BRB No. 97-1007

STEVEN K. SENTYZ	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
HOLT CARGO SYSTEMS	)	
	)	
and	)	
	)	
NATIONAL UNION FIRE INSURANCE COMPANY	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

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

John F. Fusco (Nazario Jimenez, Jr., P.C.), Philadelphia, Pennsylvania, for claimant.
Michael D. Schaff (Naulty, Scaricamazza & McDevitt, LTD), Philadelphia, Pennsylvania, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (96-LHC-1272) of Administrative Law Judge Ralph A. Romano 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 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 sustained a work-related injury on August 9, 1992, when a truck he was driving tipped over. After receiving physical therapy for neck and shoulder pain, claimant returned to work on October 19, 1992. Claimant subsequently developed radiating lower

back pain. Diagnostic testing in December 1993 revealed discogenic disease. Although claimant was occasionally able to return to work, employer voluntarily paid claimant temporary total disability compensation from December 29, 1993, to July 26, 1994; August 23, 1994, to October 17, 1994; and November 28, 1994, through January 20, 1996. 33 U.S.C. §908(b). Employer terminated these benefits based on the January 26, 1996, report of Dr. Didizian, who diagnosed claimant's lower back symptomatology as congenital spinal stenosis, which is unrelated to the August 9, 1992, work injury. On February 1, 1996, claimant underwent surgery from L2 to S1 for herniated discs and spinal stenosis. Thereafter, claimant returned to work on April 20, 1996. Claimant subsequently sought reimbursement of medical expenses for his back condition, 33 U.S.C. §907, total disability compensation from January 20 to April 19, 1996, and continuing partial disability from April 20, 1996, based on a loss of wage-earning capacity. 33 U.S.C. §908(c)(21).

In his Decision and Order, the administrative law judge, after initially finding that claimant was entitled to the Section 20(a), 33 U.S.C. §920(a), presumption of causation, found that employer produced substantial evidence to rebut the presumption. The administrative law judge next credited the opinion of Dr. Didizian, as supported by the opinions of Drs. Valentino and Collier, in concluding, based on the record as a whole, that claimant's back condition is caused by a congenitally degenerative pathology unrelated to his work accident.[1] Accordingly, the administrative law judge denied claimant benefits under the Act.

On appeal, claimant challenges the administrative law judge's denial of his claim for benefits. 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 and that an accident occurred which could have caused that harm. *See generally Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991). Upon invocation of the presumption, the burden shifted to employer to present specific and comprehensive evidence sufficient to sever the causal connection between the injury and the employment, and therefore, to rebut the presumption 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); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990). In the instant case, claimant does not challenge the administrative law judge's determination that the opinion of Dr. Didizian is sufficient to rebut the presumption. *See Phillips v. Newport News Shipbuilding & Dry Dock Co.,* 22 BRBS 94 (1988); *Kier v.*

[1]In his Decision and Order, the administrative law judge noted that claimant did not allege that the work injury aggravated or exacerbated a pre-existing back condition. Decision and Order at 7 n.2.

Bethlehem Steel Corp., 16 BRBS 128 (1984). Thus, as the presumption was rebutted by employer, the administrative law judge was required to weigh all of the evidence contained in the record and resolve the causation issue based on the record as a whole. *See Hughes v. Bethlehem Steel Corp.,* 17 BRBS 153 (1985).

The administrative law judge next found that claimant failed to establish causation based upon the record as a whole. After setting forth the medical evidence of record, the administrative law judge credited the deposition testimony of Dr. Didizian, as supported by the normal diagnostic examination results of record and the opinions of Drs. Valentino and Collier, as well as the diagnosis of Dr. Hersh, claimant's treating physician, in concluding that claimant's medical condition is unrelated to his work accident. Dr. Didizian unequivocally opined that claimant's back symptomatology is due to congenital spinal stenosis and is unrelated to claimant's employment. EX 19 at 40-42. Similarly, Drs. Valentino and Collier opined that claimant's degenerative back condition is unrelated to his work accident. *See* EXS 4, 5.

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. *See Calbeck v. Strachan Shipping* Co., 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963); *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 instant case, the administrative law judge rationally credited the opinion of Dr. Didizian, as supported by the opinions of Drs. Valentino and Collier, and his decision is thus supported by substantial evidence. We therefore affirm the administrative law judge's determination, based on the record as a whole, that claimant's back condition is not causally related to his work accident. *See, e.g., Rochester v. George Washington University*, 30 BRBS 233 (1997).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge