BRB No. 97-1242

EDDIE L. HUMPHREY	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
COLONNA'S SHIPYARD	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Treatment and Benefits for a Bilateral Foot Disorder of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

John H. Klein (Rutter & Montagna, L.L.P.), Norfolk, Virginia, for claimant.

F. Nash Bilisoly (Vandeventer, Black, Meredith & Martin, L.L.P.), Norfolk, Virginia, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Treatment and Benefits for a Bilateral Foot Disorder (96-LHC-646) of Richard K. Malamphy 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 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 back injury while in the course of his employment with employer on February 9, 1990, for which employer voluntarily paid temporary total disability benefits. *See* 33 U.S.C. §908(b). As a result of claimant's work-related back injury, he underwent a spinal fusion on September 11, 1991. Claimant subsequently developed a bilateral foot problem and sought medical benefits under Section 7(a) of the Act, 33 U.S.C. §907(a), for treatment of this condition, alleging that his bilateral foot problem was causally related to his February 9, 1990 work injury.

In his Decision and Order, the administrative law judge, after initially finding that claimant

was entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption of causation, found that employer produced substantial evidence to rebut the presumption. Next, after considering the totality of the evidence, the administrative law judge concluded that claimant's bilateral foot condition was not causally related to his February 9, 1990 work injury. Accordingly, the administrative law judge denied the claim for medical benefits for the treatment of claimant's bilateral foot impairment.

On appeal, claimant challenges the administrative law judge's denial of his request for medical benefits. Employer responds, urging affirmance.

An award of medical benefits is contingent upon a finding of a causal relationship between the injury for which medical benefits are being sought and the employment. *See Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989); *Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988). Thus, the Section 20(a) presumption applies to the issue of whether the injury for which medical benefits are sought arose out of and in the course of employment. 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 shifts 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). The unequivocal testimony of a physician that no relationship exists between an injury and a claimant's 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 Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153 (1985).

In finding that employer rebutted the presumption, the administrative law judge credited the medical opinion of Dr. Holden, who unequivocally opined that there is no relationship between claimant's work-related back injury and his bilateral foot condition. Emp. Ex. 2. We note that Dr. Holden, an orthopedic surgeon, had previously treated claimant's back injury and examined claimant on two occasions for the purpose of evaluating the cause of his foot condition. Thus, Dr. Holden had a sufficient foundation to render a reasoned opinion, and the administrative law judge could reasonably find his opinion to be probative. *See generally Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). As Dr. Holden's opinion severs the causal link between claimant's February 9, 1990 work injury and his bilateral foot problem, we affirm the administrative law judge's

finding that the Section 20(a) presumption is rebutted. *See generally Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).[1]

The administrative law judge next found that claimant failed to establish causation based on the record as a whole. In weighing the evidence as a whole, the administrative law judge initially accorded greater weight to the opinions of the orthopedic surgeons, Drs. Holden, Graham and Byrd, than to the opinion of claimant's internist, Dr. Amabile, on the basis that the orthopedic surgeons are better qualified to render an opinion regarding the relationship between claimant's back injury and his current foot condition. Specifically, the administrative law judge credited Dr. Holden's unequivocal opinion, which he found was supported by Dr. Graham's opinion, that claimant's bilateral foot condition is unrelated to his back injury. Decision and Order at 9-10. The administrative law judge further determined that, although Dr. Graham's initial impression was that claimant's foot condition probably developed as a result of the period of inactivity following his back surgery, his present opinion is that claimant's foot problem cannot be related to his back injury. The administrative law judge found that Dr. Byrd, who ultimately deferred to Dr. Graham's opinion as to the existence of a causal relationship between claimant's back injury and his foot condition, declined to render an independent opinion regarding causation.

It is well-established that, in adjudicating a claim, 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.*, 300 F.2d at 741; *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). In the instant case, the administrative law judge rationally gave greater weight to the opinions of the orthopedic surgeons and his decision is thus supported by substantial evidence.[2] We therefore affirm the administrative law judge's

[1]We need not address claimant's contention that Dr. Graham's opinion is too equivocal to rebut the Section 20(a) presumption in light of our holding that Dr. Holden's unequivocal opinion alone constitutes substantial evidence to establish rebuttal. *See Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

[2]Contrary to claimant's contention, the administrative law judge was not precluded from giving greater weight to Dr. Holden's opinion simply because Dr. Holden neither treated claimant for his foot problems nor specialized within his orthopedic surgery practice in the treatment of foot

determination, based on the record as a whole, that claimant's bilateral foot condition is not causally related to his February 9, 1990 work injury. *See Phillips*, 22 BRBS at 94. In light of our affirmance of the administrative law judge's finding that no causal relationship exists between claimant's employment and his foot condition, we affirm his finding that employer is not liable for medical benefits related to the treatment of claimant's foot condition.

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

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disorders. *See, e.g., Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94, 96 n.1 (1988).