

BRB Nos. 11-0135

SHANNON FREDERICK )  
(Widow of BLAKE FREDERICK) )  
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 Claimant-Respondent )  
 )  
 v. )  
 )  
 M-I DRILLING FLUIDS COMPANY ) DATE ISSUED: 08/25/2011  
 )  
 and )  
 )  
 ACE AMERICAN INSURANCE )  
 COMPANY )  
 )  
 Employer/Carrier- )  
 Petitioners ) DECISION and ORDER

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

Frank E. Lemoine, Abbeville, Louisiana, for claimant.

Tobin J. Eason (Weiss & Eason, L.L.P.), Mandeville, Louisiana, for  
employer/carrier.

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

**PER CURIAM:**

Employer appeals the Decision and Order (2009-LHC-1654) 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 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's husband (the decedent) was employed by employer as a liquid mud man. On November 20, 2006, the decedent and a co-worker, Mr. Tarver, were preparing a 2,500 barrel order of drilling fluids. In preparing these barrels, the decedent was required to cut open, pour, and mix bags of lime and "VG Supreme" into tanks of diesel fuel. While performing these employment duties, during which time he was exposed to lime dust and diesel fumes, the decedent appeared to pass out and was unresponsive for a period of time. The decedent subsequently complained of difficulty breathing and was taken by ambulance to the hospital where he remained until November 28, 2006. On December 12, 2006, the decedent was taken to a hospital emergency room where he expired.

In his Decision and Order, the administrative law judge found, *inter alia*, claimant entitled to invocation of the presumption at Section 20(a), 33 U.S.C. §920(a), linking the decedent's death to his employment with employer. The administrative law judge found that employer rebutted the presumption and, after weighing the totality of the evidence, concluded that claimant met her burden of establishing a causal connection between the decedent's death and his employment with employer. Accordingly, the administrative law judge awarded death benefits to claimant and the decedent's minor child. 33 U.S.C. §909(b).

On appeal, employer contends the administrative law judge erred in finding that the decedent's death was causally related to his employment. Claimant responds, urging affirmation of the administrative law judge's decision. Employer has filed a reply to claimant's response.

Claimant bears the initial burden of establishing the occurrence of a work-related accident or that working conditions existed which could have caused the decedent's death.<sup>1</sup> See *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5<sup>th</sup> Cir. 1998); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996). If claimant establishes her *prima facie* case, the Section 20(a), 33 U.S.C. §920(a), presumption applies to link the decedent's death to his employment with employer. See *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5<sup>th</sup> Cir. 2000); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5<sup>th</sup> Cir. 1999).

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<sup>1</sup>Section 9 of the Act, 33 U.S.C. §909, provides for death benefits to certain survivors "if the injury causes death."

Employer does not challenge the administrative law judge's finding that decedent was diagnosed with, *inter alia*, blood clots, a blockage of his pulmonary artery, and that the decedent subsequently died due to a pulmonary embolism. Decision and Order at 15. Employer contends, however, that the administrative law judge erred in invoking the Section 20(a) presumption because, it asserts, claimant did not affirmatively establish a causal connection between the decedent's alleged inhalation of diesel fumes and lime dust and the development of his ultimately fatal pulmonary emboli. We reject employer's contentions of error regarding claimant's *prima facie* case.

Contrary to employer's argument, claimant is not required to prove that working conditions in fact caused the decedent's harm in order to invoke the Section 20(a) presumption; rather, claimant need establish only the existence of working conditions which *could have* caused the harm. *See, e.g., Port Cooper*, 227 F.3d 285, 34 BRBS 96(CRT); *Brown v. I.T.T./Continental Baking Co.*, 901 F.2d 289, 24 BRBS 75(CRT) (D.C. Cir. 1990); *Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1993). Thus, the "working conditions" or "accident" prong of a claimant's *prima facie* case requires that the administrative law judge determine whether the alleged employment events in fact occurred. *See Noble Drilling Co. v. Drake*, 795 F.2d 478, 19 BRBS 6(CRT) (5<sup>th</sup> Cir. 1986).

In this case, the administrative law judge, having previously credited the testimony of Mr. Tarver regarding the working conditions he and the decedent experienced on November 20, 2006,<sup>2</sup> *see* Decision and Order at 10, found that claimant established that the decedent was exposed to lime dust and diesel fuel while at work, and that these exposures constituted the existence of working conditions which caused or could have caused the damage to the decedent's pulmonary artery which ultimately lead to his demise. *Id.* at 15. Moreover, claimant submitted Dr. Laga's opinion that the decedent's death was related to these workplace exposures. *See infra*; Tr. at 49-11. Employer has cited no evidence that the decedent was not engaged in the work activities described by Mr. Tarver prior to his collapse and hospitalization; rather, employer, noting that the decedent worked with the wind to his back, with a filter mask, and that no other similar claims have been presented, questions only whether the decedent sustained an inhalation injury. Substantial evidence of record supports the finding that decedent sustained an inhalation injury and that decedent was exposed to substances that could have caused the injury that led to his death.<sup>3</sup> On these facts, we affirm the administrative law judge's

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<sup>2</sup>Mr. Tarver, in describing the decedent's mixing ingredients on November 20, 2006, testified that the decedent was covered with lime dust and that he could smell diesel fumes. *See EX L at 6, 15-16.*

finding that the Section 20(a) presumption was invoked. *Port Cooper*, 227 F.3d 285, 34 BRBS 96(CRT).

Upon invocation of the Section 20(a) presumption, the burden shifts to employer to rebut it with substantial evidence that the decedent's death was not caused or hastened by his employment. *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT)(5<sup>th</sup> Cir.), *cert. denied*, 540 U.S. 1056 (2003); *Fineman v. Newport News Shipbuilding & Dry Dock Co.*, 27 BRBS 104 (1993). 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 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) (1994); *Del Vecchio v. Bowers*, 296 U.S. 280 (1935).

Contrary to employer's contention on appeal, the administrative law judge found that employer established rebuttal of the Section 20(a) presumption based on the opinions of Drs. Cain, Newman and Hamer that they were unaware of any association between inhalation injuries and pulmonary emboli. EXs F, G, I, K; *see Decision and Order at 15; Ortco*, 332 F.3d 283, 37 BRBS 35(CRT). Consequently, we need not address employer's arguments regarding rebuttal of the Section 20(a) presumption.

The administrative law judge then weighed all of the evidence and, giving greater weight to the opinion of Dr. Laga, found that claimant met her burden of establishing that the decedent's death was causally related to his November 20, 2006, work exposures. Specifically, stating that he was impressed by Dr. Laga's professionalism and detailed testimony, the administrative law judge found Dr. Laga's most recent opinion, which took into consideration previously unavailable medical information, to be the most comprehensive and informed and thus the more persuasive opinion of record. Dr. Laga, a Board-certified forensic pathologist and toxicologist, opined that the decedent's employment exposures resulted in damage to his pulmonary artery which, in turn,

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<sup>3</sup>Contrary to employer's statement that the decedent "showed no signs of any trauma whatsoever from an inhalation problem," *see Emp. Br. at 11, 18*, the report generated by the ambulance crew which transported the decedent to the hospital following the work incident stated that the call was for "Respiratory Distress/Difficulty Breathing/Dyspnea," that the decedent stated that he had become "overwhelmed with the fumes," and that the decedent complained of shortness of breath. *See CX 15 at 2*. Moreover, upon hospitalization, the decedent was diagnosed with "an inhalational injury." CX 17 at 30.

triggered a clotting mechanism resulting in a systemic inflammatory response (SIRS) leading to a complete blockage of the decedent's pulmonary artery and thereafter to his death.<sup>4</sup>

We reject employer's assertion that the administrative law judge erred in weighing the evidence of record regarding the issue of causation. 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) (5<sup>th</sup> Cir. 1995); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5<sup>th</sup> Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2<sup>d</sup> Cir. 1961). 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) (5<sup>th</sup> Cir. 1991); *Newport News Shipbuilding & Dry Dock Co. v. Winn*, 326 F.3d 427, 37 BRBS 29(CRT) (4<sup>th</sup> Cir. 2003). In his decision, the administrative law judge addressed the medical opinions discussing the causal relationship between decedent's death and his employment, and he rationally concluded that Dr. Laga's testimony, which took into consideration the decedent's working conditions on November 20, 2006, and the totality of the decedent's medical records, is the most comprehensive of record and entitled to greatest weight. As the administrative law judge's weighing of the evidence is rational and his finding is supported by substantial evidence, we affirm the administrative law judge's conclusion that the decedent's death was related to his employment with employer. Therefore, we affirm the award of benefits pursuant to Section 9 of the Act, 33 U.S.C. §909. *Casey v. Georgetown Univ. Medical Center*, 31 BRBS 147 (1997).

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<sup>4</sup>Following his performance of the decedent's autopsy, Dr. Laga opined that the decedent's demise was the result of a blockage in his pulmonary artery. CXs 26, 27. Dr. Laga subsequently received and reviewed the decedent's Lafayette General Hospital records which showed no leg clotting, genetic testing regarding blood clotting from the decedent's mother and brother which revealed no predisposition to clotting, and the substances that the decedent was exposed to while working for employer on November 20, 2006. Taking into consideration this new information, which was not available at the time he performed the decedent's autopsy, Dr. Laga opined that the decedent's exposure to diesel fumes affected his pulmonary artery, which triggered a SIRS response and ultimately a blockage of the pulmonary artery which resulted in the decedent's demise. *See* Tr. at 49-110.

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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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge