

MANUEL RODRIGUEZ)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
MAHER TERMINALS,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Permanent Total Disability of Gerald M Tierney, Administrative Law Judge, United States Department of Labor.

Phillip J. Rooney (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

William M. Broderick and Richard P. Stanton, Jr., New York, New York, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits of Permanent Total Disability (91-LHC-2632) of Administrative Law Judge Gerald M. Tierney 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 the conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On February 20, 1991, claimant sustained a back injury while working for employer. Approximately four months later, claimant, who had previously fractured his hip and required the insertion of a pin in 1959, began experiencing right hip pain. After being treated conservatively, claimant ultimately underwent hardware replacement hip surgery in September 1991. CXS. 3, 4. Employer voluntarily paid temporary total disability compensation from February 27, 1991, through July 11, 1991. Claimant sought additional compensation under the Act for both his back injury and hip condition which he claimed had been aggravated in the work accident. The administrative law judge denied the claim for additional compensation, finding that claimant's hip problems were not

causally related to the work accident and that his work-related back injury had resolved as of July 11, 1991.

Claimant appeals the denial of benefits, asserting that in finding that his hip impairment was not caused or aggravated by the February 20, 1991, work accident and that his work-related back injury had resolved as of July 11, 1991, the administrative law judge applied the wrong legal standard and erred as a matter of law by failing to take into account his credibility and un rebutted testimony. Employer responds, urging affirmance of the decision below.

After consideration of the administrative law judge's Decision and Order in light of the relevant evidence and claimant's arguments, we initially affirm his denial of compensation for claimant's hip condition. In establishing the cause of a disabling condition, claimant is aided by the Section 20(a), 33 U.S.C. § 920(a), presumption. *Kubin v. Pro-Football, Inc.*, 29 BRBS 117, 118-119 (1995). In the present case, claimant correctly asserts that he is entitled to invocation of the Section 20(a) presumption, as it is undisputed that he suffers from a hip condition which required surgery and that the work-related accident occurred. *See Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989). Although the administrative law judge did not analyze the evidence in terms of the Section 20(a) presumption, we conclude that any error he may have made in this regard is harmless, because he fully considered and weighed the relevant evidence and the evidence he ultimately credited is sufficient to rebut the Section 20(a) presumption and establish the absence of causation under the proper standards. *See generally Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140, 145 (1992).

Based on the medical opinion of Dr. Greifinger, his negative assessment of claimant's credibility regarding when he first complained of hip pain, and the fact that no medical reports contemporaneous with the work accident mentioned a hip injury, the administrative law judge rationally found that there was no connection between claimant's hip problems and the work accident. *See Holmes v. Universal Maritime Service Corp.*, 29 BRBS 18, 21 (1995) (decision on recon). Although, as claimant avers, Dr. Fateh did opine that claimant's hip problems and the resultant surgery were work-related, Tr. at 80-88, the administrative law judge, acting within his discretion, chose to credit Dr. Greifinger's contrary opinion. Tr. at 300-304, 312. *See generally Thompson v. Northwest Enviro Services, Inc.*, 26 BRBS 53, 61 (1992). The administrative law judge found that Dr. Greifinger's explanation was better reasoned and was consistent with claimant's complaints of periodic soreness since 1959, the fact that the hardware was encrusted with bone and difficult to remove, and the lack of x-ray evidence documenting movement at the opposite end of the pin. Inasmuch as the administrative law judge's finding that claimant's hip problems are not work-related is supported by substantial evidence and claimant has failed to raise any reversible error made by the administrative law judge in evaluating the conflicting medical evidence and making credibility determinations, we affirm his denial of compensation for claimant's hip condition. *See Uglesich v. Stevedoring Services of America*, 24 BRBS 180, 83 (1991).

The administrative law judge's denial of additional compensation for claimant's back injury is also affirmed. His finding that any disability that claimant had from this injury had resolved as of July 11, 1991, is rational, accords with applicable law, and is supported by the medical opinions of

Drs. Greifinger and Larkins, EXS. 8, 11, whom the administrative law judge acted within his discretion in crediting. *Avondale Shipyards, Inc. v. Kennel*, 914 F.2d 88, 24 BRBS 46 (CRT) (5th Cir. 1990); *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).¹

Accordingly, the Decision and Order of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

¹We also reject claimant's contention that in denying his claim, the administrative law judge erred in failing to resolve all doubtful factual questions in his favor. In *Director, OWCP v. Greenwich Collieries*, ___ U.S. ___, 114 S.Ct. 2251, 28 BRBS 43 (CRT) (1994), the United States Supreme Court held the true doubt rule is invalid as it is violative of Section 7(c) of the Administrative Procedure Act (APA), 5 U.S.C. §556(d).