *Bath Iron Works Corp. v. Director, OWCP [Shorette]*, 109 F.3d 53, 31 BRBS 19(CRT) (1st Cir. 1997).

In this case, employer submitted the opinion of its expert psychiatrist, Dr. Stewart. EX 11-12. Dr. Stewart evaluated claimant on May 2, 2013, and he concluded that claimant's symptoms of major depressive disorder and memory difficulties pre-existed his employment with employer and are secondary to his military service. EX 11 at 33-35, 47, ex. 2. Although Dr. Amatruda stated that claimant had significant work stress which rendered him incapable of performing his duties, Dr. Stewart found no documentation of stress at work. He stated that claimant was a "security-type guard" who carried a gun, and that there were no significant situations (such as shootings, hostages, etc.) that were "above and beyond anything he would otherwise do." *Id.* at 34-35, 49-50; EX 12 at 108. When asked if he had an opinion to a reasonable degree of medical certainty as to whether claimant's psychological disability was "caused, hastened or accelerated" by his work for employer, Dr. Stewart stated: "[m]y opinion is that [claimant's] work at Electric Boat did not contribute in any way to his claimed disability." EX 11 at 47; EX 12 at 96-97. Finally, Dr. Stewart stated that the aggravation of a pre-existing condition would depend on the circumstances, and he thought it "unlikely that any of the experiences [at claimant's work] would cause him to have any psychiatric damage" because it was a "fairly routine" job. EX 12 at 108. Dr. Stewart also identified other potential reasons for claimant's deteriorating condition such as physiology, age, non-compliance with

medications, poor genes, and prior use of steroids. EX 12 at 116-118. The administrative law judge found that Dr. Stewart's opinion rebuts the Section 20(a) presumption. Decision and Order at 12. We affirm his finding.

We reject claimant's contention that Dr. Stewart's opinion is not substantial evidence of non-causation. Dr. Stewart stated that claimant's employment did not contribute "in any way" to claimant's psychological condition, EX 11 at 47, ex. 2, and he also stated that claimant's work did not contribute to or aggravate claimant's pre-existing psychological condition, regardless of claimant's perception that it did, which Dr. Stewart said was based on concerns not shown to be valid.³ EX 11 at 76-79, 82-84; EX 12 at 97. Dr. Stewart also identified alternative non-work factors that could have aggravated claimant's condition. The administrative law judge cited Dr. Stewart's opinion regarding the lack of aggravation in his recital of the evidence. *See* Decision and Order at 7. In his discussion of rebuttal, the administrative law judge relied on Dr. Stewart's conclusion that claimant's psychological disability is not causally related to his employment, *id.* at 12; EX 11 at 34, and cited to that portion of Dr. Stewart's deposition in which he addressed the lack of aggravation. EX 12 at 108. The administrative law judge thus rationally found that employer produced substantial evidence, in the form of Dr. Stewart's opinion, that a reasonable mind could accept as demonstrating that claimant's psychological condition was not caused or aggravated by his employment with employer. *Rainey*, 517 F.3d 632, 42 BRBS 11(CRT); *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999). Therefore, we affirm the administrative law judge's finding that employer rebutted the Section 20(a) presumption.

Claimant also contends the administrative law judge erred in finding, on the record as a whole, that claimant's employment did not contribute to the deterioration of claimant's psychological condition. As employer rebutted the Section 20(a) presumption, the presumption drops from the case, and the case must be decided on the record as a whole with claimant bearing the burden of persuasion. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). It is well established that an administrative law judge is entitled to evaluate and weigh the evidence of record and that the Board may not reweigh the evidence, but may assess only whether there is substantial evidence to support the administrative law judge's decision. *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *see also Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969); *Miffleton v.*

³ Dr. Stewart stated that claimant's concerns about his job were a product of his pre-existing mental illness. EX 11 at 84.

Briggs Ice Cream Co., 12 BRBS 445 (1980), *aff'd*, No. 80-1870 (D.C. Cir. 1981). The Board may not disturb the administrative law judge's findings merely because the record could support other inferences and conclusions. *See, e.g., Newport News Shipbuilding & Dry Dock Co. v. Winn*, 326 F.3d 427, 37 BRBS 29(CRT) (4th Cir. 2003).

In support of his claim for benefits, claimant submitted Dr. Amatruda's opinion that claimant experienced significant work-related stress and can no longer perform his job duties. CX 2; EX 11 at ex. 6. The administrative law judge found that Dr. Amatruda's opinion was equivocal and based on incomplete facts. EX 11 at 13-15; EX 13 at 28, 42-43. Dr. Amatruda has treated claimant since December 21, 2010, and was still treating him as of the date of his deposition in March 2014. EXs 1, 13. Dr. Amatruda diagnosed major depressive disorder recurrent, and he acknowledged that claimant's condition has gotten worse over the years. EX 13 at 28. Despite the longevity of their relationship, the administrative law judge observed that claimant and Dr. Amatruda discussed claimant's work infrequently, and, sometimes, only tangentially. Decision and Order at 14; EX 13 at 13, 15, 17, 27, 34, 36-37. Moreover, the administrative law judge found Dr. Amatruda's opinion equivocal as to whether claimant's work contributed to his psychological condition. Decision and Order at 14-15. Dr. Amatruda at first was unwilling to state with a reasonable degree of psychological certainty that claimant's major depressive disorder was caused or contributed to by his employment. *Id.* at 28. Then, he said it was, *id.* at 39, and then he stated with a reasonable degree of psychological certainty that claimant's work "could have" exacerbated his underlying condition, but he was not sure that it did, *id.* at 43.⁴ The administrative law judge also found that Dr. Amatruda was unaware of other factors, such as claimant's prior use of drugs and his pulmonary embolism, that could have affected claimant's condition. *Id.* at 21-23, 26.

The administrative law judge permissibly found Dr. Amatruda's opinion to be insufficient to establish that claimant's psychological condition was caused or aggravated by his employment because of its foundational shortcomings and equivocal nature. Decision and Order at 14-15; *see Lennon v. Waterfront Transport*, 20 F.3d 658, 28 BRBS 22(CRT) (5th Cir. 1994). Thus, the administrative law judge found that claimant did not satisfy his burden of establishing a causal link between his psychological injury and his

⁴ Q: Do you have an opinion to a reasonable degree of psychological certainty whether [claimant's] diagnosis that you've rendered here today was caused or contributed to by his work at Electric Boat? And, again, I think that question can be fairly answered yes or no. A: Yes. Q: And what is that opinion? A: That his work conditions at Electric Boat could have exacerbated underlying depression and anxiety. Could have. Q: To a reasonable degree of psychological probability, did they? A: I don't know. EX 13 at 43.

employment. This finding is supported by substantial evidence.⁵ *Hice v. Director, OWCP*, 48 F.Supp.2d 501 (D. Md. 1999). Therefore, we affirm the denial of benefits.

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

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

⁵ We reject claimant's assertion that the administrative law judge erred in not addressing Dr. Lin's opinion. Although Dr. Lin noted situational stressors, such as claimant's loss of short-term disability benefits, his having to get unemployment benefits, and his not getting his VA disability check because of the government shutdown, at no time did Dr. Lin espouse an opinion on whether claimant's employment with employer aggravated his psychological condition. EX 1 at 25-27, 42-44, 68-69, 101-102, 151-153, 221-223, 233-235, 246-247, 284-285, 297-299, 306-307, 317-318, 329-339, 347-349, 420-423, 431-432.