

BRB No. 96-0890

GERALDINE REEVES)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
NEXCOM, NAVY EXCHANGE)	DATE ISSUED:
)	
and)	
)	
GATES MCDONALD, CRAWFORD AND)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order and Amended Decision and Order of Joel F. Gardiner, Administrative Law Judge, United States Department of Labor.

Gary A. Gabree (Stinson, Lupton, Weiss & Gabree, P.A.), Bath, Maine, for claimant.

Richard van Antwerp and Elizabeth Connellan (Robinson, Kriger & McCallum), Portland, Maine, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, DOLDER and McGRANERY, Administrative Appeals Judges

PER CURIAM:

Claimant appeals the Decision and Order and Amended Decision and Order (95-LHC-0132) of Administrative Law Judge Joel F. Gardiner 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 Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). We must affirm the findings of fact and the conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359

(1965); 33 U.S.C. §921(b)(3).

On June 18, 1991, claimant began experiencing pain and numbness in her left arm while working for employer filling out price exchange forms in a Naval retail exchange store. Thereafter, after missing two weeks of work, claimant returned to work at reduced hours. Claimant continued to work until March 5, 1992, when she quit, allegedly due to her arm problems. Employer voluntarily paid temporary total disability benefits until April 26, 1994, and temporary partial disability benefits thereafter. Claimant sought temporary total disability benefits from April 26, 1994 to the present and continuing.

After determining that claimant suffered from fibromyalgia rather than myofascial pain syndrome, based primarily on the testimony of Dr. Wickenden, the administrative law judge found that any work-related aggravation of her disease was temporary and had fully resolved as of April 26, 1994, when employer ceased its voluntary payment of temporary total disability benefits. Inasmuch as claimant failed to establish that her ongoing symptoms subsequent to April 26, 1994, were in any way causally related to her work activities, the administrative law judge found that claimant had been fully compensated for the work-related aggravation of her underlying disease and denied the claim for ongoing temporary total disability.

Claimant appeals the denial of benefits, contending that the administrative law judge erred in finding that she was fully compensated for her work-related disability. Specifically, claimant contends that in finding that claimant's disability subsequent to April 26, 1994, is not causally related to her employment duties, the administrative law judge erred in finding Dr. Wickenden's opinion sufficient to establish rebuttal of the Section 20(a), 33 U.S.C. §920(a), presumption. Moreover, in the event that the administrative law judge's finding of rebuttal is upheld, claimant argues that in weighing the evidence as a whole, the administrative law judge erred in crediting Dr. Wickenden's opinion rather than that of Dr. Mesrobian, who opined that claimant suffers from ongoing myofascial pain syndrome due to repetitive motion office work in her prior employment. Employer responds, asserting that the administrative law judge erred in applying the Section 20(a) presumption to the determination of the cause of claimant's disability. In the alternative, employer argues that if the Section 20(a) presumption does apply, the administrative law judge properly found it rebutted and that the weight of the evidence as a whole was insufficient to establish that claimant's ongoing disability is work-related.

After consideration of the administrative law judge's Decision and Order in light of the relevant evidence and claimant's arguments, we affirm his denial of additional disability compensation. The administrative law judge's finding that any work-related aggravation of claimant's symptoms had resolved by April 26, 1994, and that claimant's underlying fibromyalgia is not work-related, is rational, in accordance with applicable law, and is

supported by the medical opinion of Dr. Wickenden, EX-8, which the administrative law judge acted within his discretion in crediting. See *O’Keeffe*, 380 U.S. at 359; *Thompson v. Northwest Enviro Services*, 26 BRBS 53 (1992).¹

In establishing the cause of a disabling condition, claimant is aided by the Section 20(a) presumption. *Kubin v. Pro-Football, Inc.*, 29 BRBS 117, 118-119 (1995). In the instant case, the administrative law judge properly invoked the Section 20(a) presumption in assessing the cause of claimant’s disability as it is uncontested that claimant suffered pain and numbness in her left arm, and that claimant’s former job required repetitive movements such as flipping papers which could have caused the harm. *White v. Peterson Boatbuilding Co.*, 29 BRBS 1, 11 (1995). Employer’s argument that the administrative law judge erred in this regard is rejected.

Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut it with substantial evidence that claimant’s disabling condition was not caused or aggravated by her employment. *Kubin*, 29 BRBS at 119. If the administrative law judge finds that the Section 20(a) presumption is rebutted, the administrative law judge must weigh all of the evidence and resolve the causation issue on the record as a whole. See *Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84, 89 (1995). In the present case, after considering the relevant evidence, the administrative law judge found the Section 20(a) presumption rebutted and the absence of a causal nexus established based on Dr. Wickenden’s testimony and his negative assessment of claimant’s credibility, due to discrepancies between claimant’s representations to her physicians regarding her work hours and the repetitive nature of her work duties and testimony provided by claimant and her supervisor at the hearing .

On appeal, claimant argues that Dr. Wickenden’s opinion cannot properly support a finding of rebuttal because he conceded that the cause of fibromyalgia is unknown and applied a “significant contribution” standard in finding that claimant’s work duties were not the cause of claimant’s ongoing condition. We disagree. Although Dr. Wickenden stated that the cause of fibromyalgia is unknown, EX-8 at 18, 28, he also indicated that it is the best

¹Contrary to claimant’s assertion, the administrative law judge also did not err in concluding that the distinctions between fibromyalgia and myofascial pain syndrome are irrelevant inasmuch as Dr. Wickenden, whom he credited, opined that these two disease entities were virtually identical. EX-2.

judgement of modern medicine that there is no causal relationship between claimant's work activity and the development of fibromyalgia. EX-8 at 19. Because this testimony is tantamount to an opinion based on a "reasonable degree of medical certainty," the administrative law judge did not err in relying on Dr. Wickenden's testimony to conclude that claimant's fibromyalgia is not causally related to her prior work activities. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990). Moreover, Dr. Wickenden's statements regarding "significant contribution" do not lead to the conclusion that his opinion does not rebut Section 20(a). Claimant was seeking temporary total disability compensation subsequent to April 26, 1994, and Dr. Wickenden opined that claimant's work duties caused only a transient increase in her symptoms and played *no part* whatsoever in her condition after she stopped working in March 1992. EX-8 at 17, 30-31, 37-38; *Kubin*, 29 BRBS at 117. Finally, we reject claimant's assertion that the administrative law judge erred in failing to accord determinative weight to Dr. Mesrobian's opinion because it was better reasoned than Dr. Wickenden's opinion; such credibility determinations are solely within his discretionary authority. *Thompson v. Northwest Enviro Services*, 26 BRBS 53 (1992). Inasmuch as the medical opinion of Dr. Wickenden in conjunction with the administrative law judge's negative assessment of claimant's credibility provides substantial evidence to support his finding that claimant's disability subsequent to April 26, 1994, is not work-related, and claimant has failed to demonstrate any reversible error, we affirm his denial of additional temporary total disability compensation in this case. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge