

DARRYL M. WILLIAMS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
NEWPORT NEWS SHIPBUILDING)	DATE ISSUED: <u>April 24, 2001</u>
AND DRY DOCK COMPANY)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Montagna, Klein & Camden, L.L.P.), Norfolk, Virginia, for claimant.

Jonathan H. Walker (Mason, Cowardin & Mason, P.C.), Newport News, Virginia, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order on Remand (97-LHC-1208) of Administrative Law Judge 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 administrative law judge's findings of fact and conclusions of law which 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).

This case is on appeal to the Board for the second time. Claimant, a welder, injured his back at work on April 12, 1993. Claimant sought disability benefits from the date of his layoff with employer on December 7, 1996, until his recall on September 29, 1997. Employer voluntarily paid claimant temporary total disability benefits for various periods of time. The administrative law judge initially found that employer did not establish rebuttal of the Section 20(a), 33 U.S.C. §920(a), presumption that claimant's back condition is work-

related. Thus, the administrative law judge awarded claimant permanent total disability benefits from December 7, 1996, through March 16, 1997, and permanent partial disability benefits from March 17, 1997, through September 28, 1997, the period during which he worked at alternate employment for a different employer. The administrative law judge denied employer's motion for reconsideration which, in relevant part, challenged the administrative law judge's weighing of the evidence at rebuttal. Employer appealed the administrative law judge's decision to the Board.

In *Williams v. Newport News Shipbuilding & Dry Dock Co.*, BRB No. 98-1408 (July 27, 1999)(unpublished), the Board vacated the administrative law judge's finding that employer did not establish rebuttal of the Section 20(a) presumption, and remanded the case to the administrative law judge to reconsider this finding. The Board held that the administrative law judge had mischaracterized Dr. Persons' opinion and had not discussed and weighed Dr. Kyles' opinions with the opinions of Drs. Persons and Neal. The Board stated that Dr. Neal's opinion is sufficient to establish rebuttal of the Section 20(a) presumption unless it is discredited by the administrative law judge for valid reasons.¹

In his decision on remand, the administrative law judge found that employer established rebuttal of the Section 20(a) presumption. The administrative law judge also found, after discussing and weighing the opinions of Drs. Neal, Kyles, and Persons, that claimant did not establish with certainty that his current back disability is related to his April 1993 work injury. Therefore, the administrative law judge denied benefits.

In the present appeal, claimant contends that the administrative law judge erred in finding that the opinions of Drs. Neal, Kyles, and Persons are sufficient to establish rebuttal, and that claimant's back condition is not work-related upon a weighing of this evidence. Employer responds in support of the administrative law judge's denial of benefits on remand.

Section 20(a) provides claimant with a presumption that the injury he sustained is causally related to his employment if he establishes a *prima facie* case by showing that he suffered a harm and that employment conditions existed or a work accident occurred which

¹The Board affirmed the administrative law judge's determination that claimant is entitled to total disability benefits from December 6, 1996, through March 16, 1997, if a causal nexus between claimant's work injury and his disability is established on remand.

could have caused the harm. *See Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT)(4th Cir. 1997). Once claimant has invoked the presumption, as here, the burden shifts to employer to rebut it with substantial countervailing evidence. *Id.* An unequivocal opinion, given to a reasonable degree of medical certainty, that the employee's injury is not work-related is sufficient to rebut the Section 20(a) presumption. *See O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000). If the administrative law judge finds that the Section 20(a) presumption is rebutted, then all relevant evidence must be weighed to determine if a causal relationship has been established with claimant bearing the burden of persuasion. *See Moore*, 126 F.3d 256, 31 BRBS 119(CRT); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT)(1994).

The administrative law judge found that employer established rebuttal of the Section 20(a) presumption, and that claimant did not establish that his current back disability is related to his April 1993 work injury, based upon the opinions of Drs. Neal, Kyles, and Persons. Dr. Neal affirmatively stated that claimant's ongoing symptoms are unrelated to the 1993 work injury, that claimant does not have any permanent residual effects from this work injury, and that claimant's underlying degenerative disc disease was not aggravated by this injury. Emp. Ex. 7. Dr. Kyles testified in his deposition that the physical restrictions imposed upon claimant in 1997 were the result of his 1993 work-related back injury. Cl. Ex. 7 at 27. In a written opinion, however, Dr. Kyles found that claimant has degenerative disc disease which was not caused by his work-related back injuries, and that he would not place any limitations upon claimant due to the 1993 work injury. Emp. Ex. 13 at 7. Dr. Persons stated that claimant's symptoms were contemporaneous with the 1993 work injury. Emp. Ex. 8. Dr. Persons, however, also opined that he could not state with any reasonable degree of medical probability that claimant's condition in 1996 was related to his 1993 work injury. *Id.*

After consideration of claimant's arguments on appeal, employer's response, and the administrative law judge's decision in light of the record evidence, we affirm the administrative law judge's denial of disability benefits on remand. The administrative law judge's finding that employer established rebuttal of the Section 20(a) presumption is supported by Dr. Neal's opinion that claimant's condition is unrelated to the work injury in 1993 and that claimant's underlying degenerative disc disease was not aggravated by the work injury. Thus, we affirm this finding, as it is supported by substantial evidence.² *See Moore*, 126 F.3d 256, 31 BRBS 119(CRT); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000); *O'Kelley*, 34 BRBS 39; Decision and Order at 4; Emp. Ex. 7. Moreover, the administrative law judge found that claimant did not establish the work-relatedness of his

²Any error in the administrative law judge's reliance on the opinions of Drs. Kyles and Person as support for the finding that the Section 20(a) presumption is rebutted therefore is harmless.

back injury based upon his weighing of the opinions of Drs. Neal, Kyles, and Persons, as none stated with certainty that the requisite causal relationship exists between claimant's condition and the work incident. *See Moore*, 126 F.3d 256, 31 BRBS 119(CRT); *see also Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT); Decision and Order at 7; Emp. Exs. 7, 8, 13 at 7; Cl. Ex. 7 at 27. As this finding is rational and supported by substantial evidence, we affirm the administrative law judge's denial of benefits.

Accordingly, the administrative law judge's Decision and Order on Remand denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge