

PERRY P. THIBODEAUX)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BOLLINGER QUICK REPAIR,)	DATE ISSUED: 12/15/2006
INCORPORATED)	
)	
and)	
)	
LOUISIANA WORKERS')	
COMPENSATION CORPORATION)	
)	
Employer/Carrier-)	
Respondents)	
)	DECISION and ORDER

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

Jeremiah A. Sprague (Falcon Law Firm, PLC), Marrero, Louisiana, for claimant.

David K. Johnson (Johnson, Stiltner & Rahman), Baton Rouge, Louisiana, for employer/carrier.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Additional Benefits (2005-LHC-0504) 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).

On May 10, 1996, claimant, a welder for employer, twisted his lower back at work. Approximately, two weeks later, claimant began to treat with an orthopedist, Dr. Gallagher, for complaints of low back pain and intermittent right leg pain. EX 2 at 18. In a report dated October 4, 1996, Dr. Gallagher diagnosed claimant with minimal degenerative disc disease and chronic low back pain. EX 2 at 18. Dr. Gallagher stated that he did not feel any further orthopedic intervention was necessary, discharged claimant from the clinic, and instructed him to return to his regular duties and continue his stretching and strengthening exercises. EX 2. Following his work injury, claimant returned to light-duty work at employer's facility, but was laid off later in 1996.¹ After his lay-off from employer, claimant worked as a welder for several employers, although he alleged that he was able to perform his duties for Point Eight, his last employer, only because he had a helper and that ultimately he was discharged from that employer because of his back condition. Claimant sought continuing temporary total disability benefits from employer beginning on September 30, 2003, alleging that his current back condition for which he has restrictions and ongoing pain for which he takes medication are casually related to his 1996 work accident and render him unable to work.²

Employer contested the claim on the basis that claimant's work-related back condition had resolved. The administrative law judge found that claimant's work injury in 1996 caused a lumbar sprain that aggravated claimant's underlying disc disease, but that the aggravation lasted only until October 4, 1996, when Dr. Gallagher stated claimant could return to full-duty work. Therefore, the administrative law judge denied additional benefits.

Claimant appeals, contending the administrative law judge erred in finding that his current disability is not related to the 1996 work injury. Employer responds, urging affirmance of the administrative law judge's decision.

In determining whether a disabling condition is work-related, claimant is aided by the Section 20(a) presumption, 33 U.S.C. §920(a). *See Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.2d 285, 34 BRBS 96(CRT) (5th Cir. 2000). In order to rebut the Section 20(a) presumption, employer must introduce substantial evidence that claimant's condition was not caused or aggravated by his employment. *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). Claimant, however, bears the

¹ Employer paid temporary total disability benefits for various periods between July 1996 and October 1999.

² Claimant worked for Point Eight from October 9, 2000 to September 23, 2002, and from December 2, 2002 through December 29, 2003, when he was laid off. He did not actually work after September 29, 2003.

burden of establishing the nature and extent of any disability sustained as a result of a work-related aggravation. *See generally Carlisle v. Bunge Corp.*, 33 BRBS 133 (1999), *aff'd*, 227 F.3d 934, 34 BRBS 79(CRT) (7th Cir. 2000). Claimant contends Dr. Gallagher's deposition testimony establishes that while the aggravation of claimant's pre-existing degenerative disease by the work accident is not the "sole cause" of claimant's current condition and resulting light-duty restriction, it is the "triggering" factor that has resulted in claimant's being unable to return to work.

Dr. Gallagher stated at this deposition that claimant's work accident triggered pain resulting from claimant's underlying degenerative arthritis. He stated that claimant has had chronic pain since that time, which can be triggered by activity or merely by sleeping in the "wrong" position. EX 12 at 13-14. However, Dr. Gallagher also stated that the work-related aggravation of the pre-existing condition is not the cause of claimant's light-duty work restriction, but that such is due to the underlying degenerative disc disease and arthritis. *Id.* at 14, 18. He stated the work accident resulted in a lumbar strain with muscle spasm, and that this temporary aggravation lasted only two to three months. *Id.* at 18, 24-25. Dr. Gallagher stated that this aggravation had ended by the time he released claimant to full-duty work in October 1996. *Id.* at 24-25.

In adjudicating a claim, it is well established that an administrative law judge is entitled to weigh the medical evidence and to draw his own inferences from it. *See Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). In this case, the administrative law judge rationally relied on Dr. Gallagher's opinion that the disability attributable to the work accident ended in October 1996, and that claimant's current condition is due to the underlying degenerative condition. This opinion is sufficient to rebut the Section 20(a) presumption, *see generally Director, OWCP v. Vessel Repair, Inc.*, 168 F.3d 190, 33 BRBS 65(CRT) (5th Cir. 1999); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir.1998), and claimant has not identified any reversible error in the administrative law judge's consideration of the evidence of record as whole. *See generally ITO Corp. v. Director, OWCP*, 883 F.2d 422, 22 BRBS 126(CRT) (5th Cir. 1988). Therefore, as it is rational, supported by substantial evidence, and in accordance with law, we affirm the finding that claimant's work-related disability ended in October 1996, as well as the consequent denial of additional benefits.³ *Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd mem. sub nom. in pert. part Chong v. Director, OWCP*, 909 F.2d 1488 (9th Cir. 1990).

³ Because we have affirmed the administrative law judge's finding that claimant's current disability is not related to his May 10, 1996, work accident, we need not address claimant's contentions regarding his post-injury wage-earning capacity.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge