U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 15-0313

WILLIE MAE JOSEPH	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: Dec. 18, 2015
CARGILL, INCORPORATED	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Larry W. Price, Administrative Law Judge, United States Department of Labor.

Willie Mae Joseph, Reserve, Louisiana, pro se.

George J. Nalley, Jr., and Bridget D. Nalley (Nalley & Dew), Metairie, Louisiana, for self-insured employer.

Before: BOGGS, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant, appearing without representation, appeals the Decision and Order Denying Benefits (2014-LHC-00609) of Administrative Law Judge Larry W. Price 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). In an appeal by a claimant without legal representation, we will review the administrative law judge's findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and in accordance with law. If they are, they must be affirmed. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant worked for employer from November 1978 to November 1992. She had an audiometric evaluation on April 4, 2013, which showed an 8.4 percent binaural impairment under the American Medical Association *Guides to the Evaluation of*

Permanent Impairment (AMA *Guides*).[1] JX 15. Claimant filed a claim for compensation, alleging her hearing loss is due to injurious noise exposure during the course of her employment for employer.[2]

In his decision, the administrative law judge found that claimant's 2013 audiogram and her testimony of noise exposure at work are sufficient evidence to invoke the Section 20(a) presumption that her hearing loss was caused by her exposure to noise at work. 33 U.S.C. §920(a); Decision and Order at 10-11. The administrative law judge found that employer rebutted the Section 20(a) presumption based on the opinions of Drs. Seidemann and Engelberg that claimant's hearing loss was not caused by her employment and on an in-house audiogram conducted in 1992 by employer approximately three months before claimant stopped working for it, which was interpreted as not showing any hearing impairment under the AMA *Guides*. *Id*. at 11-12; *see* JXs 13; 25 at 23-24; 26 at 22-23. On the record as a whole, the administrative law judge concluded that the credible evidence does not support "a finding of causation or aggravation," and he found that claimant did not establish that her hearing loss is related to her employment. *Id*. at 14. Thus, he denied the claim for benefits.

Claimant appeals the denial of benefits. Employer filed a response brief in support of the administrative law judge's decision.

Once, as here, claimant establishes a prima facie case, Section 20(a) applies to relate her injury to her employment, and the burden is on employer to rebut this presumption by producing substantial evidence that the injury is not related to the employment. *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5 (2013). If the employer rebuts the presumption, it no longer controls, and the issue of whether there is a causal relationship between the injury and the employment must be resolved on the evidence of

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[1] Section 8(c)(13)(E) of the Act provides that hearing loss is to be calculated pursuant to the AMA Guides:

> (E) Determinations of loss of hearing shall be made in accordance with the guides for the evaluation of permanent impairment as promulgated and modified from time to time by the American Medical Association.

33 U.S.C. §908(c)(13)(E).

[2] Claimant testified that she was exposed to loud noise while engaged in "river work" caused by barges banging into each other and from machinery and equipment at employer's facility. Tr. at 7-10.

record as a whole, with the claimant bearing the burden of persuasion. *Ceres Gulf, Inc. v. Director, OWCP* [*Plaisance*], 683 F.3d 225, 46 BRBS 25(CRT) (5th Cir. 2012); *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171 (2001).

In this case, the administrative law judge found that employer produced substantial evidence to rebut the Section 20(a) presumption. The administrative law judge relied on employer's in-house audiogram conducted in August 1992, which showed no hearing loss under the AMA *Guides* and the opinions of Drs. Seidemann and Engelberg. Dr. Seidemann opined that the 1992 test was valid as an "exit audiogram" since claimant stopped working for employer three months later. JXs 10, 11. Moreover, he and Dr. Engelberg testified on deposition that claimant did not sustain any hearing loss during her employment from August to November 1992. JXs 25 at 23-24; 26 at 23-27. Drs. Seidemann and Engelberg also stated that claimant's hearing loss in 2013 was not caused by her longshore employment. JXs 25 at 23-24; 26 at 22-23. The administrative law judge properly found that this evidence is sufficient to rebut the Section 20(a) presumption. Therefore, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebutted and that claimant bore the burden of establishing that her hearing loss is related to her workplace exposure to noise. *Plaisance*, 683 F.3d 225, 46 BRBS 25(CRT); *Cline*, 48 BRBS 5; *see also Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000).

In finding, on the record as a whole, that claimant did not establish that her hearing loss is related to her longshore employment, the administrative law judge credited the medical opinions of Drs. Seidemann and Engelberg and the August 1992 audiogram, discussed above. Decision and Order at 12. The administrative law judge also credited the deposition testimony of Drs. Seidemann and Engelberg that the audiometric configuration of the April 2013 audiogram is not consistent with noise-induced hearing loss, but with normal aging processes or other etiologies unrelated to noise exposure. *Id*.; *see* JXs 10 at 1; 12 at 2; 25 at 21-23; 26 at 22-24. The administrative law judge found no evidence that employer's eight workplace audiograms conducted from 1979 to 1992 were unreliable,[3] and Dr. Seidemann testified that clinical audiometric testing generally shows less hearing loss than on-site tests. *Id*.; *see* JXs 25 at 8, 13; 26 at 45-46. The administrative law judge found based on the deposition testimony of Drs. Seidemann and Mulnick that the 1992 audiogram conducted three months before claimant stopped working for employer is sufficiently close in time to establish claimant's hearing acuity at the time she stopped working. *Id*. at 13. Specifically, Dr.

[3] Dr. Engelberg testified that claimant's in-house audiograms at employer's facility were reliable. JX 25 at 8-10, 13. The administrative law judge found that none of these audiograms showed an impairment under the AMA *Guides*. Decision and Order at 6; *see* JXs 13, 14.

Seidemann testified that it was not scientifically possible for claimant's hearing loss to have been caused by noise exposure during this three-month period, and Dr. Mulnick, claimant's chosen audiologist, testified that her hearing loss was "probably not caused" by her employment. JXs 24 at 39-40; 26 at 24-26. Finally, the administrative law judge found it significant that Dr. Mulnick's initial opinion that claimant's hearing loss is work-related changed once he became aware of the test results from employer's on-site audiograms. Decision and Order at 13; *see* JX 24 at 10-11, 39-40.

The Board is not empowered to reweigh the evidence, but must accept the rational inferences and findings of fact of the administrative law judge that are supported by the record. *See James J. Flanagan Stevedores, Inc. v. Gallagher*, 219 F.3d 426, 34 BRBS 35(CRT) (5th Cir. 2000); *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991). Moreover, an administrative law judge is entitled to weigh the medical evidence and draw his own inferences therefrom; he has the prerogative to credit one medical opinion over that of another and is not bound to accept the opinion or theory of any particular medical examiner. *See Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 29 BRBS 79(CRT) (5th Cir. 1995). In this case, the administrative law judge rationally credited the August 1992 audiogram showing no hearing loss under the AMA *Guides*, the opinions of Drs. Seidemann and Engelberg that claimant's hearing loss is not related to her longshore employment, and the later opinion of Dr. Mulnick that claimant's hearing loss is probably not work-related. Thus, substantial evidence supports the administrative law judge's finding that claimant did not establish a causal relationship between her 2013 hearing loss and her longshore employment, which terminated in November 1992. Therefore, we affirm the denial of benefits. *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171 (2001); *Coffey*, 34 BRBS 85.

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

SO ORDERED.

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JUDITH S. BOGGS
Administrative Appeals Judge

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RYAN GILLIGAN
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge