BRB No. 97-1243

JAMES KING	)	
	)	
Claimant-Respondent	)	DATE ISSUED:
	)	
v.	)	
	)	
CASCADE GENERAL, INCORPORATED	)	
	)	
and	)	
	)	
SAIF CORPORATION	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeal of the Decision and Order Denying Modification and Awarding Benefits of Alexander Karst, Administrative Law Judge, United States Department of Labor.

Gregory A. Bunnell (Pozzi Wilson Atchison, LLP), Portland, Oregon, for claimant.

John Dudry (Williams, Fredrickson & Stark, P.C.), Portland, Oregon, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order Denying Modification and Awarding Benefits (95-LHC-3076, 96-LHC-1393) of Administrative Law Judge Alexander Karst 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, who worked for employer off and on as a pipefitter since 1984, began working for employer as a painter in September 1990, at which time he was exposed to respiratory irritants. He stopped working in November 1990 due to severe respiratory symptoms, as well as skin rashes and headaches, and thereafter filed a claim under the Act alleging that he contracted occupational asthma as a result of his exposure to epoxy-based paints while working for employer. In a Decision and Order issued on March 10, 1993, Administrative Law Judge James J. Butler awarded claimant temporary total disability benefits for his respiratory impairment. Subsequently, employer filed a motion for modification, contending that it was a mistake of fact for Judge Butler to conclude that claimant suffered from occupational asthma. In response, claimant sought a determination that his disabling respiratory condition is permanently totally disabling; additionally, claimant filed a second claim, contending that his exposure to irritants caused laryngeal cancer, a condition which caused claimant to undergo a total laryngectomy on January 8, 1994.

In his Decision and Order, Administrative Law Judge Alexander Karst (the administrative law judge) first concluded that Judge Butler's determination that claimant suffered from work-related occupational asthma was supported by the evidence and not based on a mistake of fact. In addition, since employer stipulated that claimant is not employable and that post-injury wage-earning capacity cannot be demonstrated, the administrative law judge found that claimant is entitled to permanent total disability compensation for his respiratory impairment. Next, with regard to the claim concerning claimant's laryngeal cancer, the administrative law judge found invocation of the Section 20(a), 33 U.S.C. §920(a), presumption established, and that employer failed to rebut the presumption. Thus, the administrative law judge awarded claimant permanent total disability compensation commencing on September 14, 1995, and medical benefits under Section 7 of the Act, 33 U.S.C. §907, past and future, which were or will be reasonably necessary to treat claimant's asthma and laryngeal cancer.[1]

The sole contention raised by employer on appeal is that the administrative law judge erred in determining that it failed to present evidence sufficient to rebut the Section 20(a) presumption with respect to claimant's laryngeal cancer. Claimant responds, urging affirmance of the administrative law judge's decision.

[1]The administrative law judge denied claimant's request for penalties under Section 14(f) of the Act, 33 U.S.C. §914(f).

In establishing that an injury arises out of his employment, claimant is aided by the Section 20(a) presumption which applies to the issue of whether an injury is causally related to his employment activities. *Perry v. Carolina Shipping Co.,* 20 BRBS 90 (1987). Where, as in the instant case, it is uncontroverted that claimant is entitled to invocation of the Section 20(a) presumption, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Manship v. Norfolk & Western Railway Co.*, 30 BRBS 175 (1996). If the administrative law judge finds that the Section 20(a) presumption is rebutted, he must weigh all of the evidence and resolve the causation issue based on the record as a whole. *See Devine v. Atlantic Container Lines, G.I.E.,* 23 BRBS 270 (1990).

In the instant case, employer alleges that the opinion of Dr. Burton constitutes evidence sufficient to establish rebuttal of the Section 20(a) presumption. We need not address this specific contention because, assuming *arguendo* that Dr. Burton's opinion is sufficient to rebut the Section 20(a) presumption, the administrative law judge's finding that causation is established is rational and supported by substantial evidence. Specifically, the administrative law judge, after setting forth all of the medical evidence of record fully weighed that evidence. Although he did so in addressing the issue of whether employer established rebuttal of the presumption, any error is harmless if his conclusion is supported by substantial evidence.

In this regard, the administrative law judge rejected the opinion of Dr. Burton, who he found neither treats cancer patients nor personally examined claimant, in favor of the opinions of Drs. Flaming, Faust and Howard. Dr. Flaming, who performed claimant's total laryngectomy, opined that claimant's exposure to toxins while working for employer contributed to the development of his laryngeal cancer. Specifically, in a September 17, 1996 letter, Dr. Flaming stated that environmental exposure severe enough to cause claimant's bronchospastic disease would also create laryngeal inflammation that would contribute to the development of laryngeal cancer. Cl. Ex. 83. Dr. Faust opined that claimant's laryngitis and bronchitis were probably caused by exposure to chemicals at work. Cl. Ex. 32. Dr. Howard, a pathologist, testified that while smoking is a risk factor for cancer, exposure to resins and epoxies can contribute to one or several steps in the development of laryngeal cancer. Emp. Ex. 60 at 554-556. We hold that the administrative law judge could properly rely on the opinions of Drs. Flaming, Faust and Howard in concluding that claimant's exposure to toxic substances during the course of his employment with employer contributed to his laryngeal cancer, *see* Decision and Order at 7; *Cordero v. Triple A Machine Shop,* 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979), as 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). Thus, as the administrative law judge rationally accorded greater weight to the opinions of Drs. Flaming, Faust and Howard, over the opinion of Dr. Burton, we affirm the administrative law judge's determination that claimant's laryngeal cancer is related to his employment with employer. *See generally Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989).

Accordingly, the Decision and Order Denying Modification and Awarding Benefits of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge