

BRB No. 12-0509

CHRISTOPHER FIFER)

Claimant-Respondent)

v.)

MARINE REPAIR SERVICES,)
INCORPORATED)

and)

SIGNAL MUTUAL INDEMNITY)
ASSOCIATION, LIMITED)

Employer/Carrier-)
Petitioners)

DATED ISSUED: APR 25 2013

DECISION and ORDER

Appeal of the Decision and Order of Christine L. Kirby, Administrative Law Judge, United States Department of Labor.

Michael J. Perticone (Hardwick & Harris, LLP), Baltimore, Maryland, for claimant.

Lawrence P. Postol (Seyfarth Shaw LLP), Washington, D.C., for employer/carrier.

Before: SMITH, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2011-LHC-01080) of Administrative Law Judge Christine L. Kirby 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 rational, supported by substantial evidence, and 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 alleges that his employment as a marine container and chassis repair mechanic with employer caused his current carpal tunnel syndrome. Specifically, claimant testified that he worked for employer between August 1, 2005 and October 26, 2007, during which time he used vibrating hand and power tools.¹ Claimant testified that he experienced arm pain and hand symptoms sometime in January 2007. Claimant's symptoms worsened and, on August 3, 2009, following a nerve conduction study and EMG, Dr. Lee diagnosed carpal tunnel syndrome. Claimant began treating with Dr. Franchetti in November 2007 in connection with claimant's car accident. In 2010, Dr. Franchetti diagnosed carpal tunnel syndrome and stated that claimant's occupational duties with employer were classically aligned with the development of that condition. On May 4, 2011, claimant was examined by Dr. Innis, who diagnosed bilateral hand pain, but not carpal tunnel syndrome, unrelated to claimant's employment with employer. Claimant filed a claim for medical benefits under the Act.

In her Decision and Order, the administrative law judge initially found claimant's testimony, that his employment duties required the use of vibrating and pounding tools and that he suffers from pain in his hands, to be credible. Relying upon the opinions of Drs. Lee and Franchetti, the administrative law judge found that claimant suffers from carpal tunnel syndrome and that claimant thus established his prima facie case; consequently, the administrative law judge invoked the Section 20(a) presumption, 33 U.S.C. §920(a), linking claimant's carpal tunnel syndrome to his employment. The administrative law judge found, however, that employer rebutted the presumption. The administrative law judge then weighed the evidence as a whole and concluded that claimant established a casual relationship between his carpal tunnel syndrome and his employment duties. Thus, the administrative law judge awarded claimant reasonable and necessary medical benefits for his carpal tunnel syndrome pursuant to Section 7 of the Act, 33 U.S.C. §907.

On appeal, employer challenges the administrative law judge finding that claimant sustained a compensable injury, specifically carpal tunnel syndrome, that is related to his employment. Claimant responds, urging affirmance of the administrative law judge's decision. Employer filed a reply brief.

Claimant bears the burden of proving the existence of an injury or harm and that a work-related accident occurred or that working conditions existed which could have caused the harm, in order to establish a prima facie case. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *see U.S. Industries/Federal Sheet Metal, Inc. v. Director*,

¹Claimant was involved in a work-related automobile accident on October 26, 2007, and he has not worked for employer since that day. Claimant filed a separate claim for benefits under the Act for injuries he allegedly sustained as a result of this incident.

OWCP, 455 U.S. 608, 14 BRBS 631 (1982). If these elements are established, the Section 20(a), 33 U.S.C. §920(a), presumption applies to link claimant's injury or harm with his working conditions. See *Moore*, 216 F.3d 256, 31 BRBS 119(CRT). Upon 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. See *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009). If the administrative law judge finds the Section 20(a) presumption rebutted, it no longer controls, and the issue of causation must be resolved on the evidence of record as a whole, with claimant bearing the burden of persuasion. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT).

Employer challenges the administrative law judge's finding that claimant suffers from carpal tunnel syndrome and, if claimant does have this condition, that it is related to claimant's employment. Specifically, employer contends that the administrative law judge erred in failing to credit the opinion of its medical expert, Dr. Innis, over that of Dr. Franchetti.² It is well-established that an administrative law judge has considerable discretion in evaluating and weighing the evidence of record, and may draw inferences therefrom. See *Newport News Shipbuilding & Dry Dock Co. v. Cherry*, 326 F.3d 449, 37 BRBS 7(CRT) (4th Cir. 2003); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2^d Cir. 1961). Moreover, an administrative law judge is not required to find determinative the opinion of a medical expert simply because the expert is more highly trained. The Board may not reweigh the evidence or disregard the administrative law judge's findings on the ground that other conclusions and inferences might have been more reasonable. See *Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 21 BRBS 10(CRT) (4th Cir. 1988); see also *Bath Iron Works Corp. v. Director, OWCP*, 244 F.3d 222, 35 BRBS 35(CRT) (1st Cir. 2001).

In this case, the administrative law judge initially credited claimant's testimony that he began having sporadic problems with his hands in 2007 while working for employer. Decision and Order at 20-22. The administrative law judge found that claimant was diagnosed with carpal tunnel syndrome on August 3, 2009, by Dr. Lee, following a nerve conduction study and an EMG. *Id.* With respect to the cause of claimant's hand pain, the administrative law judge found the opinion of Dr. Franchetti, claimant's treating physician, to be better reasoned and supported by the objective evidence than that of Dr. Innis. *Id.* at 22. Specifically, while acknowledging that both

²Employer has submitted to the Board a newspaper article which it asks the Board to consider when addressing the weight accorded to Dr. Franchetti's opinion by the administrative law judge. Employer concedes that this article constitutes new evidence, see Employer's reply br. at 4; consequently, we decline to consider this article as it was not submitted into evidence before the administrative law judge. 20 C.F.R. §802.301(b).

Dr. Franchetti and Dr. Innis are Board-certified orthopedic surgeons, the administrative law judge relied on Dr. Franchetti's opinion that claimant suffers from work-related carpal tunnel syndrome based on claimant's employment history, claimant's medical history documenting the initiation and progression of his hand symptoms, Dr. Franchetti's treatment of claimant, and the results of claimant's medical tests. *Id.* at 21-23. Contrary to employer's argument, the administrative law judge was not required to rely upon Dr. Innis's opinion due to that physician's qualifications.³ *See generally Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996); *Doss v. Director, OWCP*, 53 F.3d 654, 19 BLR 2-181 (4th Cir. 1995). Moreover, the administrative law judge addressed employer's contention that claimant's hand complaints were not constant, and that there is no medical evidence contemporaneous with claimant's employment, rationally finding that these factors do not detract from claimant's testimony that his symptoms commenced in 2007. Decision and Order at 20. Contrary to employer's contention, the administrative law judge discussed all the medical evidence presented by the parties. *See* Decision and Order at 7-17. She rationally concluded that the testimony of claimant, and the opinion of Dr. Franchetti, as supported by the diagnosis of Dr. Lee, establishes by a preponderance of the evidence that claimant suffers from carpal tunnel syndrome related to his repetitive use of vibratory tools. *Id.* at 18-23. Thus, as it is supported by substantial evidence, we affirm the administrative law judge's finding that claimant established he suffers from work-related carpal tunnel syndrome. *See generally Pittman Mechanical Contractors, Inc. v. Director, OWCP*, 35 F.3d 122, 28 BRBS 89(CRT) (4th Cir. 1994). Therefore, we affirm the administrative law judge's award of medical benefits for that condition.

³Dr. Innis testified that, in addition to being Board-certified in orthopedic surgery, he has received a Certificate of Added Qualifications in hand surgery. EX 49 at 6-7.

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

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge