



BRB No. 14-0264

ROLAND COON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED: <u>Mar. 30, 2015</u>
ELECTRIC BOAT CORPORATION)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of Decision and Order Denying Benefits of Richard D. Clark, Administrative Law Judge, United States Department of Labor.

Nathan Julian Shafner (Embry and Neusner), Groton, Connecticut, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2012-LHC-0209) of Administrative Law Judge Richard D. Clark rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant worked for employer, first as a pipefitter in 1968, and later as a lead bonder from September 1974 through April 1995, during which time it is undisputed that he was exposed to lead while installing radiation shields on nuclear submarines. Claimant was laid off in 1995 and never returned to work for employer. In 2011, claimant filed a claim seeking permanent partial disability benefits pursuant to Section

8(c)(23) of the Act, 33 U.S.C. §908(c)(23), alleging that his hypertension/high blood pressure is due, at least in part, to his work-related exposure to lead.

In his Decision and Order, the administrative law judge found that claimant established his prima facie case based upon his exposure to lead and the diagnosis of hypertension. See 33 U.S.C. §920(a). The administrative law judge next found that employer rebutted the Section 20(a) presumption. The administrative law judge then weighed the evidence as a whole and determined that claimant did not establish a causal relationship between his hypertension and his employment. Accordingly, the administrative law judge denied the claim for benefits.

On appeal, claimant challenges the administrative law judge's finding that employer's evidence is sufficient to rebut the Section 20(a) presumption. Employer responds, urging affirmance of the administrative law judge's denial of benefits.

Once, as in this case, the Section 20(a) presumption is invoked, the burden shifts to employer to produce substantial evidence that claimant's condition was not caused or aggravated by his employment. *Rainey v. Director, OWCP*, 517 F.3d 632, 634, 42 BRBS 11, 12(CRT) (2d Cir. 2008); *American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 64-65, 35 BRBS 41, 49(CRT) (2d Cir. 2001). If employer rebuts the Section 20(a) presumption, it no longer controls and the issue of causation must be resolved on the evidence of record as a whole, with the claimant bearing the burden of persuasion. *Rainey*, 517 F.3d at 634, 42 BRBS at 12(CRT); *Marinelli*, 248 F.3d at 65, 35 BRBS at 49(CRT); *Santoro v. Maher Terminal, Inc.*, 30 BRBS 171 (1996); see also *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

In this case, the administrative law judge found the opinion of Dr. Bradbury sufficient to rebut the presumed causal link between claimant's hypertension and his work exposure to lead.¹ In addressing whether claimant's hypertension is related to his lead exposure, Dr. Bradbury testified on deposition that medical literature does not support a conclusion that lead is a risk factor for hypertension, that claimant exhibited no tissue damage or organ dysfunction establishing an accumulation of lead in his body, and that, to a reasonable degree of medical certainty, claimant's exposure to lead did not create, hasten, cause, contribute to or accelerate his present medical condition. To the contrary, Dr. Bradbury opined that claimant's medical history explained most of his

¹ As claimant currently resides in Montana, the parties' medical experts only reviewed claimant's medical files. Thereafter, Dr. Bradbury authored a medical report dated September 7, 2012, was deposed on April 15, 2013, and authored a supplemental report on July 20, 2013.

medical symptoms.² See EX 2 at 27, 48; EX 3. Specifically, in the concluding paragraph of his supplemental report, Dr. Bradbury stated that

I believe that the patient's hypertension is strongly correlated with his morbid obesity and metabolic syndrome. . . . I see no compelling relationship between his lead exposure and lack of documented lead accumulation and subsequent development of hypertension or cardiovascular disease from lead as a causative agent.

EX 3 at 2.

In support of his contention on appeal, claimant avers that Dr. Bradbury's opinion is not "substantial evidence" sufficient to rebut the Section 20(a) presumption; specifically, claimant contends that Dr. Bradbury's opinion is speculative, did not address the issue of aggravation, and is based on an inadequate history of claimant's employment exposures. We reject claimant's contention. Employer's burden on rebuttal is one of production only, not one of persuasion. *Rainey*, 517 F.3d at 637, 42 BRBS at 14(CRT). An employer satisfies this burden of production when it presents "such relevant evidence as a reasonable mind might accept as adequate" to support a finding that workplace conditions did not cause the accident or injury." *Id.* (quoting *American Grain Trimmers, Inc. v. Director, OWCP*, 181 F.3d 810, 817, 33 BRBS 71, 76 (CRT) (7th Cir. 1999), *cert. denied*, 528 U.S. 1187 (2000)). The opinion of a physician that, to a reasonable degree of medical certainty, no relationship exists between an injury and the claimant's employment, has been held to be sufficient to rebut the presumption. See *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000).

In finding that Dr. Bradbury's opinion rebuts the Section 20(a) presumption, the administrative law judge acknowledged Dr. Bradbury's board certification in internal medicine, cardiology and cardiovascular disease; his daily work with hypertension, metabolic syndrome and hyperlipidemia; and his familiarity with the medical literature on the issues presented in this case. See Decision and Order at 6 - 9. Specifically, the administrative law judge found that,

Dr. Bradbury is a well-qualified expert in the field and offered a compelling opinion, based upon a reasoned and considered review of the evidence available in this case, that demonstrates that Claimant's condition may not

² Claimant testified that he presently weighs between 300 and 321 pounds, that he was a regular cigarette smoker between the mid-1960s and January 1990, and that he has been additionally diagnosed with high cholesterol, diabetes, and sleep apnea. See HT at 58 - 60.

have been caused by any work-related reason. Dr. Bradbury pointed to specific evidence in the record, including medical literature, that there is no correlation between lead exposure and hypertension, and offered a persuasive opinion that Claimant's medical conditions are brought on by a series of co-morbidities. . .that provide much better explanations for hypertension than does lead exposure in the workplace. F.F. ##16-24. I find the opinion offered by Dr. Bradbury to be substantial evidence that rebuts the presumption. . . .

Decision and Order at 10. Contrary to claimant's contentions on appeal, Dr. Bradbury's opinion is not speculative, is based on a full review of claimant's medical records, and he addressed the question of whether claimant's lead exposure caused, hastened, accelerated or contributed to his hypertension. *See* EX 2 at 27, 48. Additionally, Dr. Bradbury rendered his opinion, given to a reasonable degree of medical certainty, based on the premise that claimant had been regularly exposed to lead while working for employer.³ *Id.* at 48. As the administrative law judge properly considered Dr. Bradbury's opinion in light of employer's burden of production, and as this opinion constitutes substantial evidence that claimant's work-related exposure to lead did not cause or contribute to his hypertension, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebutted. *See Rainey*, 517 F.3d 632, 42 BRBS 11(CRT); *O'Kelley*, 34 BRBS 39.

The administrative law judge, after evaluating the evidence of record as a whole, concluded that claimant failed to establish that his hypertension is causally related to his work-related exposure to lead. *See* Decision and Order at 10 - 12. As this conclusion is not challenged on appeal by claimant, it is affirmed. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 77 (2007).

³ In this regard, Dr. Bradbury, in his supplemental report, noted that "[w]hen the body of evidence is reviewed by experts who publish in the field, lecture at conferences, and form national panels, no support for lead as a causative agent of hypertension is established." EX 3 at 1 (emphasis in original).

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

SO ORDERED.

BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge