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| THOMAS W. ATKINS |) | |
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| Claimant-Petitioner |) | |
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| v. |) | |
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| KBR GOVERNMENT OPERATIONS |) | DATE ISSUED: 11/20/2006 |
| |) | |
| and |) | |
| |) | |
| THE INSURANCE COMPANY OF THE |) | |
| STATE OF PENNSYLVANIA |) | |
| |) | |
| Employer/Carrier- |) | |
| Respondents |) | DECISION and ORDER |

Appeal of the Decision and Order and Decision and Order on Reconsideration of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

David M. Linker and William H. Haller (Freedman and Lorry, P.C.), Philadelphia, Pennsylvania, for claimant.

Robert N. Dengler (Flicker, Garelick & Associates, LLP), New York, New York, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order and Decision and Order on Reconsideration (2005-LDA-0003) of Administrative Law Judge Patrick M. Rosenow 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 (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, a security coordinator at the United States military base in Karshi, Uzbekistan, suffers from neurocysticercosis with seizures, which he alleges stems from his consumption of infected food during the course of his employment with employer from November 2003 to March 2004.¹ Claimant filed a claim for total disability compensation and medical benefits; the parties stipulated that claimant currently is temporarily totally disabled.

In his Decision and Order, the administrative law judge found that claimant is entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption of causation but that employer rebutted the presumption. Upon weighing the evidence, the administrative law judge found that claimant failed to establish a causal relationship between his condition and his employment. Accordingly, he denied benefits. On claimant's motion for reconsideration, the administrative law judge addressed claimant's contentions regarding employer's rebuttal evidence and that inadequate consideration was given to the fact that claimant was in a zone of special danger. The administrative law judge denied claimant's contentions of error in this regard.

On appeal, claimant contends that the administrative law judge erred in finding that employer rebutted the Section 20(a) presumption. Employer responds, urging affirmance of the denial of benefits.

Once, as here, the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused, aggravated, or rendered symptomatic by his employment. *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004); *Port Cooper/T. Smith Stevedoring Co., Inc. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). If the administrative law judge finds that the Section 20(a) presumption is rebutted it falls from the case and claimant bears the burden of persuasion on the issue of the work-relatedness of his condition. *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).

In this case, the administrative law judge found the Section 20(a) presumption rebutted based upon the opinion of Dr. Seals, a board-certified neurologist, who treats patients with neurocysticercosis. Dr. Seals opined, to a reasonable degree of medical certainty, that claimant's condition is unrelated to his employment in Uzbekistan. EX 11

¹ Neurocysticercosis is an infection that causes neurological problems. It stems from the ingestion of pork tapeworm eggs consumed by eating infected pork or food handled by infected workers.

at 14. Dr. Seals based his opinion on claimant's developing symptoms in a shorter period of time than that described in medical literature.² *Id.* at 16-17. Dr. Seals also based his opinion upon the facts that the pork claimant ate in Uzbekistan was imported from the United States by the military, that Uzbekistan is a Muslim country where pork is generally unavailable and is not eaten,³ and that claimant had lived and traveled in South America where infected pork, and the disease, is more common.⁴ *Id.* at 18-22.

Claimant contends that Dr. Seals's opinion is not substantial evidence to rebut the Section 20(a) presumption because it is speculative. Claimant contends that Dr. Seals provided no support for his opinion that Uzbekistan is largely devoid of pigs or pork consumers merely because it is a Muslim country.⁵ Claimant also contends that Dr. Seals could not provide any medical literature stating that neurocysticercosis could not have a shorter latency period than is usually documented.

We reject claimant's contentions and affirm the administrative law judge's finding that employer produced substantial evidence that claimant's condition is not due to his employment in Uzbekistan. The administrative law judge may find a medical opinion that is vague and speculative does not constitute substantial evidence of the lack of a causal connection between claimant's injury and his employment. *American Grain Trimmers v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999), *cert. denied*, 528 U.S. 1187 (2000). In this case, however, Dr. Seals gave his opinion regarding the absence of a causal relationship between claimant's disease and his employment to a "reasonable degree of medical certainty." *See O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000). His opinion is bolstered by medical literature noting the prevalence of neurocysticercosis in Central and South America and by the length of time claimant lived and worked in those geographic areas compared to his relatively short stay

² Claimant began working in Uzbekistan in November 2003 and developed symptoms in March 2004. Dr. Seals stated that the typical period between ingestion and the onset of symptoms is "a few to many years." EX 11 at 16.

³ The administrative law judge did note that claimant testified that he ate only food prepared on base but that he had met "modern" Muslims who ate pork and that pork products were available off the base. Decision and Order at 5; HT at 51; 72.

⁴ Claimant's wife is a Colombian national and claimant lived in South America, primarily in Colombia from 1992 to 2001, and worked in Ecuador, Mexico, Guatemala, Peru, Chile and El Salvador. HT at 66-67.

⁵ Claimant cites data appearing on the website of the United Nations Food and Agricultural Organization indicating that pigs are raised in Uzbekistan.

in Uzbekistan. Contrary to claimant's contention, Dr. Seals did not merely provide another possible agency of causation, *i.e.*, claimant's potential exposure in South and Central America, but he opined that claimant did not contract the infection in Uzbekistan. Such an opinion is sufficient to rebut the Section 20(a) presumption. *Bath Iron Works Corp. v. Director, OWCP [Harford]*, 137 F.3d 673, 32 BRBS 45(CRT) (1st Cir. 1998); *cf. Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989) (presumption not rebutted only by suggestion that carpal tunnel syndrome occurs in women of a certain age without any known cause).

Moreover, although Dr. Seals lacked direct knowledge concerning the prevalence or lack of pigs and pork consumers in Uzbekistan, his opinion that the disease is less likely to occur there is supported by literature introduced into the record from the Centers for Disease Control which states that the pork tapeworm "is more prevalent in poorer communities where humans live in close contact with pigs and eat undercooked pork, and in very rare Muslim countries." EX 11 at ex. 3. Thus, the administrative law judge was not required to find Dr. Seals's opinion undermined by his lack of personal knowledge in this regard. In addition, Dr. Seals's opinion regarding the latency period for the manifestation of neurocysticercosis is not undercut because literature states that the degeneration of the parasite (which leads to most symptoms) occurs after a "variable and unknown time." EX 11 at ex. 2, p. 549. The article cited by claimant goes on to state that the time before degeneration of the parasite is estimated to be "several years" based on clinical studies. *Id.* That the medical community cannot state exactly what is the latency period does not prevent Dr. Seals's opinion from rebutting the Section 20(a) presumption. *Neeley v. Newport News Shipbuilding & Dry Dock Co.*, 19 BRBS 138 (1986).

In sum, as Dr. Seals's opinion, to a reasonable degree of medical certainty, that claimant's neurocysticercosis is not related to claimant's employment in Uzbekistan constitutes substantial evidence of the absence of a causal relationship, we affirm the administrative law judge's finding that employer rebutted the Section 20(a) presumption. *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999), *aff'd* 31 BRBS 98 (1997); *O'Kelley*, 34 BRBS 39; *Neeley*, 19 BRBS 138. As claimant does not challenge the administrative law judge's crediting of Dr. Seals's opinion over that of Dr. Mejia based on the record as a whole, we affirm the denial of benefits as it is rational, supported by substantial evidence and in accordance with law. *See 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. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 493 (2^d Cir. 1961).

Accordingly, the administrative law judge's Decision and Order and Decision and Order on Reconsideration are affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge