BRB No. 10-0583

HIPOLITO SALAZAR	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
P&O PORTS TEXAS, INCORPORATED	)	DATE ISSUED: 04/15/2011
	)	
Self-Insured Employer-Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

Dennis L. Brown and Mike N. Cokins (Law Office of Dennis L. Brown, P.C.), Houston, Texas, for claimant.

Scott A. Soule and Adelaida J. Ferchmin (Chaffe McCall, LLP), New Orleans, Louisiana, for self-insured employer.

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

PER CURIAM:

Employer appeals the Decision and Order (2009-LHC-01730) of Administrative Law Judge Clement J. Kennington 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 if they 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 was struck on his right leg between his thigh and knee by a wrench while working for employer as a mechanic on Friday, May 16, 2008. Upon returning to work the following Monday, May 19, 2008, claimant informed employer of this work incident and employer sent claimant for medical treatment. Claimant received physical therapy, underwent an MRI, and was given work restrictions which placed him on light-duty. Claimant was released to full duty on June 20, 2008; however, he continued to complain

of pain in his knee. A second MRI performed on December 5, 2008, revealed a medial meniscus tear in claimant's right knee. As claimant's symptoms of pain persisted, he underwent knee surgery on June 11, 2009. Claimant continued to experience discomfort in his right knee and, after a third MRI performed on November 19, 2009, revealed joint effusion and neuroma, he underwent a second surgical procedure on January 29, 2010. Claimant's symptoms thereafter resolved. Claimant sought temporary total disability compensation for the period of February 12, 2009, through July 29, 2010, and medical benefits under the Act.

In his Decision and Order, the administrative law judge found that claimant was entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption, that employer established rebuttal of the presumption, and that, based on the record as a whole, claimant established a causal relationship between his employment accident and his right knee condition and surgeries. Further, the administrative law judge determined that claimant was unable to perform his usual work for employer from February 12, 2009, until July 29, 2010. Accordingly, the administrative law judge awarded claimant temporary total disability compensation from February 12, 2009 through July 29, 2010. 33 U.S.C. §908(b). The administrative law judge also awarded claimant medical benefits and interest on accrued, unpaid compensation.

On appeal, employer contends the administrative law judge erred in finding a causal relationship between claimant's right knee condition and his employment with employer. Claimant responds, urging affirmance. Employer has filed a reply brief.

Employer challenges the administrative law judge's finding that claimant's right knee condition is causally related to his May 16, 2008, work injury.[1] Where, as in this case, claimant has established entitlement to invocation of the Section 20(a) presumption, the burden shifts to employer to rebut it with substantial evidence that claimant's condition was not caused or aggravated by his employment.[2] *See Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *Conoco*,

[1]While employer on appeal maintains that it remains "completely mystified" as to claimant's description of the work incident which formed the basis of claimant's claim for benefits under the Act, employer stipulated that claimant sustained a work-related injury on May 16, 2008. Decision and Order at 2.

[2]The aggravation rule provides that where an injury at work aggravates, accelerates or combines with a prior condition, the entire resultant disability is compensable. *Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45(CRT) (5th Cir. 1986) (*en banc*).

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). 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, with claimant bearing the burden of persuasion. *See Port Cooper*, 227 F.3d 285, 34 BRBS 96(CRT); *Gooden*, 135 F.3d 1066, 32 BRBS 59(CRT); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 257, 28 BRBS 43(CRT) (1984); *Del Vecchio v. Bowers*, 296 U.S. 280 (1935).

In this case, the administrative law judge found that claimant invoked the Section 20(a) presumption and that employer established rebuttal thereof based on the opinion of Dr. Vanderweide. The administrative law judge then weighed all of the relevant evidence and, giving greater weight to claimant's testimony and the opinion of Dr. Lowe, found that claimant established that his May 16, 2008, work injury contributed to or aggravated a right knee meniscal problem, which in turn necessitated claimant's two knee surgeries. Specifically, the administrative law judge found that claimant had an absence of knee symptoms prior to the work incident, but consistently expressed knee complaints after that event which necessitated two operations. In this regard, Dr. Lowe, the physician who performed claimant's two knee surgeries, stated that claimant's knee condition became symptomatic following the 2008 work incident.[3]

It is well-established that the 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 Mendoza v. Marine Pers. Co., Inc.*, 46 F.3d 498, 29 BRBS 79(CRT) (5th Cir. 1995); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). Moreover, it is impermissible for the Board to substitute its views for those of the administrative law judge; thus, the administrative law judge's findings may not be disregarded merely on the basis that other inferences might appear to be more reasonable. *See Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991). In this case, substantial evidence supports the administrative law judge's finding that claimant did not experience knee symptoms prior to his May 16, 2008, work injury, that claimant thereafter consistently complained of such symptoms, and that claimant's condition resolved following his knee surgeries. In his decision, the administrative law judge rationally relied on claimant's testimony regarding the knee pain he experienced following the work incident. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). The administrative law judge also discussed all the medical opinions regarding the causal relationship between claimant's knee symptoms and his employment, and he rationally

[3]Dr. DeBender, who examined claimant on February 6, 2009, similarly noted claimant's complaints of knee pain since the occurrence of the work incident.

relied on Dr. Lowe's opinion that claimant's meniscus tear was made symptomatic by the work injury. CX 27. Thus, as it is supported by substantial evidence, we affirm the administrative law judge's finding that claimant's knee condition and consequent surgeries were related to the work injury. *See Avondale Shipyards, Inc. v. Kennel*, 914 F.2d 88, 24 BRBS 46(CRT) (5th Cir. 1990). Therefore, we affirm the award of temporary total disability benefits.

Accordingly, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge