BRB No. 13-0388

RONALD E. COMPTON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DYNCORP INTERNATIONAL	)	DATE ISSUED: Mar. 26, 2014
	)	
and	)	
	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA	)	
	)	
	)	DECISION and ORDER
Employer/Carrier-Respondents	)	

Appeal of the Decision Denying Claim of Jennifer Gee, Administrative Law Judge, United States Department of Labor.

Scott J. Bloch (Offices of Scott J. Bloch, PA), Washington, D.C., for claimant.

James M. Mesnard (Seyfarth Shaw, LLP), Washington, D.C., for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision Denying Claim (2012-LDA-00292) of Administrative Law Judge Jennifer Gee 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, rational, and 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 was hired by employer in November 2009 to work as a solid waste manager at Kandahar Air Field in Afghanistan. He first complained to employer's medical service provider, Occupational Health & Safety, Incorporated (OHS), of coughing, shortness of breath and wheezing on March 10, 2010. Claimant was diagnosed with acute bronchitis. EX 19 at 225. Examinations at OHS on October 31 and November 14, 2010, showed chest congestion, wheezing and swollen ankles. *Id*. at 232-233. Shortly thereafter, claimant traveled, at employer's request, to Dubai where he experienced weakness and breathing difficulties. An evaluation at the American Hospital in Dubai on November 19, 2010, revealed severe mitral regurgitation, moderate tricuspid regurgitation and severe pulmonary hypertension. CX 1 at 94. Claimant underwent open heart surgery to repair a mitral valve rupture on November 28, 2010. Subsequently, claimant worked for employer in Dubai from December 5, 2010, until February 28, 2011, when he was terminated due to his health condition. Tr. at 132-133; EXs 2-3. Claimant complained of post-surgical arm and wrist pain in December 2010 and January 2011, and he was diagnosed with rheumatoid arthritis (RA). CX 1 at 186-191. Claimant returned to the United States on March 18, 2011. CX 1 at 9. He filed a claim under the Act in which he alleged he sustained work-related heart valve failure and RA. CX 1 at 12; EX 4.

In her decision, the administrative law judge found claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), linking his heart ailments and RA to his working conditions in Afghanistan. The administrative law judge found that employer rebutted the presumption with substantial evidence showing that claimant's heart condition is due to congenital mitral valve disease and that claimant's employment in Afghanistan did not aggravate this condition. Decision and Order at 24-25. The administrative law judge also found that employer presented substantial evidence that claimant's RA was not a consequence of his open heart surgery or aggravated by his work in Afghanistan. *Id*. at 25-26. The administrative law judge determined, based on the record as a whole, that claimant's heart condition and RA were not caused or aggravated by his employment in Afghanistan. *Id*. at 26-29. Accordingly, the administrative law judge denied the claim for compensation under the Act.

Claimant challenges the administrative law judge's finding that employer established rebuttal of the Section 20(a) presumption.[1] 33 U.S.C. §920(a). Claimant

[1] In this regard, we reject claimant's contention that the administrative law judge erred in failing to apply "the zone of special danger" principle to this case. Under the Act, an injury generally occurs in the course of employment if it occurs within the time and space boundaries of the employment and in the course of an activity whose purpose is related to the employment. *Palumbo v. Port Houston Terminal, Inc.*, 18 BRBS 33 (1986); *Mulvaney v. Bethlehem Steel Corp*., 14 BRBS 593 (1981). However, in cases arising under the Defense Base Act, the United States Supreme Court has held the injury

contends that the administrative law judge credited equivocal medical opinions and that she did not address contrary evidence. In this case, the administrative law judge properly found the Section 20(a) presumption invoked. Where, as here, the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's heart condition and RA were not caused by his working conditions or aggravated or contributed to by his employment.[2] *See Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999).

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may be within the course of employment even if the injury did not occur within the space and time boundaries of work, so long as the employment creates a "zone of special danger" out of which the injury arises. *O'Leary v. Brown-Pacific-Maxon, Inc.*, 340 U.S. 504, 507 (1951). In this case, the issue does not concern whether claimant's injuries occurred in the course of his employment but whether they arose out of his employment, *i.e.*, were they caused by the employment. *See* 33 U.S.C. §902(2). The "zone of special danger" doctrine does not aid claimant in this inquiry, although the Section 20(a) presumption, which the administrative law judge did apply, does aid claimant.

[2] We reject claimant's contention that the administrative law judge erred by failing to separately address his claims for work-related chronic obstructive pulmonary disease (COPD), pulmonary disease, ventricular contractions, fatigue and depression. In her decision, the administrative law judge properly addressed these conditions as symptoms or consequences of claimant's heart condition and/or RA. Decision and Order at 22. In addressing causation and the Section 20(a) presumption, the Supreme Court held that the presumption attaches only to the claim that is made by claimant. *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 613 n.7, 14 BRBS 631, 633 n.7 (1982). Claimant's LS-202, LS-203, and LS-18 allege only heart and joint injuries, which claimant variously described as "mini-traumas to chordae tendinae," "major heart valve failure," "arthritis," and "heart/joint failure." CXs 1 at 12; 13; EX 6. At the hearing, the administrative law judge asked claimant's attorney to clarify the injuries claimed. Tr. at 4. Claimant's attorney responded, "major heart valve failures, affected heart, body swelling, very weak and tired, arthritis, extremely painful chest, wrist, elbows and ankles. In addition, open heart surgery to repair mitral valve regurgitation secondary to ruptured chordae tendinae, severe seropositive RA and erosive arthritis, sleeping problems … these are the nature of the injuries and the effects or the symptoms that he has claimed in this case." *Id*. at 6. He later stated there were two conditions that he forgot to mention "COPD and pulmonary hypertension related to these...." *Id*. at 6. The transcript did not state the rest of this phrase. Given this record, the administrative law judge did not err by limiting her inquiry to the cause of claimant's heart condition and RA and the symptoms thereof.

Employer's burden on rebuttal is one of production rather than persuasion; the credibility of the witnesses and contrary evidence are not weighed at this stage. *See Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT) (9th Cir. 2010); *see also Truczinskas v. Director, OWCP*, 699 F.3d 672, 46 BRBS 85(CRT) (1st Cir. 2012). Thus, contrary to claimant's contention, the administrative law judge did not err by not weighing the evidence favorable to claimant's claim before concluding that employer rebutted the Section 20(a) presumption. The administrative law judge credited the opinions of Drs. Angell and Nocero that claimant's heart condition was not caused or aggravated by his working in Afghanistan; of Drs. Knapp and Hess that claimant's RA was not a consequence of his open-heart surgery or attributable to his working conditions; and of claimant's treating rheumatologist, Dr. Vaz, that associating claimant's RA with his working conditions is too speculative.[3] These opinions constitute substantial evidence to rebut the Section 20(a) presumption, and we thus affirm the administrative law judge's finding. *Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000); *see* EXs 18 at 222-24; 21 at 297-98; 24 at 324-27; 26 at 336; 37 at 24-26.

Claimant also challenges the administrative law judge's weighing of the evidence based on the record as a whole. Claimant contends the administrative law judge ignored favorable evidence and that claimant's testimony of the working conditions in Afghanistan, as well as scholarly articles linking heart valve conditions to physical exertion, establish that claimant's heart condition is related to his employment. Claimant also argues that the administrative law judge improperly found more credible employer's "equivocal" medical evidence.

If the administrative law judge finds that the Section 20(a) presumption is rebutted, it drops from the case. *Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT). The administrative law judge then must weigh all the relevant evidence and resolve the causation issue based on the record as a whole with claimant bearing the burden of persuasion. *Id.*; *see also Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996); *see generally 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 weigh the medical evidence and to draw her own inferences therefrom; she has the prerogative to credit one witness or medical opinion over that of another and is not bound to accept the

[3] Dr. Vaz stated that no proven links have been shown between RA and the environment or stress. EX 37 at 409.

opinion or theory of any particular medical examiner.[4] *See Ogawa*, 608 F.3d at 650, 44 BRBS at 49(CRT), *Duhagon*, 169 F.3d at 618, 33 BRBS at 3(CRT); *Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 29 BRBS 79(CRT) (5th Cir. 1995). Moreover, it is impermissible for the Board to substitute its views for those of the administrative law judge; thus, the administrative law judge's findings may not be disregarded merely on the basis that other inferences might appear to be more reasonable. *See Duhagon*, 169 F.3d at 618, 33 BRBS at 2-3(CRT); *see also Newport News Shipbuilding & Dry Dock Co. v. Winn*, 326 F.3d 427, 37 BRBS 29(CRT) (4th Cir. 2003); *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27(CRT) (9th Cir. 1988). In this case, substantial evidence in the form of the opinions of Drs. Nocero, Angell, Hess, Vaz, and Knapp supports the administrative law judge's findings that claimant's heart condition is due to a congenital heart defect that was not aggravated by his employment in Afghanistan and that claimant's RA was not caused or aggravated by his employment. Moreover, the administrative law judge acted within her discretion in crediting these opinions over the evidence presented by claimant.[5] *See Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I.

[4] Claimant submitted scholarly articles linking mitral valve rupture to blunt chest trauma. CXs 18, 22. However, the administrative law judge rationally rejected claimant's contention that he sustained such trauma in Afghanistan. Claimant testified that he fell down stairs and heard something snap in his chest. Tr. at 110-111. The administrative law judge found that claimant did not report this incident, nor did he seek treatment or submit a witness statement that such an incident occurred. Decision and Order at 17. Claimant also submitted a scholarly article linking mitral valve rupture to "extreme" exercise. CX 19. The administrative law judge rationally found claimant's testimony described a stressful work environment, rather than strenuous exercise, and that claimant was a manager who spent most of his time at his desk. Tr. at 84; EX 20 at 31.

[5] Claimant contends that his treating physicians, Drs. Goldberg and Vaz, are in the best position to assess the cause of claimant's heart and joint conditions. Dr. Goldberg opined that it is "possible that the strenuous activity . . . in Afghanistan directly led to chord rupture." EX 16 at 325. Dr. Vaz opined that claimant's RA was exacerbated by his open heart surgery; however, as the administrative law judge found that claimant's heart condition, is not work-related, claimant's RA also is not work-related. CX 5 at 452. In weighing a treating physician's opinion, the administrative law judge may accord determinative weight to the opinion but he also must consider its underlying rationale, as well as the other medical evidence of record. *Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir. 1998), *amended*, 164 F.3d 480, 32 BRBS 144(CRT) (9th Cir.), *cert. denied*, 528 U.S. 809 (1999). In this case, the administrative law judge found Dr. Goldberg's causation opinion less credible because he did not address the pathology report nor was he aware of claimant's non-strenuous working conditions. Decision and Order at 18. Claimant has not demonstrated any error in this credibility determination. *See Monta v.*

1969). Therefore, as it is rational and supported by substantial evidence, we affirm the administrative law judge's findings that claimant's heart condition and RA are not related to his employment in Afghanistan and the consequent denial of the claim.

Accordingly, the administrative law judge's Decision Denying Claim is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

Navy Exchange Service Command, 39 BRBS 104 (2005); *Brown v. National Steel & Shipbuilding Co.*, 34 BRBS 195 (2001).