BRB No. 05-0350

GABRIEL OAKES	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
LEEVAC SHIPYARDS, INCORPORATED	)	DATE ISSUED: 12/16/2005
	)	
and	)	
	)	
LOUISIANA WORKERS' COMPENSATION CORPORATION	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of Russell D. Pulver, Administrative Law Judge, United States Department of Labor.

Harry K. Burdette, Lafayette, Louisiana, for claimant.

Travis R. LeBleu (Johnson, Stiltner & Rahman), Baton Rouge, Louisiana, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order Granting Benefits (03-LHC-1905) of Administrative Law Judge Russell D. Pulver 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 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 began working for employer as a painter and sandblaster in June 1998. On February 11, 2001, claimant sustained a work-related injury after lifting a paint pot which weighed about 80 pounds. Tr. at 37; CX 1. Claimant reported the injury to his supervisor, who signed an investigative report stating that claimant "felt a pop and felt like a tear" in his back. CX 8. Employer's injury report, dated February 12, 2001, indicated that the injury caused pain on the lower-left side of claimant's back. CX 15 at 7. Claimant saw Dr. McGregor, his family physician, on February 12, 2001, complaining of back pain above the waist on the left side. CX 3 at 5. Approximately one year later, claimant began complaining of severe headaches, and he stopped working in March 2002 due to severe neck and head pain. MRIs performed on March 6, 2002, and on April 9, 2002, showed central disc herniation at C5-6. On March 11, 2002, claimant was involved in a motor vehicle accident.

In his decision, the administrative law judge found that claimant's headaches and neck problems are causally related to his February 2001 work-accident. Accordingly, he awarded claimant payment for medical expenses related to claimant's condition, including recommended surgery. The administrative law judge also awarded claimant continuing temporary total disability benefits of $500.82 per week beginning on March 6, 2002. 33 U.S.C. §§908(b), 907.

On appeal, employer challenges the administrative law judge's findings with respect to causation. Claimant responds, urging affirmance of the administrative law judge's decision. Employer has filed a reply brief.

Employer, in support of its contention that the administrative law judge's decision cannot be upheld, alleges that the administrative law judge disregarded a "mountain" of evidence contradicting the claimant's and his wife's "self-serving" testimony. Er's Brief on Appeal at 7. Employer asserts, therefore, that claimant has not established a causal nexus between his neck condition and headaches and his employment with employer. We disagree.

The Section 20(a) presumption, 33 U.S.C. §920(a), applies to this issue. In order to be entitled to invocation of the Section 20(a) presumption, claimant must establish a *prima facie* case by showing that he sustained a harm and that an accident occurred or working conditions existed which could have caused the injury or harm. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Konno v. Young Bros., Ltd.*, 28 BRBS 57 (1994). Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut it with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert. denied*, 540 U.S. 1056 (2003); *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684,

33 BRBS 187(CRT) (5th Cir. 1999); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000). Where aggravation of a pre-existing condition is at issue, employer must establish that work events neither directly caused the injury nor aggravated the pre-existing condition resulting in injury. *O'Kelley*, 34 BRBS 40. *See Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45(CRT) (5th Cir. 1986) (*en banc*). If employer establishes rebuttal of the presumption, the administrative law judge must weigh all of the evidence contained in the record and resolve the causation issue based on the record as a whole. *See Avondale Shipyards, Inc. v. Kennel*, 914 F.2d 88, 24 BRBS 46 (CRT)(5th Cir. 1990); *Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153 (1985); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

In the instant case, employer does not dispute that claimant has presented evidence of a cervical condition and recurring headaches and that claimant sustained a work-related accident on February 11, 2001. Accordingly, as claimant has established the two elements of his *prima facie* case, the Section 20(a) presumption applies to link the aforementioned conditions to his employment. *See Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981).

Next, the administrative law judge found that employer submitted no evidence sufficient to sever the presumed causal link between claimant's present conditions and his work-accident. Specifically, the administrative law judge stated that "[employer has] offered no medical opinion evidence to show that Claimant's cervical condition is totally unrelated to his accident of February 11, 2001. Indeed, the testimony offered at the hearing by [employer] merely points to some possible preexisting cervical and headache problems experienced by claimant which fail to address Claimant's testimony that his problems were more severe and of a different type than he had ever experienced before the accident." Decision and Order at 6.

We affirm the administrative law judge's finding that causation is established in this case. Employer argues that the evidence shows that claimant suffered from headaches prior to his February 2001 work-accident, that claimant's family has a history of headaches, that when claimant reported his accident his only complaint was low back pain, that he continued to work for another year in the physically strenuous job of sandblaster/painter, that he did not visit a doctor until a year after his accident, that claimant's complaints after a year have changed from low back to neck and head and that claimant provides doctors with a history contrary to the history he provided immediately after the February 2001 work-accident. As the administrative law judge found, these contentions are not sufficient to establish rebuttal, particularly in the absence of supporting medical evidence. The Section 20(a) presumption is not rebutted where employer does not provide evidence but merely suggests alternate ways that claimant's injury might have occurred. *See Delay v. Jones Washington Stevedoring Co.*, 31 BRBS 197 (1998). *Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989).

Moreover, in view of the aggravation rule, *see Strachan Shipping Co.*, 782 F.2d 513, 18 BRBS 45(CRT), evidence of a pre-existing condition alone cannot rebut. In the instant case, employer has presented no medical evidence that claimant's cervical condition or headaches are unrelated to his employment; we therefore affirm the administrative law judge's finding that these conditions are causally related to his employment. *See Manship v. Norfolk & Western Ry. Co.*, 30 BRBS 175 (1996); *Bass v. Broadway Maintenance*, 28 BRBS 11 (1994); *see generally I.T.O. Corp. v. Director, OWCP*, 883 F.2d 422, 22 BRBS 126(CRT) (5th Cir. 1989).

Assuming, *arguendo,* that Section 20(a) was rebutted, the administrative law judge's decision must nonetheless be affirmed, as his finding that causation was established based on the record as a whole is rational and supported by substantial evidence. *See generally Gooden v. Director, OWCP,* 135 F. 3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998). It is well established that, in arriving at his decision, the administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). Thus, it was within the administrative law judge's discretionary authority to credit claimant's testimony that following the work accident the severity of his headaches increased and their quality changed. Additionally, the administrative law judge found claimant's testimony corroborated by the testimony of his wife and the medical opinion of Dr. Goldware, who attributed claimant's current cervical problems and related headaches to his February 11, 2001 work-accident. The administrative law judge noted that Dr. Goldware also eliminated the motor vehicle accident in which claimant was involved as a significant subsequent cause of claimant's problems based on a comparison of MRI tests taken before and after the automobile accident. CXs 11, 17 at 11. As it is supported by substantial evidence, we affirm the administrative law judge's finding that claimant established a causal relationship between his present cervical problems and headaches and his work-accident.[1]

[1] Employer alleges that the administrative law judge impermissibly applied the "true doubt" rule in favor of claimant. The United States Supreme Court has held that the "true doubt" rule, which resolves factual doubt in favor of claimant when the evidence is in equipoise, violates Section 7(c) of the Administrative Procedure Act. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). Although the administrative law judge did cite this rule in his general boilerplate, Decision and Order at 6, he did not apply it or find the evidence in equipoise but, rather, held after considering the evidence that claimant established causation. Decision and Order at 6-7. Moreover, in context, the administrative law judge's reference to the "liberal causation

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

rule" applied refers to the aggravation rule, and his statement that he was constrained to find a causal nexus established is based on employer's failure to present evidence.