

BRB No. 99-0379

WILLIAM G. LOWRY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
MARINE TERMINALS)	DATE ISSUED: <u>Dec. 23, 1999</u>
CORPORATION)	
)	
and)	
)	
MAJESTIC INSURANCE COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Samuel J. Smith,
Administrative Law Judge, United States Department of Labor.

Gregory A. Bunnell and Meagan A. Flynn (Pozzi Wilson Atchison, LLP),
Portland, Oregon, for claimant.

Robert E. Babcock, Lake Oswego, Oregon, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (97-LHC-2011) of Administrative Law Judge Samuel J. Smith 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 if they are rational, supported by substantial evidence, and 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 sustained a cerebral vascular accident, or stroke, during the course of his employment for employer as a marine manager on November 5, 1996. Claimant and employer stipulated that claimant is permanently and totally disabled as a result of this stroke. Claimant asserted that increased physical exertion due to his work activities from November 2 to November 5, 1996, contributed to the occurrence of the stroke. Employer contended that claimant's stroke was the natural result of claimant's pre-existing diabetes, hypertension, sedentary lifestyle, obesity, cigarette smoking, and erythrocytosis (an elevation of red blood cells).

In his Decision and Order, the administrative law judge found claimant entitled to the Section 20(a) presumption of compensability, 33 U.S.C. §920(a), which he found employer rebutted. In analyzing the record evidence as a whole, the administrative law judge determined that claimant failed to show by a preponderance of the evidence that his stroke was caused, aggravated or accelerated by his job duties. Accordingly, the administrative law judge denied the claim for benefits under the Act.

On appeal, claimant contests the administrative law judge's finding that claimant failed to establish that his stroke was work-related. Employer responds, urging affirmance.

Where, as here, the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption by producing substantial evidence that claimant's condition was neither caused nor aggravated by his employment. See *American Grain Trimmers, Inc. v. Director, OWCP* 181 F.3d 810, 33 BRBS 71 (CRT)(7th Cir. 1999)(*en banc*); *Swinton v. J. Frank Kelley, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). If the administrative law judge finds the Section 20(a) presumption rebutted, it drops from the case. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119 (CRT)(4th Cir. 1997). The administrative law judge then must weigh all the evidence and resolve the issue of causation on the record as a whole with claimant bearing the burden of persuasion. See *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996); see generally *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT)(1994).

In addressing the record as a whole, the administrative law judge credited the opinions of Drs. Wynn, Goldberg and DeLoughery that claimant's stroke was not caused or contributed to by his work activities, but is attributable to non-work-related risk factors, over the opinions of Drs. Ryan and Smith that claimant's physical exertion at work in the days preceding the stroke contributed to its occurrence. The administrative law judge found the qualifications of Drs. Wynn and Goldberg more

specialized for this type of injury than those of Drs. Ryan and Smith, and thus that they possess superior qualifications to render an opinion regarding the etiology of strokes.¹ Moreover, the administrative law judge found that Dr. DeLoughery, a hematologist, has far greater expertise on the subject of blood coagulation and its relationship to physical exertion. EX 3. The administrative law judge also gave less weight to the opinions of Drs. Smith and Ryan because they initially relied on an inaccurate work history, which greatly overstated the duration and intensity of claimant's work activities preceding the stroke. CXS 16, 23 at 46, 31 at 10-11.

In adjudicating a claim, it is well-established that the administrative law judge is entitled to weigh the evidence and is not bound to accept the opinion or theory of any particular witness; rather, the administrative law judge may draw his own conclusions and inferences from the evidence. See *generally Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27 (CRT)(9th Cir. 1988). In the instant case, we hold that the administrative law judge's decision to credit the opinions of Drs. Wynn, Goldberg, and DeLoughery regarding the cause of claimant's stroke over the opinions of Drs. Ryan and Smith is rational and supported by substantial evidence. See *O'Keefe*, 380 U.S. at 359; see also *Santoro*, 30 BRBS at 173. We therefore affirm the administrative law judge's determination that claimant's stroke is not related to his employment.

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

¹In this regard, Dr. Ryan is a board-certified internist specializing in hypertension and cardiovascular disease, CX 29, and Dr. Smith is a board-certified neurologist specializing in epilepsy, CX 27. Dr. Wynn has specialized training in acute stroke diagnosis and risk factors, EX 2, and Dr. Goldberg is qualified in the physiological effects of exercise, EX 1.

MALCOLM D. NELSON, Acting
Administrative Appeals Judge