BRB No. 07-0864

L.T.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND DRYDOCK COMPANY	)	DATE ISSUED: 04/30/2008
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order-Denying Benefits of Alan L. Bergstrom, Administrative Law Judge, United States Department of Labor.

Charlene A. Morring (Montagna Klein Camden L.L.P.), Norfolk, Virginia, for claimant.

Before: DOLDER, Chief Administrative Appeals Judge, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order-Denying Benefits (2006-LHC-01122) of Administrative Law Judge Alan L. Bergstrom 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 if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant suffered a work-related injury to his left knee on February 12, 2004, which required arthroscopic surgery on March 3, 2004. Pursuant to the parties' stipulations, the district director entered a Compensation Order on December 30, 2004, awarding claimant temporary total disability benefits from February 19 to August 26, 2004, and permanent partial disability benefits for a 20 percent impairment of the leg.

Claimant subsequently moved for modification pursuant to Section 22 of the Act, 33 U.S.C. §922 alleging that a pre-existing right knee condition was related to his altered gait from the left knee injury.[1] In November 2005, claimant obtained medical treatment for swelling in his right knee. An MRI showed a tear of the medial and lateral meniscus. Claimant sought medical benefits for his right knee condition, based on Dr. Stiles's opinion that claimant's altered gait resulting from the 2004 left knee injury contributed to claimant's right knee condition. Employer controverted the claim.

In his decision, the administrative law judge found claimant entitled to invocation of the Section 20(a) presumption linking his current right knee condition to the work-related left knee injury. The administrative law judge found that employer rebutted the Section 20(a) presumption based on the opinions of Drs. Apostoles and Blasdell, and that, based on the record as a whole, claimant failed to establish that his right knee condition is related to the 2004 work accident. Accordingly, the administrative law judge denied claimant's claim for medical benefits. On appeal, claimant challenges the administrative law judge's finding that employer rebutted the Section 20(a) presumption and his weighing of the evidence as a whole. Employer has not responded to this appeal.

Once, as here, the Section 20(a) presumption is invoked, it is presumed that claimant's injury is work-related, and it is employer's burden to rebut it with substantial evidence that there is no causal connection between claimant's injury and his employment. *See Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). As claimant had a pre-existing right knee condition, the aggravation rule is implicated.[2] Thus, employer must produce substantial evidence that the work accident did not aggravate the pre-existing condition. *See Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999) If the administrative law judge finds that the Section 20(a) presumption is rebutted, he must resolve the causation issue based on the record as a whole, with claimant bearing the burden of persuasion. *Universal Maritime Corp.*, 126 F.3d 256, 31 BRBS 119(CRT)*; see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 257, 28 BRBS 43(CRT) (1994).

[1] Claimant had surgery for a right knee condition in 1990 and 1996. Employer paid benefits for disability resulting from the 1996 surgery.

[2] The aggravation rule provides that if an employment-related injury aggravates, accelerates, or combines with a pre-existing condition, the entire resultant disability is compensable. *See, e.g., Newport News Shipbuilding & Dry Dock Co. v. Fishel*, 694 F.2d 327, 15 BRBS 52(CRT) (4th Cir. 1982).

Claimant contends the administrative law judge erred in finding the Section 20(a) presumption rebutted, but fails to offer any argument in support of his contention. Cl. brief at 3; *see Collins v. Oceanic Butler, Inc.*, 23 BRBS 227 (1990). Moreover, the administrative law judge's finding that employer rebutted the presumption is supported by substantial evidence. Dr. Blasdell stated, to a reasonable degree of medical probability, that claimant's current right knee impairment is "completely unrelated" to the 2004 work injury. EX 4. Dr. Apostoles opined, to a reasonable degree of medical certainty, that the 2004 left knee injury did not cause or aggravate any pathology in the right knee. EX 5. Therefore, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebutted. *See Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999), *aff'g* 31 BRBS 98 (1997); *Rochester v. George Washington Univ.*, 30 BRBS 233 (1997).

Claimant contends that, on weighing the evidence as a whole, the administrative law judge should have given determinative weight to the opinion to Dr. Stiles, who has treated him for 10 years. Dr. Stiles opined on September 7, 2006, that, to a reasonable degree of medical certainty, claimant's 2004 injury, subsequent surgery, and resultant period when claimant could not bear weight on his left leg contributed to the problem in claimant's right knee. CX 4. The administrative law judge rejected this opinion as unsupported by the contemporaneous medical records. Specifically, the administrative law judge noted that claimant first complained of renewed right knee pain in September 2004 after he was able to bear weight on his left knee and had, in fact, returned to work without restrictions. EX 9 at 16. The administrative law judge found that Dr. Stiles did not begin to treat the right knee pain regularly until May 2005 and that the torn meniscus was not diagnosed until after claimant sustained a twisting injury on November 1, 2005. The administrative law judge found, in light of this sequence of events, that Dr. Stiles failed to explain how the 2004 left knee injury contributed to claimant's right knee condition, and that the better explanation was that the two conditions are unrelated, as espoused by Drs. Blasdell and Apostoles.

We affirm the administrative law judge's finding that claimant failed to meet his burden of proving that the 2004 left knee injury contributed to the current condition of claimant's right knee. The administrative law judge is entitled to determine the weight to be accorded to the medical evidence of record, *Calbeck v. Strachan Shipping Co.*, 306 F. 2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961), and the Board must respect the rational inferences he draws from the evidence. *See Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP [Hess]*, 681 F.2d 938, 14 BRBS 1004 (4th Cir. 1982). The administrative law judge is not required to give determinative weight to the opinion of any particular physician, including the treating doctor, but may examine the logic or lack thereof behind the physician's conclusion. *Hice v. Director, OWCP*, 48 F.Supp. 2d 501

(D. Md. 1999). The administrative law judge rationally found that Dr. Stiles's opinion that the left knee injury contributed to the right knee condition is not explained or borne out by the contemporary treatment notes. Substantial evidence thus supports the administrative law judge's finding that claimant did not establish that his right knee condition is work-related, and we therefore affirm the denial of medical benefits. *See generally Brooks v. Newport News Shipbuilding & Dry Dock Co.*, 26 BRBS 1 (1992), *aff'd sub nom. Brooks v. Director, OWCP*, 2 F.3d 64, 27 BRBS 100(CRT) (4th Cir. 1993).

Accordingly, we affirm the administrative law judge's Decision and Order-Denying Benefits.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge