

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 23-0131

ELIZABETH GENTILE)	
(Widow of JOHN GENTILE))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 04/11/2024
)	
ELECTRIC BOAT CORPORATION)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Timothy J. McGrath, Administrative Law Judge, United States Department of Labor.

Dana Simoni and Daniel P. Percy (Embry, Neusner, Arscott & Shafner, LLC), Groton, Connecticut, for Claimant.

Edward W. Murphy (Morrison Mahoney LLP), Boston, Massachusetts, for Self-Insured Employer.

Before: BOGGS, BUZZARD, and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Timothy J. McGrath’s Decision and Order Denying Benefits (2021-LHC-00426) rendered on a claim filed pursuant to the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. §§901-950 (Act). We must affirm the ALJ’s findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Decedent injured his back on March 8, 1975, during the course of his employment for Employer as a lead bonder.¹ He subsequently returned to work but further injured his back on April 7, 1976. Joint Exhibit (JX) at 1. He underwent surgery on April 8, 1976, and did not return to work for Employer. JX at 1. On April 25, 1979, ALJ Leonard N. Lawrence awarded Decedent permanent total disability benefits commencing March 8, 1977. 33 U.S.C. §908(a); CX 4 at 5-6. Subsequently, Decedent developed multiple comorbidities, including coronary artery disease, diabetes mellitus, morbid obesity, hyperlipidemia, obstructive lung disease, and benign prostatic hyperplasia. *See* CX 5 at 1. He died on January 21, 2019; his death certificate lists the immediate causes of death as congestive heart failure, hypertension, and diabetes mellitus, with morbid obesity and tobacco use as significant contributing causes. CX 1. Claimant, his widow, filed a claim for death benefits under 33 U.S.C. §909, asserting her husband's 1975 work-related back injury caused, contributed to, or hastened his comorbidities, which caused his death.

The ALJ held a hearing on August 11, 2021, and issued his Decision and Order Denying Benefits (D&O) on December 27, 2022. In his decision, the ALJ found Claimant invoked the Section 20(a) presumption of death causation, 33 U.S.C. §920(a), based on evidence from Drs. Robert E. Fox and Steven D. Weisbord that Decedent's work-related back injury contributed to his comorbidities, which in turn caused or hastened his death. D&O at 13. The ALJ then found the opinions of Drs. William Bradbury, Thomas F. Morgan, and Milo Pulde, that Decedent's work-related back injury did not cause, contribute to, hasten, or aggravate his death, are sufficient to rebut the Section 20(a) presumption. *Id.* at 14. Weighing the evidence as a whole, the ALJ concluded Employer's medical experts and contemporaneous medical reports are more credible than Claimant's evidence and established Decedent's death was due to his diet and medical noncompliance, not his back injury or sedentary lifestyle. *Id.* at 17-19. Consequently, he denied Claimant's claim for death benefits. *Id.* at 21.

On appeal, Claimant challenges the denial of death benefits, alleging the ALJ erred by not properly considering evidence showing Decedent's work-related back injury was the cause of his comorbidities and his death. Employer responds, urging affirmance.

Claimant argues the ALJ's denial of death benefits is not supported by substantial evidence. She asserts the ALJ erred by failing to properly consider evidence, injecting fault into his considerations, and concluding Decedent's voluntary behaviors severed the

¹ This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the injury occurred in Connecticut. 33 U.S.C. 921(c); *see Roberts v. Custom Ship Interiors*, 35 BRBS 65, 67 n.2 (2001), *aff'd*, 300 F.3d 510 (4th Cir. 2002), *cert. denied*, 537 U.S. 1188 (2003); 20 C.F.R. 702.201(a).

causal chain between his work-related back injury and the comorbidities that led to his death.

Under Section 9 of the Act, eligible survivors and dependents are entitled to death benefits where a work-related injury causes the decedent's death. 33 U.S.C. §909. Section 20(a) presumes, in the absence of substantial evidence to the contrary, that the claim for death benefits comes within the provisions of the Act, *i.e.*, that the death was work-related. *Sprague v. Director, OWCP*, 688 F.2d 862 (1st Cir. 1982); *see also Rainey v. Director, OWCP*, 517 F.3d 632, 634 (2d Cir. 2008). Thus, in order to invoke the Section 20(a) presumption in a claim for death benefits, the claimant must present some evidence or allegation that the decedent suffered a harm (death) and a work-related accident or working conditions existed which could have caused that harm. *Rose v. Vectrus Systems Corporation*, 56 BRBS 27 (2022) (en banc), *appeal dismissed* (MDFL Aug. 24, 2023); *see also American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 64-65 (2d Cir. 2001); *Fineman v. Newport News Shipbuilding & Dry Dock Co.*, 27 BRBS 104 (1993).

Where a claimant establishes a *prima facie* case, as here with Decedent's work-related back injury and Claimant's evidence tying the back injury to Decedent's comorbidities, Section 20(a) applies to connect his death to his employment. The employer can rebut the presumption by producing substantial evidence that the decedent's death was not caused, contributed to, or hastened by his employment. *Rainey*, 517 F.3d at 634. If the employer rebuts the presumption, as here, it no longer controls and the issue of causation must be resolved based on the evidence of the record as a whole, with the claimant bearing the ultimate burden of persuasion. *Marinelli*, 248 F.3d at 65.

Claimant contends the ALJ improperly considered Decedent's 2009 Exercise Tolerance Test (ETT) and disregarded evidence from the medical experts showing Decedent's work-related back injury severely limited his ability to exercise which was a contributing factor to his obesity and death. Cl. Brief at 8-9. She asserts the record shows Decedent was unable to engage in any meaningful exercise necessary to overcome his sedentary lifestyle and avoid his obesity and other comorbidities. *Id.* at 8, 11-12. Claimant further asserts the ALJ wrongly inserted fault into his consideration of the evidence by finding Decedent could have lost weight through diet and medicine rather than focusing on the contribution of his work-related back injury and associated chronic pain to his obesity, hypertension, coronary artery disease, and diabetes mellitus. *Id.* at 8-10. Finally, Claimant argues the ALJ erroneously used Decedent's eating habits and other behaviors as an intervening cause to break the causal link between his work-related injury and his death. *Id.* at 12-13. We disagree.

As the factfinder, the ALJ is entitled to assess the credibility of all witnesses and reach his own inferences and conclusions from the evidence. *John W. McGrath Corp. v.*

Hughes, 289 F.2d 403, 405 (2d Cir. 1961). The Board is not permitted to reweigh the evidence but must affirm the ALJ's factual findings if they are rational, supported by substantial evidence, and in accordance with the law. *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1040 (2d Cir. 1997).

Claimant's arguments amount to a request that the Board reweigh the evidence, which we may not do. Rather, the ALJ permissibly found Drs. Fox's and Weisbord's opinions attributing Decedent's death to his work injury unpersuasive and therefore do not meet Claimant's burden of persuasion.

The ALJ gave Dr. Fox's statement minimal weight because the physician's treatment history with Decedent and medical records warranted a more thorough analysis than the one paragraph letter with indistinct causal language Dr. Fox provided. D&O at 14. Dr. Fox's letter supports the ALJ's conclusions, as it states nothing more than "it is entirely feasible that the hypothesis that Mr. Gentile, due to problems of immobility related to a back injury in 1975, contributed to his multiple comorbidities." *See* CX 7 at 1. The ALJ rationally found this language speculative as it did not draw a clear conclusion, particularly when Dr. Fox later stated in the same paragraph that certain factors "[morbid obesity, diabetes mellitus, hypertension, and heart disease] definitely contributed to his death." *Id.* Further, as the ALJ found, Dr. Fox signed Decedent's death certificate, which does not mention Claimant's work-related back injury but exclusively lists his causes of death as congestive heart failure, hypertension, and diabetes mellitus, with morbid obesity and tobacco use as contributing causes. CX 1.

The ALJ also permissibly determined Dr. Weisbord's opinion overstated Decedent's inability to exercise. The physician's medical opinion letter concluded Decedent's work-related injury resulted in chronic debilitating back pain that lasted until his death and the resulting limitation in physical functioning caused by the injury was a contributing factor to his early onset comorbidities. CX 5 at 1-2. However, as the ALJ found, the record indicates Dr. Fox, Decedent's primary care physician, assigned Decedent to complete 30 to 60 minutes of aerobic exercise per day, five to seven days per week and isometric exercise regardless of his bending, stooping, lifting, and sitting restrictions. TR at 20; CX 7 at 17; EX 2.

