BRB No. 99-340

MIHAI GHEORGHIU	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
REYNOLDS SHIPYARD CORPORATION	)	DATE ISSUED: Dec. 16, 1999
	)	
and	)	
	)	
THE STATE INSURANCE FUND	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

William Leeds, New York, New York, for claimant.

Christopher J. Field (Weber Goldstein Greenberg & Gallagher), Jersey City, New Jersey, for employer/carrier.

Before: BROWN and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (98-LHC-0519) of Administrative Law Judge Ralph A. Romano 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 and 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, a burner/pipefitter, worked for employer from 1975 to 1994. Claimant

currently works for a different employer as a maintenance superintendent. He filed a claim for occupational hearing loss in 1995. An audiogram performed by Dr. Brownstein in 1995, shortly after claimant filed his claim, revealed a 19.37 percent work-related binaural hearing loss. A subsequent 1995 audiogram performed by Dr. Katz revealed a zero percent binaural hearing loss with a mild conductive hearing impairment which was not associated with work or noise exposure in the employment area. The administrative law judge found invocation of the presumption pursuant to Section 20(a) of the Act, 33 U.S.C. §920(a), as conceded by employer, and rebuttal of the Section 20(a) presumption based on Dr. Katz's opinion. The administrative law judge denied claimant's claim upon weighing the evidence and crediting Dr. Katz's opinion over that of Dr. Brownstein.

On appeal, claimant challenges the administrative law judge's denial of benefits, contending that the administrative law judge erred in crediting the opinion of Dr. Katz over that of Dr. Brownstein.[1] Employer filed a response brief in support of the administrative law judge's denial of benefits, to which claimant replied.

Claimant argues that the administrative law judge erred in denying his hearing loss claim based on his crediting of Dr. Katz's opinion over that of Dr. Brownstein. Section 20(a) provides claimant with a presumption that the injury he sustained is causally related to his employment if he establishes a *prima facie* case by showing that he suffered a harm and that employment conditions existed or a work accident occurred which could have caused the harm. *See, e.g., Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59 (CRT)(5th Cir. 1998). Once claimant has invoked the presumption, the burden shifts to employer to rebut it with substantial countervailing evidence. *Peterson v. General Dynamics Corp.*, 25 BRBS 71, 78 (1991), *aff'd sub nom. Ins. Co. of North America v. U.S. Dep't of Labor [Peterson]*, 969 F.2d 1400, 26 BRBS 14 (CRT)(2d Cir. 1992), *cert. denied*, 507 U.S. 909 (1993); *Davison v. Bender Shipbuilding & Repair Co., Inc.*, 30 BRBS 45, 46-47 (1996). If the

[1]Claimant alternatively requests that the Board remand this case so that an independent medical evaluation can be performed. There is no statutory or regulatory authority for the Board to remand this case for an independent medical evaluation. If, however, claimant obtains additional evidence, he may request modification pursuant to Section 22 of the Act, 33 U.S.C. §922. *See Metropolitan Stevedore Co. v. Rambo*, 515 U.S. 291, 30 BRBS 1 (CRT)(1995); *Woods v. Bethlehem Steel Corp.*, 17 BRBS 243 (1985).

administrative law judge finds that the Section 20(a) presumption is rebutted, then all relevant evidence must be weighed to determine if a causal relationship has been established with claimant bearing the burden of persuasion. *See, e.g., Meehan Service Seaway Co. v. Director, OWCP*, 125 F.3d 1163, 31 BRBS 114 (CRT)(8th Cir. 1997), *cert. denied*, 118 S.Ct. 1301 (1998)*; see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT)(1994).

The administrative law judge found that claimant established invocation of the Section 20(a) presumption as conceded by employer and that employer rebutted this presumption. Upon an evaluation of the evidence, the administrative law credited the opinion of Dr. Katz[2] over that of Dr. Brownstein[3] since Dr. Katz's audiological technician was better qualified and as Dr. Brownstein's audiological testing did not include either speech audiometry or speech discrimination/reception tests. The administrative law judge found that Dr. Katz's audiological technician was a Board-certified audiologist with a masters degree in audiology while Dr. Brownstein's technician was a registered nurse. Moreover, the administrative law judge found Dr. Katz's audiological evaluation more complete, noting Dr. Katz's testimony that speech reception tests are confirmatory as to the reliability and accuracy of audiometric test results and Dr. Brownstein's admission that this testing plays some role in assessing such acuity and in confirming the findings on pure tone testing. Additionally, the administrative law judge found that speech discrimination/reception tests are an integral part of a complete audiogram as there is space for such test results on the standard audiogram test result form. As the administrative law judge acted within his discretion in crediting Dr. Katz's opinion over that of Dr. Brownstein and as Dr. Katz's opinion supports the administrative law judge's conclusion that claimant's hearing loss is not work-related, we affirm the administrative law

[2]Dr. Katz opined that claimant's mild conductive hearing impairment is not associated with work or noise exposure in the employment area and calculated claimant's binaural hearing loss at zero percent. Emp. Ex. 3.

[3]Dr. Brownstein opined that claimant's hearing loss is due to occupational, loud noise exposure and calculated claimant's binaural hearing loss at 19.37 percent. Cl. Ex. 3.

judge's denial of benefits.[4] *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); Decision and Order at 4-5; Cl. Exs. 3, 4, 5 at 9-13; Emp. Exs. 3, 6 at 7-18.

[4]Dr. Katz also opined that claimant's hearing loss is slightly asymmetrical and subsequently testified that if hearing loss were from noise exposure, it should be a symmetrical hearing loss. Emp. Exs. 3, 6 at 36.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge