BRB No. 97-0858

MARGARET M. GALLE (Widow of Andrew T. Galle)	)	
Claimant-Petitioner	)	
v.	)	DATE ISSUED:
INGALLS SHIPBUILDING, INCORPORATED	)	
and	)	
AETNA CASUALTY AND SURETY COMPANY	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Compensation Benefits of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Margaret M. Galle, D'Iberville, Mississippi, *pro se*.

Paul B. Howell and Traci Castille (Franke, Rainey, and Salloum), Gulfport, Mississippi, for employer/carrier.

Before: SMITH, BROWN, and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Compensation Benefits (88-LHC-3223) of Administrative Law Judge Richard D. Mills 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). In an appeal by a claimant without representation by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and in accordance with law.[1] *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3); 20 C.F.R. §§802.211(e), 802.220.

[1]Claimant's motion to expedite the decision in this case, filed March 9, 1998, is moot.

Claimant is the widow of Andrew T. Galle (hereinafter decedent), an electrician who sustained injuries during the course of his employment with employer on November 24, 1984, when he tripped and struck his right knee and shoulder; decedent was unable to return to his former job due to his inability to raise his arm to the horizontal level. On January 15, 1993, decedent died while in the restroom of a local department store; although no autopsy was performed, the cause of death was listed as acute myocardial infarction. RX 41. Claimant thereafter filed a claim for death benefits under the Act, alleging that decedent's heart disease and resulting death were caused or aggravated by his work accident and/or the stress arising out of that accident.

Prior to the formal hearing regarding this claim, claimant filed an affidavit with the administrative law judge seeking his recusal from adjudicating the instant case. In an Order dated May 8, 1995, the administrative law judge denied claimant's recusal motion. In his subsequent Decision and Order, the administrative law judge initially found claimant entitled to invocation of the presumption at Section 20(a), 33 U.S.C. §920(a), linking decedent's death to his employment. After next finding that employer had rebutted the presumption, the administrative law judge, after addressing the totality of the medical evidence, credited the testimony of Drs. Wiggins, Thomas, Jackson, Rusch, and Maggio, over the contrary opinion of Dr. Hiatt, in concluding that claimant failed to establish a causal link between decedent's employment and his death. The administrative law judge thus denied the claim for death benefits.

On appeal, claimant, representing herself, asserts error in the administrative law judge's refusal to recuse himself from the instant case; moreover, claimant alleges error in the administrative law judge's failure to assist in the prosecution of her claim. Lastly, claimant assigns error to the administrative law judge's consideration of the evidence of record and his ultimate determination that decedent's death was not causally related to his employment with employer. Employer responds, urging affirmance.

Claimant initially challenges the administrative law judge's decision not to recuse himself from the case at bar. Pursuant to Section 18.31 of the Rules of Practice and Procedure Before the Office of Administrative Law Judges, 29 C.F.R. §18.31, a party who deems that the administrative law judge is unqualified for any reason shall file a motion to recuse with the administrative law judge, who shall rule on the motion. In the instant case, claimant asserted prior to the formal hearing that, since the administrative law judge had adjudicated the claim of her then living husband, the administrative law judge must recuse himself from the instant case;[2] on appeal, claimant has additionally asserted error in the

[2]The administrative law judge awarded decedent permanent partial disability compensation; this decision was appealed to, and affirmed by, the Board. *See Galle v. Ingalls Shipbuilding, Inc.*, BRB No. 90-1830/A (July 27, 1992)(unpublished). On reconsideration, the Board, *inter alia*, modified the administrative law judge's date for the onset of decedent's partial disability to reflect the date employer established the availability of suitable alternate employment. *See Galle v. Ingalls Shipbuilding, Inc.,* BRB No. 90-1830/A (Nov. 12, 1993)(Decision and Order on Reconsideration).

administrative law judge's actions in conducting the hearing. In his pre-hearing Order denying claimant's motion for recusal, the administrative law judge fully addressed claimant's request that he recuse himself from hearing her survivor's claim by noting that it is customary for the same administrative law judge to hear both the original claim of an employee and his survivor. Moreover, the administrative law judge concluded that claimant had failed to establish judicial bias based on the fact that he had reached conclusions that she found adverse to her position. We hold that claimant has failed to show that the administrative law judge was biased against her and that the administrative law judge failed to conduct a fair and impartial hearing. The right to death benefits is separate and distinct from the right to disability benefits and does not arise until a death occurs. *See Travelers Ins. Co. v. Marshall,* 634 F.2d 843, 12 BRBS 922 (5th Cir. 1981); *Close v. International Terminal Operations,* 26 BRBS 21 (1992). Furthermore, adverse rulings alone are insufficient to demonstrate bias. *Raimer v. Willamette Iron & Steel Co.,* 21 BRBS 98 (1988). Moreover, the Act does not require an administrative law judge to act as a *pro se* claimant's legal advisor. *See Olsen v. Triple A Machine Shops, Inc.*, 25 BRBS 40 (1991), *aff'd sub nom. Olsen v. Director, OWCP*, 996 F.2d 1226 (9th Cir. 1993). Accordingly, we affirm the administrative law judge's decision not to recuse himself and hold that the administrative law judge committed no error by failing to assist claimant in the presentation of her case.

Claimant next challenges the administrative law judge's finding that she did not establish that decedent's death was causally related to his 1984 work-injury. Section 9 of the Act provides for death benefits to certain survivors "if the injury causes death." 33 U.S.C. §909 (1994). Upon invocation of the Section 20(a) presumption linking the decedent's death to his employment, the burden shifts to employer to present specific and comprehensive evidence sufficient to sever the causal connection between the death and the employment, and, therefore, to rebut the presumption with substantial evidence that the death was not caused or aggravated by his employment. *See Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). The unequivocal testimony of a physician that no relationship exists between the decedent's death and his employment is sufficient to rebut the presumption. *See Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984). If the administrative law judge finds that the Section 20(a) presumption is rebutted, the administrative law judge must weigh all of the evidence contained in the record and resolve the causation issue based on the record as a whole. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990).

