BRB No. 14-0012

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| ALBERT J. LANGLOIS | ) | |
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| Claimant-Respondent | ) | |
| | ) | |
| v. | ) | DATE ISSUED: July 25, 2014 |
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| ELECTRIC BOAT CORPORATION | ) | |
| | ) | |
| Self-Insured | ) | |
| Employer-Petitioner | ) | DECISION and ORDER |

Appeal of the Decision and Order Awarding Benefits of Colleen A. Geraghty, Administrative Law Judge, United States Department of Labor.

Amity L. Arscott (Embry and Neusner), Groton, Connecticut, for claimant.

Robert J. Quigley, Jr. (McKenney, Quigley, Izzo & Clarkin, LLP), Providence, Rhode Island, for self-insured employer.

Before: HALL, Acting Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2012-LHC-01993) of Administrative Law Judge Colleen A. Geraghty 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 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 has worked for employer for 40 years as a carpenter in the joiner shop, building shipping crates, ladders, blocking, and scaffolding. Tr. at 18-20. The process for building crates requires claimant to collect wood materials and plywood planks from an outside storage area, load them onto a cart, and push the approximately 640-pound-load nearly 100 feet to the saw where he cuts the materials to size. Then, he assembles the crates. Claimant testified that the entire process is physically demanding. Tr. at 21-26. Claimant testified that, on October 12, 2010, he went to work in the morning as

usual. At 11 a.m., he took his lunch break and, shortly thereafter, he fell ill. Co-workers called an ambulance, and claimant was taken to the hospital where he was diagnosed with having had a heart attack. Claimant underwent triple bypass surgery. *Id.* at 29-31; CX 1. Claimant returned to work on March 14, 2011. JX 1. Claimant filed a claim for compensation and medical benefits; employer controverted the claim, arguing that the heart attack was not work-related.

The administrative law judge found that claimant established a prima facie case and she invoked the Section 20(a), 33 U.S.C. §920(a), presumption. The administrative law judge found that employer presented substantial evidence, Dr. Bradbury's opinion, to rebut the presumption, and, on weighing the evidence as a whole, she credited claimant's testimony and the reports of his treating cardiologist, Dr. Bagheri, to find that claimant's working conditions aggravated his underlying cardiac condition and resulted in his heart attack. The administrative law judge awarded claimant medical benefits and temporary total disability benefits from October 12, 2010, through March 13, 2011. Decision and Order at 6-8. Employer appeals the award of benefits, and claimant responds, urging affirmance.

Employer contends the administrative law judge erred in weighing the evidence as a whole in claimant's favor. Specifically, employer contends the administrative law judge failed to address the inconsistencies in claimant's testimony concerning his work activities on the day of the heart attack and the fact that Dr. Bagheri did not testify to explain her opinion. Consequently, employer argues that the administrative law judge speculated as to the work events on the day of claimant's injury and to Dr. Bagheri's reasons for stating that claimant's work played a role in his having a heart attack.

Once the Section 20(a) presumption is invoked and rebutted, as here, it falls from the case, and the issue of whether the claimant's injury is work-related must be resolved on the evidence of record as a whole, with the claimant bearing the burden of persuasion. *Service Employees Int'l, Inc. v. Director, OWCP*, 595 F.3d 447, 44 BRBS 1(CRT) (2d Cir. 2010); *Marinelli v. American Stevedoring, Ltd.*, 34 BRBS 112 (2000), *aff'd*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). A heart attack caused by employment duties is compensable even though the employee may have suffered from a pre-existing cardiac condition. *See Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968) (*en banc*); *Marinelli*, 34 BRBS 112. The injury need not have been caused by unusual strain or stress. *Wheatley*, 407 F.2d 307.

In this case, the administrative law judge credited the opinion of Dr. Bagheri, who provided claimant's follow-up care after his bypass surgery, over that of employer's

expert, Dr. Bradbury. Dr. Bagheri opined that claimant's physical activity "probably was a contributing factor in precipitating his symptoms of chest pains and subsequent acute coronary syndrome." CX 7. Dr. Bradbury opined that claimant's employment did not contribute to his heart attack because he had multiple, non-work-related risk factors, such as smoking, and that his heart attack could have happened anywhere. EX 1. Dr. Bradbury stated it was significant that claimant's heart attack occurred while he was "at rest" after a morning where he had not been "more unusually active" than any other work day. EXs 1; 3 at 5-6, 10-11. The administrative law judge found it was unclear whether Dr. Bradbury was aware of the extent of claimant's usual physical exertion at work. Decision and Order at 7; EX 3 at 19. Further, she stated that it does not matter whether claimant's work was "unusually" stressful or strenuous, as claimant's employment involved heavy physical work. Moreover, the administrative law judge rejected the significance Dr. Bradbury gave to the fact that claimant's heart attack occurred while he was "at rest." The administrative law judge found that claimant had just started lunch after completing a morning of physical work, regardless of which aspect of his job he had been performing. Crediting Dr. Bagheri's opinion, the administrative law judge concluded that claimant's heart attack during his lunch break was related to his employment activities. Decision and Order at 8; *see Wheatley*, 407 F.2d 307.

An administrative law judge is entitled to determine the weight to be accorded to the evidence of record. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1961); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). The administrative law judge rationally credited claimant's testimony concerning his work activities and Dr. Bagheri's opinion that the physical exertion at work aggravated claimant's underlying heart disease which caused claimant's heart attack.[1] The administrative law judge rejected the significance Dr. Bradbury gave to the occurrence of the heart attack while claimant was at lunch, as she rationally concluded he did not understand the nature of claimant's job. We reject employer's contention that claimant's inconsistent testimony concerning his work on the

[1] To the extent employer asserts that Dr. Bagheri's opinion should not be accepted because she did not testify and explain her opinion, the record contains employer's notice of Dr. Bagheri's deposition for January 24, 2013, which it appears employer elected not to take. Thus, as employer had the opportunity to question Dr. Bagheri but did not avail itself of it, the administrative law judge did not err in relying on her opinion. *See generally Bell Helicopter Int'l, Inc. v. Jacobs*, 746 F.2d 1342, 17 BRBS 13(CRT) (8th Cir. 1984); *Avondale Shipyards Inc. v. Vinson*, 623 F.2d 1117, 12 BRBS 478 (5th Cir. 1980).

date of the injury undermines his claim.[2] The administrative law judge rationally found this discrepancy to be insignificant, as claimant testified that all aspects of his job involve physical labor. *See generally Pittman Mechanical Contractors, Inc. v. Director, OWCP*, 35 F.3d 122, 28 BRBS 89(CRT) (4th Cir. 1994). As substantial evidence of record supports the administrative law judge's finding that claimant's heart attack was work-related, we affirm the award of benefits.[3] *Wheatley*, 407 F.2d 307.

Accordingly, the Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge

[2] Claimant testified both that he gathered his materials that morning, Tr. at 24, and that he was ready to build his crates because he had gathered and cut the materials the day before. *Id*. at 27-28, 36-37.

[3] Contrary to employer's assertions, having rejected Dr. Bradbury's opinion, the administrative law judge's reliance on claimant's testimony and Dr. Bagheri's opinion satisfies claimant's burden of establishing the work-relatedness of his heart attack by a preponderance of the evidence. *See Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996). Moreover, the decision in *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir. 2003), *cert. denied*, 540 U.S. 1056 (2003) is not binding precedent in this case, and is based on different underlying facts and on an administrative law judge's crediting of evidence of non-causation.