

BRB No. 13-0023

ANWAR KHAN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TORRES AES	)	
	)	
and	)	
	)	
INSURANCE COMPANY OF THE STATE	)	DATE ISSUED: 07/29/2013
OF PENNSYLVANIA	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Khalid M. Azam (Azam & Hertz, LLP), Jackson Heights, New York, for claimant.

Keith L. Flicker and Brendan E. McKeon (Flicker, Garelick & Associates, LLP), New York, New York, for employer/carrier.

Before: SMITH, McGANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2011-LDA-00410) of Administrative Law Judge Ralph A. Romano 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.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *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 started working for employer as a translator in Afghanistan in January 2009. There, he experienced chest pain/angina and hypertension on May 26, 2009, and received blood pressure medication; he did not experience any subsequent episodes of chest pain. Claimant never returned to work because he was redeployed to the United States in June 2009 for treatment of a gangrenous ulcer on his right foot. Claimant underwent stent procedures for his cardiovascular condition in August and September 2009. Tr. at 29. He filed a claim in September 2009 under the Act, alleging he cannot return to work in Afghanistan because of his coronary artery disease (CAD). CX 10 at 1; EX 5 at 3.

In his decision, the administrative law judge found claimant entitled to the Section 20(a) presumption linking his chest pain/angina to the high temperatures and rough terrain in Afghanistan, and the heavy protective equipment claimant was required to wear. 33 U.S.C. §920(a). The administrative law judge found that employer did not rebut the presumption inasmuch as there is no evidence that claimant's working conditions did not exacerbate claimant's underlying CAD and hypertension and thereby cause chest pain. Thus, the administrative law judge concluded that claimant sustained an episode of work-related chest pain on May 26, 2009. Decision and Order at 5. The administrative law judge found, however, that claimant's inability to return to work "is attributable to his pre-existing conditions rather than any new disability caused by his May 2009 angina." *Id.* at 7. Therefore, the administrative law judge found that claimant is not entitled to benefits under the Act.

On appeal, claimant challenges the denial of benefits, alleging error in the administrative law judge's finding that his work injury did not result in his disability. Employer responds, urging affirmance.

In his decision, the administrative law judge found the contemporaneous medical records demonstrate that claimant was free of any chest pain after the incident on May 26, 2009, and that he was redeployed to the United States only for treatment of a gangrenous ulcer on his right foot. Decision and Order at 7; EX 1 at 2-4. The administrative law judge observed that claimant had pre-existing hypertension and had undergone prior stent procedures in February 2002 and July 2006. Tr. at 38-39; EX 5 at 2. After analyzing the relevant evidence, the administrative law stated, "[C]laimant has put forth no evidence indicating that his May 2009 episode of angina caused any new, permanent damage or that it accelerated the progression of his heart disease." *Id.* In this respect, the administrative law judge credited Dr. Brief's opinion that claimant's post-Afghanistan cardiac problems are due solely to his pre-existing CAD and hypertension.

EX 2 at 3-4, 6. The administrative law judge declined to credit Dr. Singh's opinion that claimant's work in Afghanistan worsened his cardiac condition, because Dr. Singh did not explicitly state that claimant's May 26, 2009 work injury caused any new damage or accelerated the progression of claimant's heart disease. The administrative law judge found that, while Drs. Brief and Singh opine that claimant cannot return to work in Afghanistan because of his cardiac condition, claimant's inability to do so is attributable solely to his pre-existing conditions and not to any disability caused by the angina attack in May 2009. *Id.* Accordingly, the administrative law judge concluded that claimant does not have a compensable disability.

Disability is defined under the Act as the "incapacity *because of injury* to earn wages which the employee was receiving at the time of the injury in the same or any other employment." 33 U.S.C. §902(10) (emphasis added). In order to establish a *prima facie* case of total disability, claimant must prove that he is unable to perform his usual work due to the work injury. *See, e.g., Palombo v. Director, OWCP*, 937 F.2d 70, 25 BRBS 1(CRT) (2<sup>d</sup> Cir. 1991). Thus, there must be at least a partial causal relationship between claimant's work injury and his disability. *See generally Director, OWCP v. Vessel Repair, Inc.*, 168 F.3d 190, 33 BRBS 65(CRT) (5<sup>th</sup> Cir. 1999). In this case, the administrative law judge credited the opinion of Dr. Brief to find that claimant's work injury did not cause any disability. Dr. Brief diagnosed pre-existing coronary artery disease, diabetes, hypertension, and hyperlipidemia. EX 2 at 3. He stated that these conditions pre-existed claimant's work-related episode of chest pains, that the work-related angina did not cause any permanent cardiac impairment, and that claimant's subsequent stent procedure was attributable to the progression of his underlying conditions. *Id.* at 3-4, 6. Dr. Brief also stated that claimant's inability to return to work in Afghanistan is "due entirely to the progression of pre-existing conditions and [is] not causally related to the hypertensive and anginal episode [at work]." *Id.* at 6. The administrative law judge rationally credited Dr. Brief's opinion over that of Dr. Singh, *see John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2<sup>d</sup> Cir. 1961), and Dr. Brief's opinion constitutes substantial evidence supporting the administrative law judge's finding that claimant did not establish that his work injury resulted in his inability to return to work in Afghanistan. Thus, the administrative law judge rationally concluded that claimant does not have a compensable disability. *See generally Lamon v. A-Z Corp.*, 46 BRBS 27 (2012) *vacating on recon.* 45 BRBS 73 (2011). Therefore, we affirm the denial of benefits.

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge