BRB No. 07-0465

D.B.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NORTHROP GRUMMAN SHIP SYSTEM, INCORPORATED/ AVONDALE INDUSTRIES, INCORPORATED	)	DATE ISSUED: 11/07/2007
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

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

Jeremiah A. Sprague and Dax C. Foster (Falcon Law Firm), Marrero, Louisiana, for claimant.

Richard S. Vale, Frank J. Towers, and Pamela F. Noya (Blue Williams, L.L.P.), Metaire, Louisiana, for self-insured employer.

Before: SMITH, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2005-LHC-2211) 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.* (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, while working for employer as a welder on February 13, 2002, sustained an injury to his left shoulder when he slipped, lost his balance, and fell to the deck. Claimant was diagnosed with a torn rotator cuff for which he underwent surgery. Following complaints of left arm pain and numbness post-injury, claimant was diagnosed

with carpal tunnel syndrome and Bell's Palsy. After retaining counsel, claimant was examined by another physician who reported findings of bulging discs in claimant's cervical spine. Claimant subsequently underwent a second surgical procedure as a result of this later diagnosis and filed a claim under the Act, contending that he is presently totally disabled.

In his Decision and Order, the administrative law judge found that claimant was entitled to the benefit of the presumption at Section 20(a) of the Act, 33 U.S.C. §920(a), linking his cervical back problems to his employment with employer. The administrative law judge further found, however, that employer produced substantial evidence sufficient to rebut the presumption. Thereafter, the administrative law judge concluded that claimant did not establish, based upon the evidence of record as a whole, that his cervical back condition was related to his employment with employer, and he consequently denied claimant's claim for disability and medical benefits related to that condition. Next, the administrative law judge found that claimant's shoulder condition reached maximum medical improvement on November 15, 2002, that claimant is unable to return to work as a welder, and that employer established the availability of suitable alternate employment. Accordingly, the administrative law judge awarded claimant benefits for permanent partial disability from December 24, 2005, and continuing.[1]

On appeal, claimant challenges the administrative law judge's determination that employer's evidence is sufficient to establish rebuttal of the presumed causal connection between his cervical back condition and his work-injury and that, moreover, the administrative law judge erred in concluding that claimant failed to establish causation based on the record as a whole. Claimant also avers that the administrative law judge erred in determining the extent of claimant's disability and in denying claimant reimbursement for the medical expenses incurred as a result of claimant's treatment with Drs. Barratt and Awasthi. Employer responds, urging affirmance of the administrative law judge's decision in its entirety.

In the instant case, the administrative law judge properly invoked the Section 20(a) presumption based on the findings that claimant suffers from cervical back problems and that he fell while working for employer. Where claimant has established entitlement to invocation of the Section 20(a) presumption, *see Sinclair v. United Food & Commercial Workers,* 23 BRBS 148 (1989), the burden shifts to employer to rebut it with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir. 2003); *Port Cooper/T. Smith Stevedoring Co. v. Hunter,* 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); S*winton 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

[1] The parties stipulated that employer had previously paid claimant compensation for various periods of time through December 24, 2005.

judge finds that the Section 20(a) presumption is rebutted, he must weigh all of the evidence in the record and resolve the causation issue based on the record as a whole. *See Ortco Contractors*, 332 F.3d 283, 37 BRBS 35(CRT); *Port Cooper*, 227 F.3d 285, 34 BRBS 96(CRT); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 257, 28 BRBS 43(CRT) (1984).

In finding that employer rebutted the presumption with regard to this condition, the administrative law judge relied upon the opinions of Drs. Colvin, Truax and Cashio. Dr. Colvin, who treated claimant between February 27, 2003, and January 3, 2005, opined that claimant's diagnosed cervical myelopathy and radiculopathy were not associated with his work-injury, and that if claimant's February 13, 2002, fall at work had aggravated those conditions she would have expected claimant to have complained of neck pain soon after the work-incident. Rather, Dr. Colvin noted that claimant's post-injury complaints involved his shoulder, and that claimant did not report neck symptoms to her until August 31, 2004. EXs 7; 14 at 72-73. Similarly, Dr. Truax, who treated claimant between June 8, 2004, and November 29, 2004, for Bell's Palsy, and Dr. Cashio, who treated claimant between June 6, 2002, and August 6, 2004, for left shoulder complaints, and performed claimant's left shoulder surgery, testified that claimant did not report neck complaints or symptoms during their multiple examinations. EXs 11, 12. As the opinion of Dr. Colvin, supported by those of Drs. Truax and Cashio, severs the presumed causal link between claimant's cervical condition and his employment with employer, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebutted. *See Prewitt*, 194 F.3d 684, 33 BRBS 187(CRT); *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171 (2001); *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

Claimant summarily challenges the administrative law judge's finding that he did not establish causation based on the record as a whole; specifically, claimant avers that the administrative law judge erred in not taking into consideration the opinion of Dr. Awasthi when addressing this issue. Claimant's assertions of error in this regard are without merit. Once the presumption has been rebutted, the administrative law judge is required to weigh all of the evidence in the record and resolve the causation issue based on the record as a whole, with claimant bearing the burden of persuasion. *See Port Cooper*, 227 F.3d 285, 34 BRBS 96(CRT); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996); *see also Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT); *Del Vecchio v. Bowers*, 296 U.S. 280 (1935). In this regard, it is well-established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences therefrom, and he 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 medical evidence of record, including the testimony of Dr. Awasthi, and his findings are supported by the record. The administrative law judge, after noting the treating physician status of Drs. Colvin and Cashio and Dr. Awasthi's testimony that he would defer to Dr. Colvin's opinion

regarding claimant's cervical condition, rationally concluded that the weight of the evidence in the record does not establish that claimant's cervical back problems were related to his work-injury. We therefore affirm the administrative law judge's determination that claimant failed to establish that his cervical back condition was related to his employment with employer. *See Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT); *Sistrunk*, 35 BRBS 171; *Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000); *Rochester v. Geo. Washington Univ.*, 30 BRBS 233 (1997).

Claimant next contends that the administrative law judge erred by failing to acknowledge that Dr. Barratt was claimant's choice of physician for the treatment of his cervical condition, in failing to award disability benefits as a result of that condition, and in declining to hold employer liable for the medical expenses claimant incurred as a result of his treatment with Drs. Barratt and Awasthi. We reject claimant's contentions of error. Section 7(a) of the Act, 33 U.S.C. §907(a), states that "[t]he employer shall furnish medical, surgical, and other attendance or treatment for such period as the nature of the injury or the process of recovery may require." *See Ballesteros v .Willamette W. Corp.*, 20 BRBS 184 (1988). In order for a medical expense to be assessed against employer, however, the expense must be both reasonable and necessary, and must be related to the injury at hand. *See Ezell v. Direct Labor, Inc.*, 37 BRBS 11 (2003); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Pardee v. Army & Air Force Exch. Serv.*, 13 BRBS 1130 (1981); 20 C.F.R. §702.402. In the instant case, it is undisputed that both Dr. Barratt and Dr. Awasthi treated only claimant's cervical back condition. Therefore, in light of our affirmance of the administrative law judge's determination that no causal relationship exists between claimant's employment and his cervical back condition, we affirm the administrative law judge's findings that employer is not liable for the payment of compensation or medical benefits related to the treatment of claimant's cervical back condition.[2]

[2] We need not address whether or not Dr. Barrett was claimant's choice of physician for the treatment of his non-work-related cervical back condition since, regardless of her status, employer is not liable for the medical expenses related to that condition.

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge