BRB No. 99-1255

ANTHONY IACONO	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
UNIVERSAL MARITIME SERVICE	)	
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Andrew R. Topazio (Marciano & Topazio), Hoboken, New Jersey, for claimant.

Francis M. Womack III (Weber Goldstein Greenberg & Gallagher), Jersey City, New Jersey, for employer/carrier.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (98-LHC-2422) of Administrative Law Judge Ralph A. Romano 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 if they 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 longshoreman from 1949-1950 until his retirement in 1991, was subsequently diagnosed with lung cancer, for which surgery was performed in 1993, as well as chronic obstructive pulmonary disease (COPD). Thereafter, claimant sought benefits under the Act for permanent total disability which he alleges arose from his work exposure to asbestos, fumes, and noxious substances.

In his decision, the administrative law judge determined that although claimant was entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption of causation based upon his pulmonary conditions and his exposures in the workplace, employer submitted substantial evidence rebutting the presumption. Next, the administrative law judge weighed all of the medical evidence of record and concluded that claimant failed to establish that either his lung cancer or COPD arose out of his employment with employer. Accordingly, the administrative law judge denied claimant's claim for benefits under the Act.

On appeal, claimant challenges the administrative law judge's denial of his claim. Employer responds, urging affirmance of the administrative law judge's decision.

Claimant contends that the administrative law judge erred in finding that his present medical conditions did not arise as a result of his exposures to asbestos and noxious fumes at work. In the instant case, the administrative law judge properly invoked the Section 20(a) presumption, as he found that claimant suffered harm, specifically lung cancer and COPD, and that working conditions existed which could have caused this condition. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991). Employer can rebut the Section 20(a) presumption by producing substantial evidence that claimant's injuries were not caused or aggravated by his employment. *See Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 33 BRBS 187 (CRT)(5th Cir. 1999); *American Grain Trimmers v. Director,* OWCP, 181 F.3d 810, 33 BRBS 71 (CRT)(7th Cir. 1999), *cert. denied*, 120 S.Ct. 123 (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 has been rebutted, he must weigh all of the evidence and render a decision supported by substantial evidence. *See Del Vecchio v. Bowers*, 296 U.S. 280; *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT)(1994); *Devine v. Atlantic Container Lines, G.I.E.,* 23 BRBS 279 (1990).

Initially, claimant summarily argues that the administrative law judge erred in finding the Section 20(a) presumption rebutted. We disagree. In finding rebuttal, the administrative law judge relied upon the opinion of Dr. Karetsky, who opined that claimant's surgery for lung cancer was unrelated to asbestos exposure and that claimant's current pulmonary conditions are associated with his obesity, heavy smoking and surgery and are unrelated to any work exposure to noxious substances. EX 2. As this opinion constitutes substantial evidence sufficient to rebut the presumption, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebutted. *See Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

Claimant also challenges the administrative law judge's finding that causation was not established based on the record as a whole; specifically, claimant assigns error to the administrative law judge's decision not to rely upon the testimony of Dr. Eisenstein. After considering all of the medical evidence of record, the administrative law judge credited the opinion of Dr. Karetzky over the opinion of Dr. Eisenstein, stating that Dr. Karetzky possessed superior credentials,[1] that Dr.

[1]Dr. Karetzky's *curriculum vitae* sets forth that physician's numerous Board-

Karetzky's opinion was more consistent with the underlying objective data and the predominant majority opinion of generally accepted medical thought, and that Dr. Karetzky made specific references to medical literature, articles and peer review medical journals in rendering his opinion that claimant's medical conditions are not related to his exposures while working for employer. Contrary to claimant's contentions, Dr. Karetsky accounted for evidence of pleural thickening by x-ray, noting that it was indicative of post-operative changes rather than asbestosis, *see* EX 2 at 104, and a May 1993 abnormal pulmonary function study, noting that these results were not valid in light of subsequent studies performed in June 1993. *See id.* at 36; *see also* EX 1.

It is well-established that an 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). In the instant case, the administrative law judge fully evaluated the two medical opinions addressing the issue of a potential casual relationship between claimant's present medical conditions and his employment with employer, and his findings regarding those medical opinions are supported by the record. As the administrative law judge thus rationally gave less weight to the opinion of Dr. Eisenstein, claimant did not meet his burden of persuasion in this case. *See Greenwich Collieries*, 512 U.S. at 267, 28 BRBS at 43(CRT). We therefore affirm the administrative law judge's determination, based on the record as a whole, that claimant's present medical conditions are not causally related to his employment with employer. *See generally Rochester v. George Washington University*, 30 BRBS 233 (1997).

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certifications, as well as a multitude of articles and reviews authored over the course of his career.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge