BRB No. 13-0052

KENNETH A. PETERSEN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BATH IRON WORKS CORPORATION	)	DATE ISSUED: 08/15/2013
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Colleen A. Geraghty, Administrative Law Judge, United States Department of Labor.

Benjamin K. Grant (McTeague, Higbee, Case, Cohen, Whitney & Toker, P.A.), Topsham, Maine, for claimant.

Stephen Hessert (Norman, Hanson & DeTroy), Portland, Maine, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2011-LHC-01599, 2011-LHC-01620) of Administrative Law Judge Colleen A. Geraghty 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 works for employer as a shipfitter. He alleges he suffered a work injury on October 24, 2010, that resulted in a pneumothorax, *i.e.*, a collapsed lung, on October 26, 2010, and again on November 11, 2010. He filed a claim for disability and medical benefits under the Act. Specifically, claimant claimed his "extreme/unusual heavy exertion at work" and his "heavy work . . . grinding, working with pneumatic tools,"

caused "stress, strain, taxation on the left upper extremity."[1] This work, he asserted, resulted in two occurrences of left lung collapse. Employer controverted the claim, contending that claimant's pneumothoraces were spontaneous and the result of his pre-existing chronic obstructive pulmonary disease (COPD) and his smoking cigarettes. JX 3, 11.

Upon Dr. Phillips's opinion that claimant's pneumothoraces could be related to his heavy work, the administrative law judge found claimant entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption that his pneumothoraces were related to his employment. Decision and Order at 11; JX 30, 33; TR at 15-36. However, based on the opinions of employer's clinic director, Dr. Mazorra, and reviewing physician, Dr. Bajwa, the administrative law judge found that employer submitted substantial evidence to rebut the presumption. Decision and Order at 11; JX 25-26, 34. After weighing the conflicting evidence as a whole, she concluded that claimant failed to prove by a preponderance of the evidence that his pneumothoraces were related to his employment. Therefore, the administrative law judge denied the claim for compensation and medical benefits. Decision and Order at 12-13. Claimant appeals the denial of benefits, and employer responds, urging affirmance.

Once the Section 20(a) presumption is invoked, as here, the employer bears the burden of producing substantial evidence that the claimant's condition was not caused, contributed to, or aggravated by, his employment. *Bath Iron Works Corp. v. Director, OWCP [Shorette]*, 109 F.3d 53, 31 BRBS 19(CRT) (1st Cir. 1997). An employer's burden on rebuttal is one of production, not one of persuasion. *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004); *see also Shorette*, 109 F.3d 53, 31 BRBS 19(CRT). An employer satisfies this burden of production when it presents evidence that could satisfy a reasonable fact-finder that the employee's injury was not causally related to his employment. *Truczinskas v. Director, OWCP*, 699 F.3d 672, 46 BRBS 85(CRT) (1st Cir. 2012); *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 44 BRBS 13(CRT) (1st Cir. 2010). The opinion of a physician given to a reasonable degree of medical certainty that no relationship exists between an injury and an employee's employment is sufficient to rebut the presumption. *See O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000); *see also Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999).

Claimant contends the administrative law judge erred in finding that employer submitted substantial evidence rebutting the Section 20(a) presumption. Specifically,

[1]Claimant's also sought benefits for injuries to his shoulders on October 26, 2010. JX 5. Employer accepted liability for the shoulder injuries but asserts there is no relationship between those injuries and his pneumothoraces.

claimant asserts that Dr. Bajwa's opinion is speculative and conclusory and Dr. Mazorra's opinion does not address the cause of claimant's pneumothoraces.

Dr. Bajwa, Board-certified in pulmonary and critical care, was deposed and submitted at least three letters explaining his opinion. He stated that, to a reasonable degree of medical certainty, the events on October 24, 2010, involving strenuous pulling and twisting, did not cause or contribute to claimant's collapsed lung. It was his "best medical opinion" that claimant suffered a spontaneous pneumothorax on October 26, 2010, and again on November 11, 2010, as a result of his severe COPD and smoking. JX 25 at 24-26. He explained that the link between spontaneous pneumothoraces and smoking is strong and well-documented, while the relationship between physical exertion and pneumothoraces was not; therefore, he stated it was highly unlikely that claimant's collapsed lung was the result of exertion at work, as alleged by claimant and surmised by his physiatrist, Dr. Phillips. JX 34 at 247, 253. Indeed, Dr. Bajwa stated that a traumatic pneumothorax was typically caused by a stabbing or rib puncture, allowing air into the pleural space, and that did not happen here. Moreover, as claimant's lung did not collapse until after a lunch break two days after the exertion, Dr. Bajwa thought it impossible to make a connection between the two events. Any exertion on the November date, using a vibratory tool, he stated, was not of the type that would cause a lung collapse. JX 25 at 21, 66; JX 34 at 249. As claimant has a history of smoking and severe COPD, with emphysematous changes in his lungs, as well as atypical blebs, both of which are common in COPD and are frequently associated with spontaneous pneumothoraces,[2] Dr. Bajwa opined that claimant's two episodes were spontaneous, "likely not" related to work, and merely "coincident" in time to the shoulder injury in October 2010. JX 34 at 253. Although Dr. Bajwa stated there is general difficulty in giving definitive diagnoses long after an event occurs, employer's evidence need not rule out all causal possibilities in order to constitute substantial evidence of non-causation. *Bath Iron Works Corp. v. Director, OWCP [Harford]*, 137 F.3d 673, 32 BRBS 45(CRT) (1st Cir. 1998). The administrative law judge found that Dr. Bajwa explained the basis for his opinion that the pneumothoraces were not related to claimant's employment, *see* Decision and Order at 11, and rationally concluded that his opinion constitutes substantial evidence to rebut the Section 20(a) presumption. As this finding is supported by

[2]Contrary to claimant's contention, the administrative law judge rationally relied on Dr. Mazorra's opinion that claimant had pre-existing, severe COPD. *See generally Sprague v. Director, OWCP*, 688 F.2d 862, 15 BRBS 11(CRT) (1st Cir. 1982). Dr. Mazorra doubted that the cause of the pneumothorax was physical exertion in light of the "large bulla" in claimant's upper left lung and thus her opinion is supportive of Dr. Bajwa's. JX 26.

substantial evidence and in accordance with law, it is affirmed. *Harford,* 137 F.3d 673, 32 BRBS 45(CRT). As claimant does not contest the administrative law judge's weighing of the conflicting evidence in employer's favor, we affirm the denial of benefits. *Sprague v. Director, OWCP*, 688 F.2d 862, 15 BRBS 11(CRT) (1st Cir. 1982).

Accordingly, the administrative law judge's Decision and Order Denying Benefits 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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BETTY JEAN HALL
Administrative Appeals Judge