The ALJ also rationally discounted the contrary opinions of Drs. Bradbury, Morgan, and Pulde for understating or not adequately considering Decedent's exercise limitations from the pain he experienced due to his work injury. Dr. Bradbury's medical opinion, as the ALJ found, completely dismissed any correlation between Decedent's back injury and his comorbidities. EX 7 at 3. However, during his deposition, Dr. Bradbury indicated there may be a correlation between exercise and reducing the risk of comorbidities but did not, the ALJ found, adequately address Decedent's chronic pain as possible impediment to

exercise. EX 13 at 37-40. Similarly, the ALJ permissibly found Drs. Morgan and Pulde overly-discounted Decedent's chronic pain in their analyses. *See* EXs 9 at 6, 11 at 28-29.

Thus, the ALJ weighed the relevant evidence, along with Decedent's performance on his ETT, to conclude that while he experienced chronic pain related to his March 1975 work-related back injury, the injury and pain did not prevent him from engaging in all forms of exercise and certainly not to the degree Claimant asserts, especially in light of Dr. Fox's recommendations.² D&O at 16. The ALJ's findings are rational and supported by substantial evidence. *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 27 (1st Cir. 2021), *cert. denied*, 142 S. Ct. 1110 (2022). We therefore affirm them.

Next, we reject Claimant's assertion that the ALJ injected fault into his weighing of the evidence. To the contrary, he addressed the dietary and medical noncompliance evidence in considering whether Claimant's work-related back injury caused his death.³ The ALJ rationally assigned weight to Dr. Fox's medical records indicating Decedent repeatedly deviated from his dietary restrictions and exceeded his daily caloric intake recommendations, leading to his morbid obesity. D&O at 17; *see, e.g.*, CX 7 at 12-13, 15; EXs 2 at 16, 3 at 2, 8-9. Also, his decision to apply less weight to Claimant's deposition and Claimant's daughter's hearing testimony regarding Decedent's "normal" diet, while giving greater weight to Decedent's contemporaneous admissions to different doctors about overeating, is rational and supported by the evidence.⁴ *Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98, 101 (1997); *aff'd* 169 F.3d 615 (9th Cir. 1999).

The ALJ also relied on Decedent's refusal to participate in physical therapy, receive regular and consistent health screenings, and adhere to his Lasix medicine regimen – a medicine designed to reduce the risk of heart failure – not to inject fault, but to weigh the evidence of record and conclude Decedent's death was not causally related to his work-

² Contrary to Claimant's contentions, the ALJ noted the ETT did not conclude Decedent could walk every day without pain; rather, he relied on the ETT in conjunction with other medical evidence to determine Decedent had some residual mobility and ability to exercise. D&O at 15, EX 17 at 3.

³ The Act is a no-fault statute, entitling claimants to benefits for work-related injuries independent of fault. *See O'Hara v. Weeks Marine, Inc.*, 259 F.3d 55, 62 (2nd Cir. 2002); *see also* 33 U.S.C. §905(a).

⁴ For example, Dr. Bourganos's medical records indicate Decedent stated on multiple occasions he was not adhering to his recommended diet. EX 3 at 2, 8-9, 16-17. Dr. Fox's medical records contain similar notations. CX 7 at 13, 38.

related back injury and corresponding chronic pain.⁵ See CX 7 at 1, 8, 10, 13-14, 16, 22, 31, 33, 38; EXs 2 at 1, 3, 6-8, 3 at 2, 9, 11, 15-17. Thus, as the ALJ's weighing of the evidence is rational and as his conclusion that Claimant did not establish Decedent's back injuries caused or contributed to his death is supported by substantial evidence, we affirm his finding that Claimant is not entitled to death benefits under the Act. See *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171, 174 (2001); see also *Pietrunti*, 119 F.3d at 1042.

Accordingly, we affirm the ALJ's Decision and Order Denying Benefits.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

⁵ We also do not construe the ALJ to have engaged in an intervening cause analysis, but rather, to have considered the relevant evidence on what the physicians of record opined was Decedent's cause of death, and ultimately found, permissibly so, that Claimant did not carry her burden of persuasion.