The administrative law judge initially determined that claimant was entitled to invocation of the Section 20(a) presumption. In invoking the presumption, however, the administrative law judge determined that claimant did not suffer from either acute stress or chronic stress arising out of his work injury. Specifically, the administrative law judge stated that there was no support for a finding of acute stress other than claimant's testimony, which the administrative law judge discredited both as self-serving and unreliable, or chronic stress, *i.e.*, Post-Traumatic Stress Disorder (PTSD) or depression, based upon the opinions of Drs. Maggio and Jackson and his determination that

decedent's alleged symptomology did not comport with the definition of PTSD in *The Merck Manual.*[3] As the administrative law judge's findings are within his purview as factfinder, are rational, and are supported by substantial evidence of record, they are affirmed. *See Thompson v. Northwest Enviro Service, Inc.*, 26 BRBS 53 (1992).

Next, the administrative law judge found that employer rebutted the presumption with specific and comprehensive evidence. In finding that employer presented substantial evidence sufficient to rebut the presumption, the administrative law judge credited the medical opinions of Drs. Wiggins, Thomas, Jackson, Rusch, Maggio, Mullin, and Baker, that decedent's death was unrelated to stress arising out of decedent's work injury to his shoulder. As these opinions constitute substantial evidence sufficient to rebut the presumption, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebutted.[4] *See generally Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

Next, after considering all of the medical evidence of record, the administrative law judge credited the aforementioned physicians, whose opinions he found to be well-reasoned, in concluding that claimant failed to establish a causal relationship between decedent's 1984 shoulder injury and his death. In this regard, Dr. Wiggins concluded that stress played no role in decedent's death. *See* RX-57. Dr. Thomas also opined that decedent's death was not related to his injury. *See* RX-58. Dr. Rusch opined that any acute stressor in decedent's case was related to the nature of the environment in which he was at the time of death. RX 60. Similarly, Drs. Jackson and Maggio each stated that they saw no connection between decedent's 1984 injury and his subsequent death. *See* RXS-59, 61.

It is well-established that an administrative law judge is entitled to weigh the medical

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[3]Claimant's contention that the administrative law judge erred in consulting *The Merck Manual* for a collaborating definition of PTSD is without merit. The administrative law judge did not rely solely upon this text, but rather referred to it in combination with the medical opinions of record. In this regard, we note that not only may an administrative law judge take official notice of facts, *see Jordan v. James G. Davis Const. Corp.*, 9 BRBS 528.9 (1978), *The Merck Manual* is a standard medical reference and as such is admissible under Rule 201 of the Federal Rules of Evidence, Fed.R.Evid. 201. *See generally Lindsey v. Bethlehem Steel Corp.*, 18 BRBS 20 (1986).

[4]Claimant's contention that the administrative law judge erred in his consideration of an intervening cause, *i.e.*, stress arising out of the litigation process, is without merit. The existence of an intervening cause is relevant to the issue of causation since an employer may be relieved of liability for a second injury if the second injury, in this case death, is the result of an intervening cause. *See James v. Pate Stevedoring Co.,* 22 BRBS 271 (1989). Thus, the administrative law judge committed no error in addressing the issue in his decision. *See Hall v. Newport News Shipbuilding & Dry Dock Co.*, 24 BRBS 1, 3 (1990); *Lewis v. Norfolk Shipbuilding & Dry Dock Corp.*, 20 BRBS 126, 129 (1987).

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). In the instant case, the administrative law judge's credibility determinations regarding the medical opinions are neither inherently incredible nor patently unreasonable. *See generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). We therefore affirm the administrative law judge's determination, based on consideration of the record as a whole, that decedent's death was not work-related.

Lastly, claimant alleges that the administrative law judge committed reversible error by admitting into evidence the opinions of the physicians of record as they are hearsay evidence and as such are inadmissible. We disagree. Section 23 of the Act, 33 U.S.C. §923, states that the administrative law judge is not governed by formal rules of evidence or procedure except as provided by the Act. Moreover, the Board has interpreted the relevant provisions of the Act's implementing regulations, 20 C.F.R. §§702.338, 702.339, as affording administrative law judges considerable discretion in ruling on requests for the admission of evidence into the record. *See Wayland v. Moore Dry Dock,* 21 BRBS 177 (1988). Hearsay evidence is generally admissible if considered reliable. *Richardson v. Perales*, 402 U.S. 389 (1971). Inasmuch as hearings before the administrative law judge follow relaxed standards of admissibility, the admissibility of evidence depends only on whether it is such evidence as a reasonable mind might accept as probative. *Young & Co. v. Shea*, 397 F.2d 185 (5th Cir. 1968). The Board has upheld the admission into evidence of *ex parte* medical reports, despite their hearsay nature, where the reports' authors are not biased and have no interest in the case, the opposing party has the opportunity to cross-examine or subpoena the witness, and the reports are not inconsistent on their face. *Darnell v. Bell Helicopter Int'l., Inc.*, 16 BRBS 98 (1984). In the instant case, claimant has failed to establish that the administrative law judge abused his discretion in admitting various medical reports into the record. Claimant herein was informed of the existence of these reports prior to the hearing and had full opportunity to either cross-examine the physicians or present countervailing evidence in support of her claim. Thus, claimant has demonstrated no harm to her position by their admission. Accordingly, claimant's contention of error is rejected.

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

SO ORDERED,

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge