BRB No. 09-0820

HAROLD W. LLOYD, III	)	
Claimant-Petitioner	)	
v.	)	
EAGLE SUPPORT SERVICES	)	DATE ISSUED: 05/25/2010
and	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA/AIG WORLDSOURCE	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

Ralph R. Lorberbaum (Zipperer, Lorberbaum & Beauvais), Savannah, Georgia, for claimant.

Delos E. Flint, Jr. and Anthony D'Alto II (Fowler, Rodriguez, Valdes-Fauli, Flint, Gray, McCoy, Sullivan & Carroll, L.L.C.), New Orleans, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2008-LDA-00236) of Administrative Law Judge Lee J. Romero, Jr., 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 findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, 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).

In October 2004, claimant commenced employment for employer in Kirkuk, Iraq, where he worked seven days a week, 12 hours per day, pursuant to a six-month contract.[1] On December 26, 2004, claimant sustained a work-related injury to his neck while installing air conditioner units in Humvee vehicles. Claimant continued to work and, a few days later, reported to a clinic where he was prescribed medication and released to return to work. On January 7, 2005, claimant sought additional medical attention when he returned to Camp Anaconda; claimant was once again prescribed medication and released to return to work the next day. Claimant was subsequently transferred to a supervisory position in Kuwait where he continued to work for employer until his contract expired. Claimant then declined an option to remain with employer, and he returned to the United States in April 2005. Commencing in August 2005, claimant periodically sought medical attention for complaints of neck pain.[2] Claimant has not been gainfully employed since his return to the United States.

In his Decision and Order, the administrative law judge determined that claimant sustained a work-related neck sprain on December 26, 2004, which neither aggravated nor exacerbated his pre-existing degenerative disc disease, that claimant reached maximum medical improvement, and that claimant did not suffer any disability as a result of his work-related neck sprain. Assuming, *arguendo*, that claimant established an inability to return to his usual employment with employer as a result of his work-related neck sprain, the administrative law judge found that employer established the availability of suitable alternate employment. Accordingly, the administrative law judge denied

[1] In 1989, claimant was involved in an automobile accident which resulted in a fusion at the C 6-7 level of his neck.

[2] On August 5, 2005 and November 30, 2006, claimant sought treatment with his family physician, Dr. Huelsnitz, who recommended that claimant seek an evaluation by a neurosurgeon. CX 6. On June 29, 2006 and July 27, 2006, Dr. Walsh reviewed claimant's cervical myelogram and CT scan results and determined that claimant was not a candidate for surgery. CX 8. Dr. Hellman examined claimant on August 22, 2006 and May 18, 2007, and opined that claimant's cervical pain is related to his original neck injury. CX 9. Claimant visited with Dr. Horn on November 19, 2007 and August 20, 2008; Dr. Horn related claimant's symptoms to an exacerbation of his pre-existing degenerative disc disease. CX 13. Lastly, claimant was evaluated by Dr. Deriso on November 4, 2008; Dr. Deriso found no objective findings to account for claimant's complaints of neck pain and he concluded that claimant's present condition was unrelated to a prior, resolved neck strain. EXs 17, 18.

claimant's claim for disability benefits under the Act. The administrative law judge also denied claimant's request for future medical benefits, finding that claimant failed to provide any evidence that future medical treatment for his degenerative disc disease would be related to the neck sprain which he sustained during the course and scope of his employment with employer.

On appeal, claimant challenges the administrative law judge's denial of his claim for disability and medical benefits under the Act. Employer responds, urging affirmance of the administrative law judge's decision in its entirety.

In this case, the administrative law judge properly invoked the Section 20(a) presumption based on the findings that claimant sustained a neck sprain during the course and scope of his employment with employer in Iraq. *See* 33 U.S.C. §920(a). Where claimant has established entitlement to invocation of the Section 20(a) presumption, *see Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1998), the burden shifts to employer to rebut it with substantial evidence that claimant's injury was not caused or aggravated by his employment. *See Brown v. Jacksonville Shipyards, Inc.*, 893 F.2d 294, 23 BRBS 22(CRT) (11th Cir. 1990); *Jones v. Aluminum Co. of America*, 35 BRBS 37 (2001); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000). Where aggravation of a pre-existing condition is at issue, employer must submit substantial evidence that work events did not aggravate the pre-existing condition. *See, e.g., Burley v. Tidewater Temps, Inc.*, 35 BRBS 185 (2002); *Cairns v. Matson Terminals*, 21 BRBS 252 (1988). Where, as here, the Section 20(a) presumption is rebutted, it no longer controls, and the issue of causation must be resolved on the evidence of record as a whole, with claimant bearing the burden of persuasion. *See Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

Claimant challenges the administrative law judge's finding that his December 26, 2004, work-incident did not aggravate his pre-existing neck condition, contending that common sense and substantial evidence supports a finding that such a relationship exists. In his Decision and Order, the administrative law judge fully addressed the medical evidence discussing claimant's neck condition. Decision and Order at 9 – 15; 20 – 28. After determining that claimant sustained a neck sprain while working for employer in Iraq,[3] the administrative law judge found that the medical evidence introduced by the parties does not show, by a preponderance of the evidence, that claimant's December 26,

[3] As employer does not appeal the administrative law judge's determination that claimant's December 26, 2004, work activities resulted in a neck sprain, that finding is affirmed.

2004, work-related neck sprain aggravated or exacerbated his pre-existing neck condition. *Id.* at 27. Specifically, the administrative law judge found that while Dr. Horn opined that claimant's current symptoms could be classified as an exacerbation of his pre-existing cervical spine condition since claimant was asymptomatic prior to his work-injury, Dr. Deriso concluded that claimant's 2004 neck sprain had healed long before claimant's pre-existing degenerative disc disease began to affect claimant. *Id.* The administrative law judge further stated that Dr. Deriso found no medical reasoning to support a finding that claimant would be suffering from any symptoms related to his 2004 work-injury for such a long period of time after that injury. *Id.* Finding both Drs. Horn and Deriso to be equally credible, the administrative law judge concluded that the medical evidence regarding the possible aggravation of claimant's pre-existing degenerative disc condition was both balanced and in equipoise; consequently, citing *Greenwich Collieries,* 512 U.S. 267, 28 BRBS 43(CRT), the administrative law judge held that claimant did not meet his burden of proof on this issue.

We reject claimant's assertion that the administrative law judge erred in addressing this issue. It is well-established that the administrative law judge is entitled to weigh the medical evidence and draw his own inferences therefrom and is not bound to accept the opinion or theory of any particular medical examiner. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). In his decision, the administrative law judge discussed the relevant evidence, addressed the alleged causal relationship between claimant's degenerative disc disease and his employment injury, found in weighing the evidence that the contrasting opinions of Drs. Horn and Deriso were equally credible, and rationally concluded that claimant did not meet his burden of proof. *See Greenwich Collieries,* 512 U.S. 267, 28 BRBS 43(CRT); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996). We therefore affirm the administrative law judge's determination that claimant's degenerative disc disease is not work-related and his consequent finding that claimant's December 26, 2004, work-incident resulted in only a neck sprain.

Claimant next challenges the administrative law judge's denial of his claim for ongoing disability and medical benefits. It is well-established that claimant bears the burden of establishing the nature and extent of any disability sustained as a result of a work-related injury. *See Marinelli v. American Stevedoring, Ltd.*, 34 BRBS 112 (2000), *aff'd*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56 (1980). In order to establish a *prima facie* case of total disability, claimant must establish that he is unable to perform his usual work due to the injury. *See Wheeler v. Newport News Shipbuilding & Dry Dock Co.*, 39 BRBS 49 (2005); *Delay v. Jones Washington Stevedoring Co.*, 31 BRBS 197 (1998). In the instant case, the administrative law judge credited the opinion of Dr. Deriso, as supported by the weight of the medical evidence of

record, in concluding that claimant did not sustain a compensable impairment as a result of his December 26, 2004, work-related neck sprain.

We affirm the administrative law judge's conclusion as it is based on substantial evidence. The administrative law judge addressed claimant's testimony, noting that claimant continued to work following the December 26, 2004, work-incident, that claimant submitted a report upon the conclusion of his employment with employer stating that he had sustained no disability while working for employer that would preclude him from working, and that claimant did not seek medical treatment until approximately eight months after visiting the Camp Anaconda clinic in January 2005. Decision and Order at 29. The administrative law judge also credited the testimony of Dr. Deriso, who opined that claimant's diagnosed neck sprain should have resolved by August 2005 when claimant went to his family physician, Dr. Huelsnitz, for treatment. The administrative law judge found that Dr. Deriso's opinion was supported by the weight of the medical evidence which establishes that any disability claimant suffers is due to his non work-related degenerative disc disease. In this regard, the administrative law judge stated that Dr. Huelsnitz could find nothing wrong with claimant, that Dr. Walsh opined that claimant suffers from moderately severe degenerative disc disease related to his previous non work-related neck surgery, and that Dr. Hellman diagnosed claimant with multiple level degenerative disc disease related to his 1989 injury. *Id.* at 30 n.12. The administrative law judge thus addressed the medical evidence and rationally credited the opinion of Dr. Deriso, as supported by those of Drs. Huelsnitz, Walsh and Hellman, to find that claimant has no disability resulting from his neck sprain. As he thus credited substantial evidence, we affirm the administrative law judge's conclusion that claimant sustained no work-related disability as a result of the December 26, 2004, work-incident. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962); *Donovan*, 300 F.2d 741.

We additionally affirm the administrative law judge's finding that claimant is not entitled to future medical benefits. *See* Decision and Order at 39 – 42. Section 7(a) of the Act, 33 U.S.C. §907(a), states that "[t]he employer shall furnish such medical, surgical, and other attendance or treatment . . . for such period as the nature of the injury or the process of recovery may require." *See Brooks v. Newport News Shipbuilding & Dry Dock Co.*, 26 BRBS 1 (1992), *aff'd sub nom. Brooks v. Director, OWCP*, 2 F.3d 64, 27 BRBS 100(CRT) (4th Cir. 1993); *Anderson*, 22 BRBS 20. Medical care must be reasonable and necessary for the treatment of the work injury. *See Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988). As discussed, the administrative law judge credited substantial evidence that claimant's work-related neck sprain had resolved. As substantial evidence supports the conclusion that claimant's treatment after August 2005 was not for a work-related condition and that further medical care for the work injury is

not necessary, the administrative law judge's denial of future medical benefits is affirmed.

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge