

U.S. Department of Labor

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



BRB No. 20-0471

RICHARD L. HOWARD	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: 03/12/2021
ELECTRIC BOAT CORPORATION	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits and Order Denying Claimant’s Motion for Reconsideration of Noran J. Camp, Administrative Law Judge, United States Department of Labor.

David M. Sherry (Embry Neusner Arscott & Shafner, LLC), Groton, Connecticut, for Claimant.

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

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and GRESH, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge Noran J. Camp’s Decision and Order Awarding Benefits and Order Denying Claimant’s Motion for Reconsideration (2019-LHC-00734) rendered on a claim filed pursuant to the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (Act). We must affirm the administrative law judge’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).

Claimant worked for Employer from 1973 to 1976 as a sheet metal worker and from 1976 to 1996 as an inspector at its Groton, Connecticut facility. Decision and Order at 7; *see* Tr. at 50-51, 59. His job duties regularly exposed him to dust and fumes. Decision and Order at 7, 9, 13; *see* Tr. at 54-55, 61-62, 64-69. After Claimant's employment with Employer ended, he worked as a nuclear inspector for other employers until May 2014, and he started receiving Social Security benefits in October 2014.<sup>1</sup> Tr. at 79. Claimant filed a claim under the Act on February 21, 2018 for a pulmonary injury allegedly related to exposure to dust and fumes with Employer. EX 1. He sought compensation for permanent total disability; alternatively, he sought compensation as a voluntary retiree for a 55 percent pulmonary impairment. Cl. Post-Hearing Br. at 26; *see* 33 U.S.C. §908(a), (c)(23). Claimant's treating physician, Dr. Robert Keltner, diagnosed chronic obstructive pulmonary disease (COPD) on May 23, 2018. CX 2 at 5-6.

In his decision, the administrative law judge determined Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), that his COPD is related, in part, to his working conditions for Employer. Decision and Order at 7-8. He found Employer rebutted the presumption based on Dr. Milo Pulde's opinion that Claimant's work environment did not contribute to his tobacco-related emphysema. *Id.* at 11-12; *see* EX 11 at 21, 59. Giving greatest weight to Dr. Pulde's opinion, the administrative law judge concluded Claimant failed to establish his pulmonary injury was caused or aggravated by his working conditions with Employer. Decision and Order at 20. On reconsideration, the administrative law judge rejected Claimant's contention that he erred in relying on Dr. Pulde's opinion rather than Dr. Keltner's. Order on Reconsideration at 2. Accordingly, the administrative law judge denied the claim.

On appeal, Claimant challenges the administrative law judge's finding that he did not establish his occupational exposure with Employer to dust and fumes contributed to his pulmonary condition. Employer responds in support of the denial.

Once the Section 20(a) presumption is invoked and rebutted, the issue of causation must be resolved on the evidence of record as a whole, with the claimant bearing the burden of persuasion. *Rainey v. Director, OWCP*, 517 F.3d 632, 42 BRBS 11(CRT) (2d Cir. 2008); *American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001); *Myshka v. Electric Boat Corp.*, 48 BRBS 79 (2015); *Santoro v. Maher Terminal*,

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<sup>1</sup> Thereafter, Claimant worked 30 days for another employer in New York on a ground-based assignment. Tr. at 79. He later accepted a temporary position in Minnesota; he quit upon arrival at the job site when he learned it involved climbing 80 feet, which he believed he could not physically perform. *Id.* at 77-78; *see* CX 7 at 1.

*Inc.*, 30 BRBS 171 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

The administrative law judge thoroughly discussed the relevant evidence. Decision and Order at 12-20. He found it undisputed that Claimant's smoking history is, at least, one cause of his pulmonary disability. *Id.* at 12-13 (noting Claimant's testimony that he has a smoking history of 12.5 pack years). He also found Claimant's testimony undisputed that he "regularly breathed in various industrial materials at work." *Id.* at 13. In addition, the administrative law judge summarized the pertinent medical opinions. *Id.* at 14-15. Dr. Keltner opined Claimant's industrial exposure was a substantial contributing factor to his lung injury. CX 6 at 28. Dr. Michael Conway reviewed Claimant's records and stated Claimant's "smoking history is relatively modest suggesting but at this point not proving other causes for his lung disease must be considered." EX 3 at 3. The administrative law judge determined Dr. Michael Teiger's opinion that Claimant's lung disease is solely due to smoking is unreliable because he errantly based his opinion on the lack of documented industrial exposure and inaccurately stated Claimant quit smoking in 2003 rather than in 2000. Decision and Order at 14-15; Tr. at 73, EX 5 at 11.

The administrative law judge addressed Dr. Pulde's report and deposition testimony in great detail. Decision and Order at 15-19. He found Dr. Pulde incorrectly asserted Claimant had a smoking history of over 20 years, but concluded his overestimation was inconsequential because Dr. Pulde "made plain that his conclusions applied even for much lower figures." *Id.*; EXs 11 at 1, 21, 22, 13 at 12. He further determined Dr. Pulde's summation of Claimant's occupational exposure "is consistent with Claimant's credible testimony." Decision and Order at 15; EXs 11 at 22; 13 at 8-9. Overall, he found Dr. Pulde's opinion "persuasive" that Claimant has only tobacco-related emphysema, based on the absence of evidence of occupational-related COPD and lack of studies demonstrating Claimant's occupational exposures can result in emphysema. Decision and Order at 16-17; EXs 11 at 1, 23, 13 at 21, 27-28. The administrative law judge cited Dr. Pulde's "fulsome" explanations in detail for his conclusion that Claimant's pulmonary condition was caused by smoking and secondary non-work-related causes,<sup>2</sup> and was neither caused nor aggravated by occupational exposure to dust and fumes at Employer's facility. Decision and Order at 17-19.

The administrative law judge determined Dr. Pulde's opinion is more persuasive than Dr. Keltner's because his opinion is fully explained whereas Dr. Keltner's testimony

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<sup>2</sup> Dr. Pulde also attributed Claimant's pulmonary condition to abnormalities with his inflammatory response, microbial infections, defective connected tissue or elastin, obesity, and possible unidentified obstructive sleep apnea syndrome. EX 13 at 30-31.

“tends to show only that such [a pulmonary] injury could occur, given these [work] exposures.” Decision and Order at 20. He determined “Claimant’s evidence does nothing to refute or even call into question, Dr. Pulde’s evidence;” therefore, “I fully credit Dr. Pulde’s report and testimony.” Decision and Order at 20. Accordingly, the administrative law judge concluded Claimant did not establish his pulmonary injury was caused or aggravated by his occupational exposure. *Id.*

Claimant challenges the administrative law judge’s reliance on Dr. Pulde’s assessment that there is no evidence supporting the claim because Claimant asserts he established work exposures to ozone and nitrogen oxide, and submitted a journal article/study showing that exposure to these gases aggravates emphysema.<sup>3</sup> The administrative law judge quoted from Dr. Pulde’s report detailing the rationale for his causation opinion:

Although [Claimant] experienced intermittent unprotected low-level direct asbestos exposure from 1973 to 03/01/76 when he reportedly worked with gaskets composed of asbestos and intermittent protected and unprotected bystander or secondary indirect exposure to VGFD [vapors, gases, fumes, and particulates/dusts] generated by welders, grinders, and ladders, there is no clinical, physiological, or radiographic evidence of any type of occupational pulmonary disease. Based on [Claimant’s] 1973 to 05/30/96 occupational history, the absence of a pattern of ... work related symptoms, temporal onset of symptomatic pulmonary disease subsequent to a community acquired pneumonia 05/21/10<sup>4</sup> (and 01/23/18), responsiveness of his pulmonary symptoms to tobacco cessation, and diagnosis, treatment, and evaluation of pulmonary symptoms > 12 years subsequent to his last Electric Boat workplace exposures 05/30/96, it is biologically implausible that his 1973 to 05/30/96 occupational exposure caused or contributed to his tobacco-related chronic obstructive pulmonary disease or any type of occupationally related pulmonary disorder.

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<sup>3</sup> Claimant submitted an article published in the Journal of the American Medical Association titled “Association Between Long-Term Exposure to Ambient Air Pollution and Change in Qualitatively Assessed Emphysema and Lung Function.” CX 6 at ex. 6.

<sup>4</sup> The first evidence of respiratory symptoms is documented from Claimant’s contracting pneumonia in May 2010. EX 11 at 6 (Dr. Pulde’s summary of the medical records of Dr. Michael Chianuri).

Decision and Order at 17 (quoting EX 11 at 23).

It is well established that the administrative law judge is entitled to weigh the evidence and draw his own inferences and conclusions from it. *See John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *see also Bath Iron Works Corp. v. Director, OWCP [Hutchins]*, 244 F.3d 222, 35 BRBS 35(CRT) (1st Cir. 2001); *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963)). It is impermissible for the Board to reweigh the evidence or substitute its views for those of the administrative law judge.<sup>5</sup> *Volpe v. Northeast Marine Terminals*, 671 F.2d 697, 14 BRBS 538 (2d Cir. 1982); *see also Sprague v. Director, OWCP*, 688 F.2d 862, 15 BRBS 11(CRT) (1st Cir. 1982).

The administrative law judge's conclusion that Claimant failed to meet his burden of persuasion of establishing he has a work-related respiratory condition is supported by substantial evidence in the record; specifically, the detailed opinion of Dr. Pulde that Claimant's work exposure to environmental irritants did not cause or aggravate his pulmonary condition. *See Rainey*, 517 F.3d 632, 634, 42 BRBS 11, 12(CRT) ("Pursuant to the 'substantial evidence' standard, if the decision of the administrative law judge is supported by substantial evidence, is not irrational, and is in accordance with the law, the decision must be affirmed.") (internal quotes omitted). We therefore affirm the administrative law judge's determination based on the evidence as a whole that Claimant did not establish a causal relationship between his pulmonary condition and his employment. *See Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000).

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<sup>5</sup> Claimant primarily argues that Dr. Pulde's acknowledgment of the harmful effects of ozone and nitrogen oxide supports rather than undermines Dr. Keltner's attribution of Claimant's lung disease to his work exposures. Claimant's Brief at 6-11. Contrary to Claimant's argument, Dr. Pulde testified he was aware of Claimant's exposures to these substances, factored them into his opinion, and nevertheless maintained, for several reasons, that it was "biologically implausible" for Claimant's exposures ending in 1996 to have caused or contributed to the onset of his symptoms more than twelve years later. Employer's Exhibit 13 at 8-9, 35-37.

Accordingly, we affirm the administrative law judge's Decision and Order Denying Benefits and Order Denying Claimant's Motion for Reconsideration.

SO ORDERED.

JUDITH S. BOGGS, Chief  
Administrative Appeals Judge

GREG J. BUZZARD  
Administrative Appeals Judge

DANIEL T. GRESH  
Administrative Appeals Judge