BRB No. 02-0500

EDWARD C. CAMPBELL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LAKE CHARLES STEVEDORES, INCORPORATED	)	DATED ISSUED: APR 7, 2003
	)	
	)	
and	)	
	)	
P & O PORTS TEXAS, INCORPORATED	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order and the Order Denying Claimant's Request for Reconsideration of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

Aubrey E. Denton and Aaron W. Guidry (Porter, Denton & Guidry, L.L.C.), Lafayette, Louisiana, for claimant.

Steven L. Roberts and Harry L. Scarborough (Fulbright & Jaworski L.L.P.), Houston, Texas, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order and the Order Denying Claimant's Request for Reconsideration (2001-LHCA-1732) of Administrative Law Judge Lee J. Romero, Jr., 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 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).

Claimant, while working for employer on December 5, 2000, experienced low back pain while unloading 110 pound bags of rice from the hold of a vessel. Although he continued to experience back discomfort, claimant completed his shift and went home. The following day, December 6, 2000, claimant did not report to work as a result of his continuing back symptoms. On December 7, 2000, claimant was taken to the Lake Charles Memorial Hospital emergency room when he began to experience weakness and numbness in his legs. Claimant, who was subsequently diagnosed with epidural lipomatosis, thereafter lost the use of his extremities and, on December 8, 2000, he underwent a decompressive laminectomy at the C5 through C7 and T1 through T7 levels of his spine. On January 18, 2001, claimant was transferred to a rehabilitation unit at the hospital. Claimant is presently described as an incomplete quadriplegic and, although he has regained some feeling in his feet, his condition is considered to be permanent.

Although employer acknowledged that claimant sustained an injury to his back while working for employer on December 5, 2000, it disputed claimant's contention that the condition which has caused his paralysis and permanent total disability, specifically epidural lipomatosis, is related to his employment with employer. In his Decision and Order, the administrative law judge found that claimant established a *prima facie* case for invocation of the presumption at Section 20(a) of the Act, 33 U.S.C. §920(a). Specifically, the administrative law judge determined that claimant sustained an incident to his back on December 5, 2000, and arguably neck pain thereafter, and that working conditions existed on that day which could have caused this pain. The administrative law judge further found, however, that employer produced substantial evidence sufficient to rebut the presumption. In this regard, the administrative law judge relied upon the opinions of Drs. Barrash and Esses, both of whom opined that claimant's diagnosed condition of epidural lipomatosis cannot be caused, aggravated or accelerated by trauma. Thereafter, the administrative law judge addressed the record as a whole and, after crediting the opinions of Drs. Barrash, Esses and Freeman, concluded that claimant did not establish that his totally disabling condition, which was the result of his epidural lipomatosis, is related

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[1] Epidural lipomatosis is defined as an excessive fatty disposition and accumulation in the epidural space of the spinal canal. In this case, this accumulation of fat caused a restriction of the blood flow which essentially severed claimant's spine at the C7–T1 level and resulted in the loss of use of claimant's extremities. Claimant's surgeon testified that such fat usually can be aspirated with suction; however, claimant's December 8, 2000, surgery revealed hardened fat which had to be cut out. *See* Tr. at 145.

to his employment with employer. The administrative law judge thereafter denied claimant's request for reconsideration.

On appeal, claimant challenges the administrative law judge's denial of his claim for benefits under the Act. Employer responds, urging affirmance of the administrative law judge's decision in its entirety.

Where, as in the present case, claimant has established entitlement to invocation of the Section 20(a) presumption, *see Sinclair v. United Food & Commercial Workers,* 23 BRBS 148 (1989), the burden shifts to employer to rebut it with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); S*winton v. J. Frank Kelly, Inc.,* 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). The aggravation rule provides that where an injury at work aggravates, accelerates or combines with a prior condition, the entire resultant disability is compensable. *Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966); *Kubin v. Pro-Football, Inc.,* 29 BRBS 117 (1995). This rule applies not only where the underlying condition itself is affected but also where the injury "aggravates the symptoms of the process." *Pittman v. Jeffboat, Inc.,* 18 BRBS 212 (1986). If the administrative law judge finds that the Section 20(a) presumption is rebutted, he must weigh all of the evidence in the record and resolve the causation issue based on the record as a whole. *See Port Cooper,* 227 F.3d 285, 34 BRBS 96(CRT); *Gooden*, 135 F.3d 1066, 32 BRBS 59(CRT); *see also Director, OWCP v. Greenwich Collieries,* 512 U.S. 257, 28 BRBS 43(CRT) (1984).

If there has been a subsequent non work-related event, an employer can establish rebuttal of the Section 20(a) presumption by showing that the claimant's disabling condition is caused by the subsequent event, provided the employer also proves that the subsequent event was not caused by the claimant's work-injury. *See generally Shell Offshore, Inc. v. Director, OWCP*, 122 F.3d 312, 31 BRBS 129(CRT) (5th Cir. 1997); *see also Plappert v. Marine Corps Exchange,* 31 BRBS 109, *aff'g on recon. en banc* 31 BRBS 13 (1997); *James v. Pate Stevedoring Co.,* 22

[2] We reject claimant's contention that the administrative law judge erred in determining that claimant did not sustain a neck injury while working for employer. Contrary to claimant's contention, the administrative law judge specifically found that claimant was entitled to the Section 20(a) presumption linking both his back and neck symptoms to his employment with employer, but that after employer had rebutted that presumption, claimant failed to affirmatively establish that he sustained a work-related injury to his neck which precipitated his paralysis and total disability. *See* Decision and Order at 32-33, 40-41.

BRBS 271 (1989). Where the subsequent injury is not a natural or unavoidable result of the work injury, but is the result of an intervening cause, employer is relieved of liability for that portion of disability attributable to the intervening cause. *See Wright v. Connolly-Pacific Co.,* 25 BRBS 161 (1991), *aff'd mem. sub nom. Wright v. Director, OWCP,* 8 F.3d 34 (9th Cir. 1993); *see also Arnold v. Nabors Offshore Drilling, Inc.,* 35 BRBS 9 (2001), *aff'd*, 32 Fed. Appx. 126 (5th Cir. 2002)(table); *Bass v. Broadway Maintenance*, 28 BRBS 11 (1994); *Merrill v. Todd Pacific Shipyards Corp.,* 25 BRBS 140 (1991).

Claimant first contends that the administrative law judge erred in finding that the testimony of Drs. Barrash and Esses is sufficient to rebut the Section 20(a) presumption. We reject this contention and affirm the administrative law judge's finding that the opinions of these two physicians rebut the presumption. Dr. Barrash testified that there is no relationship between claimant's disabling epidural lipomatosis and his work-incident of December 5, 2000, since it is impossible for a lifting injury to cause, aggravate, or accelerate that condition. *See* Tr. at 237-238, 243-244, 255; Emp. Ex. 11. Similarly, Dr. Esses testified that trauma is in no way related to the formation of, or the development of symptoms from, lipomatosis, and that therefore it was his opinion that claimant's December 5, 2000, work-incident had nothing to do with his subsequent surgery and paraplegia which resulted from that condition. *See* Emp. Ex. 18 at 28-35, ex. 6. Inasmuch as these opinions constitute substantial evidence severing the connection between claimant's disabling condition and his employment with employer, we affirm the administrative law judge's finding that employer rebutted the Section 20(a) presumption. *See Wright,* 25 BRBS 161.

Claimant also challenges the administrative law judge's finding that he did not establish causation based on the record as a whole. Specifically, claimant assigns error to the administrative law judge's decision not to rely upon the testimony of Dr. Brown. In support of his contention of error, claimant asserts that, contrary to the administrative law judge's determination, Dr. Brown's opinion is documented and reasoned, while the credited testimony of Drs. Barrash and Esses fails to take into account claimant's complaints of neck pain. In addressing this issue, the administrative law judge, after considering at length all of the medical evidence of

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[3] Claimant argues that only one of Dr. Esses' 15 to 20 epidural lipomatosis patients suffered from paralysis as a result of that condition for the proposition that employer did not rebut the presumption since it is extremely unlikely from a statistical standpoint that claimant's epidural lipomatosis condition by itself progressed to the point of quadriplega. *See* Clt's brief at 18. Claimant's argument is misplaced. In the instant case, both Dr. Esses and Dr. Barrash unequivocally testified that claimant's epidural lipomatosis was unrelated to claimant's December 5, 2000, work-related trauma; thus, these physicians' opinions rebut the Section 20(a) presumption.

record, credited the opinions of Drs. Barrash, Esses and Freeman rather than the contrary opinions of Drs. Brown and Moore, finding the former opinions to be well-reasoned and consistent. Dr. Barrash, a Board-certified neurosurgeon, testified that he has treated and performed surgery on patients with epidural lipomatosis. *See* Tr. at 233-234. While acknowledging that a blow to the area of claimant's spine affected by his epidual lipomatosis, *i.e.*, the C7–T1 area, could perhaps affect that condition, Dr. Barrash specifically stated that no evidence existed that such an event occurred. Thus, as it is his opinion that it is impossible for a lifting injury to cause, aggravate or accelerate the condition of epidural lipomatosis, Dr. Barrash opined that no relationship existed between claimant's lifting incident of December 5, 2000, and the onset of his paralysis on December 7, 2000. *See id.* at 237-238, 243-244, 255; Emp. Ex. 11. Rather, Dr. Barrash testified that claimant's lipomatosis, or fat, reached a point where that fat compressed the flow of blood in claimant's spine so that there was not enough blood to support the activity of claimant's nerve cells which, in turn, caused his present paralysis. *See id*. at 241-242. Dr. Esses, a Board-certified orthopedic surgeon, testified that he has previously treated and performed surgery on patients with epidural lipomatosis and that he has been published regarding this condition. Dr. Esses opined that trauma is in no way related to the formation or development of lipomatosis, and that consequently claimant's December 5, 2000, lifting incident was unrelated to his subsequent paralegia and surgery. *See* Emp. Ex. 18 at 28-35, 56-57. In declining to rely upon the contrary opinion of Dr. Brown, who is Board-certified in physical medicine and rehabilitation as well as electrodiagnostic and pain medicine, the administrative law judge found that Dr. Brown acknowledged never having seen the condition of lipomatosis prior to treating claimant, *see* Emp. Ex. 19 at 68, and that

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[4] Claimant on appeal does not challenge the administrative law judge's decision to credit Dr. Freeman's opinion that there does not appear to be a causal link between the onset of claimant's symptoms related to his epidural lipomatosis and his employment. See Emp. Ex. 13. Moreover, although stating in his brief that Dr. Moore opined that a causal relationship existed between claimant's employment and his disabling condition, claimant on appeal does not specifically challenge the administrative law judge's reasoning for not relying upon that testimony. *See* Decision and Order at 36-38.

[5] Dr. Esses, who is additionally a professor of clinical orthopedic surgery and the chief of spine section at Baylor College of Medicine, also serves on the editorial board of the journal *Spine*.

[6] Contrary to claimant's contention on appeal, both Dr. Barrash and Dr. Esses considered claimant's complaints of pain radiating up his spine when they rendered their respective opinions. *See* Tr. at 256-257; Emp. Ex. 18 at 58. Moreover, as employer posits in its response brief, both of these physicians opined that claimant's paralysis, which is caused by the condition of epidural lipomatosis, is unrelated to claimant's December 5, 2000, trauma.

Dr. Brown's opinion that claimant's post-surgical EMG showed some neurological deficits in areas which were outside of and unrelated to his epidural lipomatosis, did not further explain the nature, extent and precise relationship between these deficits and claimant's present total disability. *See id.* at 27-28. Accordingly, after considering all of the evidence of record, the administrative law judge found that claimant's present paralysis is not related to his employment with employer.

It is well-established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences therefrom and is not bound to accept the opinion or theory of any particular medical examiner. *See 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 case at bar, the administrative law judge set forth and evaluated all of the evidence of record, and his findings are supported by the record. As the administrative law judge thus acted within his discretion in crediting the opinions of Drs. Barrash and Esses, in part because of their superior credentials and their previous experience with the condition of lipomatosis, over those of Drs. Brown and Moore, claimant did not meet his burden of persuasion in this case. *See Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT). We therefore affirm the administrative law judge's determination, based on the record as a whole, that claimant's disabling paralysis is not causally related to his employment with employer. *See Calbeck v. Strachan Shipping Co.,* 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Coffey v. Marine Terminals Corp.,* 34 BRBS 85 (2000); *Rochester v. George Washington Univ.,* 30 BRBS 233 (1997).

Accordingly, the administrative law judge's Decision and Order and Order Denying Claimant's Request for Reconsideration are affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge