

BRB No. 91-1665

THOMAS NEWMAN)
)
 Claimant-Petitioner)
)
 v.)
)
 SAVANNAH SHIPYARD COMPANY)
)
 and)
) DATE ISSUED: _____
 LIBERTY MUTUAL INSURANCE)
 COMPANY)
)
 and)
)
 NATIONAL UNION FIRE)
 INSURANCE COMPANY)
)
 Employer/Carriers-)
 Respondents) DECISION and ORDER

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

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

Richard C. E. Jennings (Brennan, Harris & Rominger), Savannah, Georgia, for employer/Liberty Mutual Insurance Company.

L. Lee Bennett, Jr. and John P. Reale (Drew, Eckl & Farnham), Atlanta, Georgia, for employer/National Union Fire Insurance Company.

Before: DOLDER, Acting Chief Administrative Appeals Judge, McGRANERY, Administrative Appeals Judge, and SHEA, Administrative Law Judge.*

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (1988).

PER CURIAM:

Claimant appeals the Decision and Order (89-LHC-3702, 89-LHC-3703) of Administrative Law Judge Thomas M. Burke denying benefits 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 administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with applicable law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant worked for employer for 33 years, first as a welder, then, in the late 1970's, he was promoted to leaderman, and later to quartermen. In 1979, claimant stepped in a hole, the edge of which scraped the front of his right leg. He was examined and treated by the shipyard physician; however, he did not miss any work due to this injury. Tr. at 30, 32, 40, 42, 47. In 1984, at a time when employer was preparing to close and most of the employees had been laid off, claimant injured his shoulder while using a "gator bar." He was examined and treated by his family doctor; again, however, he did not miss any work due to this injury. Emp. Ex. 13 at 5; Tr. at 49-51. Claimant continued in his supervisory capacity for employer until August 1984 when employer closed its facility. From August 1984 through December 1985, claimant obtained intermittent welding jobs through the boilermaker's union. Cl. Ex. 23; Tr. at 53-54.

A hearing was held on claimant's claim for benefits, wherein the parties stipulated that May 31 or June 1, 1979 was the date of the first injury, and March 6, 1984 was the date of the second injury. They also stipulated to the coverage dates of the insurance companies at risk.¹ Decision and Order at 2-3. Claimant and employer disputed the cause, nature and extent of claimant's disability. Although the administrative law judge invoked the Section 20(a), 33 U.S.C. §920(a), presumption based on claimant's testimony, he found no disability, caused by either the leg or shoulder injury, based on the doctors' reports. Decision and Order at 6-7. The administrative law judge also found there is no relationship between claimant's current leg condition and his work-related leg injury. Therefore, he denied benefits, and he declared moot employer's request for Section 8(f), 33 U.S.C. §908(f), relief. *Id.* at 8. Claimant appeals the decision, and employer and its carriers respond, urging affirmance.

Claimant contends the administrative law judge erred in finding he has no work-related disability and in denying benefits. In determining whether an injury is work-related, claimant is aided by the Section 20(a) presumption, which may be invoked only after he establishes a *prima facie* case. *Hartman v. Avondale Shipyard, Inc.*, 23 BRBS 201 (1990), *vacated in part on reconsideration*, 24 BRBS 63 (1990); *Bartelle v. McLean Trucking Co.*, 14 BRBS 166 (1981), *aff'd*, 687 F.2d 34, 15 BRBS 1 (CRT) (4th Cir. 1982); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981). Once the presumption is invoked, employer may rebut it by producing facts to show that claimant's employment did not cause, aggravate or contribute to his injury. *Peterson v. General*

¹Liberty Mutual was at risk at the time of the 1979 injury, and National Union Fire was at risk at the time of the 1984 injury. Decision and Order at 3.

Dynamics Corp., 25 BRBS 71, 78 (1991), *aff'd sub nom. Insurance Company of North America v. U.S. Dept. of Labor*, 969 F.2d 1400, 26 BRBS 14 (CRT) (2d Cir. 1992), *cert. denied*, 113 S.Ct. 1253 (1993); *Obert v. John T. Clark and Son of Maryland*, 23 BRBS 157 (1990). If employer submits substantial countervailing evidence to sever the connection between the injury and the employment, the Section 20(a) presumption no longer controls and the issue of causation must be resolved on the whole body of proof. *Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990).

In this case, the administrative law judge determined that claimant's current leg condition is not related to the 1979 injury to his leg. This conclusion is supported by the evidence of record. Specifically, Dr. Jackson found that claimant's leg condition stems from chronic venostasis, a venous insufficiency, which pre-dated 1978, and that claimant's 1979 injury was not the type which would cause or aggravate the condition.² Cl. Ex. 12; Emp. Exs. 9, 11. The doctor noted that chronic venostasis could delay the healing process, but in this case, claimant's injury healed satisfactorily. Additionally, Dr. Jackson stated that claimant could continue to work, although he restricted the amount of time claimant may spend on his feet because of the chronic condition. Cl. Ex. 15; Emp. Ex. 11 at 12, 15. Dr. Jackson's opinion constitutes sufficient evidence to rebut the Section 20(a) presumption and substantial evidence on the record as a whole to support the administrative law judge's finding that claimant's leg condition is not caused by his 1979 work injury. *See, e.g., Stevens*, 23 BRBS at 194. Consequently, we affirm the finding that claimant has no work-related disability to his right leg. *Id.*

Next, we address whether claimant has a disability as a result of his work-related shoulder injury. Claimant has the burden of establishing the nature and extent of his disability. *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56 (1985). He contends his shoulder injury resulted in continued weakness which prevents him from climbing. The administrative law judge determined that no disability resulted from the work-related shoulder injury. Dr. Campbell first examined claimant three months after the March 1984 incident. He diagnosed arthritis of the acromioclavicular joint, and he prescribed medication. By November 1984, the majority of the pain in claimant's shoulder had resolved. Emp. Ex. 13 at 5-8. After reviewing criteria in the American Medical Association *Guides to the Evaluation of Permanent Impairment*, Dr. Campbell concluded that claimant has a zero percent impairment because his shoulder has a full range of motion, despite any remaining pain, and that his condition does not prevent him from performing any activities. Emp. Ex. 13 at 13-14. Dr. Campbell's opinion constitutes substantial evidence supporting the administrative law judge's finding that claimant has no impairment or disability as a result of his 1984 work-related shoulder injury. *See generally Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd mem. sub nom. Chong v. Director, OWCP*, 909 F.2d 1488 (9th Cir. 1990); *Larrabee v. Bath Iron Works Corp.*, 25 BRBS 185 (1991); *Bruce v. Bath Iron Works Corp.*, 25 BRBS 157 (1991). Therefore, we affirm the administrative law judge's finding that claimant has no work-related disability from either the 1979 work-related leg injury or the 1984 work-related

²Claimant described the 1979 injury as one which "ripped the skin to the bone," but Dr. Jackson described it as consisting of "very superficial abrasions" and a tear of a superficial vein. Emp. Ex. 11 at 5-6; Tr. at 40.

shoulder injury, and we affirm the denial of benefits.³

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

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge

³Claimant also challenges employer's failure to present evidence of the availability of suitable alternate employment. Because the administrative law judge found no work-related disability, and because we affirm said finding, it is unnecessary to reach the issue of suitable alternate employment. Therefore, we reject claimant's argument.