

BRB No. 97-1332

CARLO LATERZA)	
)	
Claimant-Petitioner)	DATE ISSUED:
)	
v.)	
)	
UNIVERSAL MARITIME SERVICE)	
CORPORATION)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

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

Samuel A. Denburg (Baker, Garber, Duffy & Pedersen), Hoboken, New Jersey, for claimant.

Christopher J. Field (Weber, Goldstein, Greenberg & Gallagher), Jersey City, New Jersey, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (96-LHC-1716) 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 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).

Claimant, who worked as a deckman and crane operator for employer from 1971 until he retired in 1987, sought benefits under the Act for noise-induced occupational hearing loss. Based on an audiogram performed on March 15, 1995, Dr. Matthews, an otolaryngologist, opined that claimant had a 30 percent hearing loss

in the right ear, a 34.5 percent hearing loss in the left ear, or a binaural hearing loss of 30.8 percent due to occupational noise exposure. CX-2. A June 13, 1996, audiogram performed by Dr. Katz, a Board-certified otolaryngologist, revealed a 16.9 percent hearing loss in the left ear, a 26.25 percent loss in the right, or a binaural hearing loss uncorrected for age of 18.4 percent. Noting that claimant's loss of hearing had progressed as he approached the age of 73, and that he had admitted experiencing a deterioration in his hearing with age, Dr. Katz opined that, corrected for age, claimant had 0 percent impairment in his left ear, an 8.6 percent loss in the right ear, or a binaural hearing loss of 1.4 percent, none of which was due to noise exposure. EX-3; EX-7 at 68.

In his Decision and Order, after initially finding that claimant was entitled to invocation of the presumption at Section 20(a), 33 U.S.C. §920(a), the administrative law judge found that employer produced substantial evidence to rebut it. Next, after considering the totality of the evidence, the administrative law judge concluded that claimant's hearing loss was not causally related to his work-related noise exposure, and accordingly denied claimant benefits under the Act.

On appeal, claimant contends that the administrative law judge erred in finding that none of his hearing loss is occupationally related. Claimant specifically avers that the administrative law judge erred in finding that the medical opinion of Dr. Katz provided substantial evidence to rebut the Section 20(a) presumption, in light of its speculative nature. In addition, claimant asserts that the record as a whole does not support the administrative law judge's ultimate conclusion regarding the cause of his hearing loss. Employer responds, urging affirmance.

In the instant case, the administrative law judge properly invoked the Section 20(a) presumption, as he found that claimant suffered a harm, a loss of hearing, and that working conditions existed which could have caused that harm. See *generally Manship v. Norfolk & Western Railway Co.*, 30 BRBS 175 (1996). Accordingly, the burden shifted to employer to present specific and comprehensive evidence sufficient to sever the causal connection between claimant's hearing loss and his employment with substantial evidence that claimant's condition was not caused or aggravated by his employment. *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976); *Davison v. Bender Shipbuilding & Repair Co., Inc.*, 30 BRBS 45, 46-47 (1996). In the present case, after considering the record evidence, the administrative law judge determined that employer established rebuttal of the Section 20(a) presumption based on the opinion of its medical expert, Dr. Katz. Dr. Katz attributed claimant's hearing loss to aging, past ear infections, and the effects of cardiovascular disease and stated unequivocally in his deposition testimony that claimant's 38 years of noise exposure

was not responsible for any portion, however slight, of claimant's hearing loss. EX-7 at 68.

In challenging the administrative law judge's findings regarding causation, claimant initially argues that the administrative law judge erred in finding the Section 20(a) presumption rebutted based on Dr. Katz's testimony. Claimant asserts that because Dr. Katz admitted that he could not tell what portion of claimant's hearing loss was attributable to age and what portion was due to noise exposure by looking at an audiogram alone, EX-7 at 63, his opinion regarding the cause of claimant's hearing loss is speculative, and thus does not constitute specific and comprehensive evidence sufficient to sever the presumed causal connection. In addition, claimant argues that Dr. Katz's opinion attributing claimant's hearing loss to age and other physiological factors is based on unsubstantiated medical theories because he inferred that claimant was suffering from cardiovascular disease based only on his medical history and the fact that he was wearing a nitroglycerine patch for chest pain without reviewing any medical records.

We reject claimant's assertion that the administrative law judge erred in finding rebuttal established based on Dr. Katz's testimony. While Dr. Katz did state that he could not determine the cause of claimant's hearing loss based solely on claimant's audiogram, he also specifically testified that he was able to make this determination based on the application of age correction tables, the pattern and progression of claimant's hearing loss, and claimant's medical and work history. EX-7 at 30, 61-62, 65. Accordingly, there is no merit to claimant's characterization of this testimony as speculative. Moreover, the fact that Dr. Katz inferred that claimant had cardiovascular disease from claimant's physical examination and medical history without having reviewed his medical records also does not, contrary to claimant's assertions, establish that this opinion was premised on unsubstantiated medical theories. Inasmuch as Dr. Katz's opinion provides substantial evidence to support the administrative law judge's finding of rebuttal and claimant has failed to raise any reversible error, we affirm this determination. See *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963); *Davison*, 30 BRBS at 45.¹

¹We note that that Dr. Katz specifically testified that he did not rely on the noise surveys performed by Mr. Bragg at employer's facility in reaching his opinion that workplace noise was not responsible for any portion of claimant's hearing loss. EX-7 at 66-67.

Claimant also argues that the evidence as a whole does not support the administrative law judge's ultimate determination that claimant's hearing loss is not noise-related. In adjudicating a claim, it is well-established that an administrative law judge is entitled to evaluate the credibility of all witnesses, including doctors, and is not bound to accept the opinion or theory of any particular medical examiner; rather, the administrative law judge may draw his own inferences and conclusions from the evidence. *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 the present case, after weighing the evidence as a whole, the administrative law judge found Dr. Katz's opinion that none of claimant's hearing loss was noise-related more persuasive than Dr. Matthew's contrary opinion, reasoning that while Dr. Katz's opinion was substantiated by the continued deterioration in claimant's hearing loss after he stopped working, Dr. Matthews had not accounted for this factor in rendering his opinion. Claimant asserts that while the evidence demonstrates that claimant's hearing loss deteriorated marginally after he stopped working, it also reflects that he was experiencing whistling in his ears while still employed. In assessing the cause of claimant's hearing loss, however, the administrative law judge recognized that claimant had some hearing problems while working, but nonetheless rationally found based on his crediting of Dr. Katz's testimony that the progression of claimant's hearing loss after he stopped working pointed to age, rather than noise exposure, as the cause of his disability. Inasmuch as Dr. Katz's testimony provides substantial evidence sufficient to establish the absence of a causal connection between claimant's hearing loss and his employment, and claimant has failed to establish error in the administrative law judge's decision to credit Dr. Katz's opinion over that of Dr. Matthews, we affirm his determination on the record as a whole that claimant's hearing loss is not work-related.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH

Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge