



BRB No. 16-0621

ANTHONY FIELDS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BAE NORFOLK SHIP REPAIR)	DATE ISSUED: <u>Apr. 20, 2017</u>
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	
ASSOCIATION, LIMITED)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of Decision and Order Denying Benefits of Monica Markley, Administrative Law Judge, United States Department of Labor.

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

Gerard E. W. Voyer and Natasha S. Lewis (Taylor Walker, P.C.), Norfolk, Virginia, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2015-LHC-01337) of Administrative Law Judge Monica Markley 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).

On December 29, 2012, claimant, who had previously been diagnosed with osteoarthritis in both hips,¹ sustained an injury to his groin when he fell from the first step of a ladder while working for employer as an apprentice instructor. Claimant's injury report states his left leg was pinned under his body when he fell. CX 1. Claimant received medical care following this incident. Claimant was off work from March to late May 2013, due to colon cancer. On August 28, 2013, claimant sought medical care for left hip pain. He underwent left total hip replacement surgery on October 7, 2014, and returned to work on November 3, 2014. Claimant sought temporary total disability benefits from October 7 through November 2, 2014, as well as medical benefits, alleging that his left hip condition and resulting surgery were related to the December 29, 2012, work incident.

The administrative law judge applied Section 20(a), 33 U.S.C. §920(a), to presume that claimant's left hip condition is related to the December 29, 2012, work incident, found that employer rebutted the Section 20(a) presumption, and found that, on the record as a whole, claimant's left hip condition is not related to the December 2012 work incident. Accordingly, the administrative law judge denied claimant's claim for temporary total disability and medical benefits.

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.

Once, as here, the Section 20(a) presumption is invoked and rebutted, the presumption longer controls, and the administrative law judge is required to resolve the causation issue on the evidence of record as a whole. Claimant bears the burden of proof on this issue. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

Claimant challenges the administrative law judge's weighing of the evidence on the record as a whole, specifically assigning error to the administrative law judge's rejection of the opinions of Drs. Marlow and Wardell. The administrative law judge credited the opinion of Dr. Cavazos that there is no causal relationship between claimant's left hip condition and the December 2012 work incident, as the administrative law judge found the opinion to be thorough and well-reasoned and thus entitled to significant weight. Decision and Order at 14-17. Taking into consideration the length of time between claimant's work injury and the pain that resulted in his surgery, as well as

¹ In 2011, Dr. Payne performed total hip replacement surgery on claimant's right hip.

claimant's x-rays which he interpreted as suggesting that claimant's left hip pain was progressive and unrelated to an acute injury, Dr. Cavazos opined that claimant's pre-existing left hip osteoarthritis was not aggravated, accelerated, or exacerbated by the December 2012 work incident. EX 2. Dr. Cavazos further stated that, from a physiological perspective, it would not be possible to worsen the degree of osteoarthritis in claimant's hip. *Id.*

In contrast, the administrative law judge found Dr. Marlow's opinion, given in a letter dated February 12, 2015 to claimant's counsel, that the work incident exacerbated claimant's existing left hip condition and accelerated the need for surgery to be equivocal, conclusory, contrary to his treatment records and not well-reasoned. CX 14. The administrative law judge found that Dr. Marlow's contemporaneous treatment records show a gradual worsening of claimant's condition and made no mention of the December 2012 work accident. CXs 8, 10. The administrative law judge found that Dr. Marlow provided no reasoning for his subsequent opinion that the December 29, 2012 work incident exacerbated claimant's pre-existing hip condition. Decision and Order at 16; CX 14. The administrative law judge similarly gave little weight to Dr. Wardell's opinion. Dr. Wardell opined on August 11, 2015, that the work accident aggravated claimant's pre-existing left hip osteoarthritis. CX 17. The administrative law judge found this opinion to be inconsistent and not well-reasoned. In this regard, the administrative law judge found that Dr. Wardell did not cite any diagnostic or objective evidence to support his opinion and that he inaccurately recited the contents of Drs. Cavazos and Marlow's medical records.² Decision and Order at 16; CX 17. Lastly, the administrative law judge found that while claimant was generally a credible witness, his deposition testimony regarding the absence of hip pain prior to the work incident is not consistent with his prior treatment records. Decision and Order at 17; *compare* CX 18 at 18 to EXs 13, 14, 15.

We reject claimant's assertion that the administrative law judge erred in evaluating this evidence.³ The administrative law judge thoroughly addressed all of the relevant

² The administrative law judge found that Dr. Wardell incorrectly stated that Dr. Marlow found a left hip contusion and that Dr. Cavazos found a sudden acceleration of the osteoarthritis due to a hip contusion. Decision and Order at 16; CX 17.

³ In this respect, we reject claimant's contention that, pursuant to *Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir. 1998), *amended*, 164 F.3d 480, 32 BRBS 144(CRT) (9th Cir.), *cert. denied*, 528 U.S. 809 (1999), the administrative law judge erred in declining to give "special weight" to the opinions of Drs. Marlow and Wardell on the basis that they are claimant's treating physicians. In *Amos*, the court stated the administrative law judge was obligated to accept the opinion of the employee's surgeon as to a treatment option which was not shown by other doctors to be unreasonable. *Id.*,

evidence. *See* Decision and Order at 14-17. It is well-established that an administrative law judge is entitled to weigh the medical evidence and to draw her own inferences therefrom. *See, e.g., Newport News Shipbuilding & Dry Dock Co. v. Cherry*, 326 F.3d 449, 37 BRBS 6(CRT) (4th Cir. 2003). Moreover, it is impermissible for the Board to reweigh the evidence or to substitute its own views for those of the administrative law judge. *See, e.g., Pittman Mechanical Contractors, Inc. v. Director, OWCP*, 35 F.3d 122, 28 BRBS 89(CRT) (4th Cir. 1994).

The administrative law judge's finding that claimant did not establish that his left hip condition and resultant surgery were related to the December 29, 2012, work accident is based on a rational weighing of the medical evidence and is supported by substantial evidence in the form of Dr. Cavazos's opinion. *See generally Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 21 BRBS 10(CRT) (4th Cir. 1988). We therefore affirm the administrative law judge's determination that claimant failed to meet his burden of establishing a causal relationship between his left hip condition and his employment with employer. *See Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Hice v. Director, OWCP*, 48 F. Supp. 2d 501 (D. Md. 1999); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000).

153 F.3d at 1054, 32 BRBS at 147-148(CRT). In this case, the administrative law judge acknowledged that Drs. Marlow and Wardell were treating physicians, but properly stated they were not to be "mechanistically credited" on this basis. *See* Decision and Order at 15. The administrative law judge is entitled to assess the rationale of, and the underlying support for, each physician's opinion, and is not required to credit any particular opinion merely on the basis of status as a treating physician. *See generally Brown v. Nat'l Steel & Shipbuilding Co.*, 34 BRBS 195 (2001).

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

SO ORDERED.

BETTY JEAN HALL, Chief

Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge