U.S. Department of Labor

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

BRB No. 16-0312

RICHARD ROY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: Feb. 7, 2017
	)	
ELECTRIC BOAT CORPORATION	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Colleen Geraghty, Administrative Law Judge, United States Department of Labor.

Mary Ann Violette and Robert P. Audette (Audette, Cordeiro & Violette), East Providence, Rhode Island, for claimant.

Edward W. Murphy (Morrison, Mahoney LLP), Boston, Massachusetts, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2015-LHC-1031) of Administrative Law Judge Colleen Geraghty 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 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 was employed as a stage builder by employer at its facility in Quonset, Rhode Island from June of 1998 until late September 2013. Claimant's duties as a stage builder consisted of building scaffolding both inside and outside submarines. Tr. at 16. The job entailed carrying planks that weighed between 20-80 pounds up the stairs

or using cranes if they were available. *Id.* The job also required kneeling, crawling, bending, and reaching. *Id.*

Claimant was diagnosed with a torn meniscus in his right knee in August 2008 and underwent a meniscectomy, after which he returned to work on regular duty. He was later diagnosed with a torn meniscus in his left knee in March 2012, necessitating another meniscectomy. Claimant then returned to work until September of 2013 when he could no longer stand the pain in his knees.[1] In December 2013, claimant underwent a partial right knee replacement and has received a series of injections for his continuing left knee pain.[2] Employer paid claimant temporary total disability benefits from September 27 to December 19, 2013 at a weekly rate of $750.00 and permanent partial disability benefits for a 6 percent impairment to the left leg at a rate of $717.31 for 17.28 weeks.

Claimant sought additional disability and medical benefits under the Act. The administrative law judge found claimant established a prima facie case that his bilateral knee osteoarthritis could have been caused, contributed to, or aggravated by his prolonged work-related kneeling, squatting, carrying materials, and climbing. Accordingly, the administrative law judge concluded that claimant was entitled to the Section 20(a), 33 U.S.C. §920(a), presumption that his knee conditions are related to his employment.[3] The administrative law judge further found, however, that employer presented substantial evidence to rebut the presumption, citing the medical opinions given by Dr. Joseph Lifrak and Dr. John Froehlich that claimant's knee condition was not caused or aggravated by his work activities. In weighing the evidence as a whole, the administrative law judge found that claimant failed to establish that his bilateral knee condition is related to his employment. Therefore, the administrative law judge denied the claim for additional disability and medical benefits.

On appeal, claimant asserts the administrative law judge erred in finding that employer rebutted the Section 20(a) presumption and in weighing the evidence on the record as a whole in favor of employer. Employer filed a response brief in support of the administrative law judge's denial of benefits.

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[1] Claimant testified that he was unable to return to work because he could not climb stairs very well or bend down. Tr. at 28.

[2] Claimant also has a varus deformity, i.e., he is bow-legged.

[3] The administrative law judge cited claimant's testimony as to the physical nature of his work duties as well as the opinions of claimant's treating physician, Dr. Richard Smith, and of Dr. Randall Updegrove, who performed a medical records review, that claimant's bilateral knee condition is related to his employment. Decision and Order at 12.

In order to be entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), a 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 or aggravated the harm. *See Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 605, 38 BRBS 60, 62(CRT) (1st Cir. 2004). Where, as here, the claimant has established his prima facie case, the burden shifts to the employer to present "substantial evidence" that the injury was not caused by the claimant's working conditions. *See Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 53, 44 BRBS 13, 15(CRT) (1st Cir. 2010). "Substantial evidence" is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Bath Iron Works Corp. v. Brown*, 194 F.3d 1, 5, 33 BRBS 162, 165(CRT) (1st Cir. 1999). If the employer succeeds in rebutting the Section 20(a) presumption, then the presumption falls out of the case and the administrative law judge "must weigh all of the record evidence to determine whether the claimant has established the necessary causal link between the injury and employment." *Fields*, 599 F.3d at 53, 44 BRBS at 15(CRT). The claimant bears the ultimate burden of proof to establish the necessary causal link between the injury and employment. *Id.*

We reject claimant's contention that the administrative law judge erred in finding that employer rebutted the Section 20(a) presumption. The administrative law judge noted that Drs. Lifrak and Froehlich are both orthopedic surgeons with experience in treating arthritic conditions such as claimant's and both examined claimant's work history and medical records and concluded to a reasonable degree of medical certainty that claimant's knee conditions were not aggravated or contributed to by his work.[4] Their testimony is relevant to the issue of causation and such that "a reasonable mind might

[4] Dr. Lifrak reviewed claimant's medical records and examined claimant on two occasions, first on November 18, 2013 and then on June 1, 2015. EX 6 at 8. Dr. Lifrak testified by deposition that although people could suffer meniscus tears from activities such as kneeling or squatting, in such a situation, a person should be able to identify a specific moment of injury, unlike in claimant's case. He further stated that a varus deformity, i.e., bow-leggedness, is among the risk factors associated with the development of osteoarthritis in the knees. *Id.* at 27. He gave his opinion to a reasonable degree of medical certainty that claimant's work for employer "did not aggravate, make worse, or accelerate [claimant's] degenerative changes in his right knee" and further that claimant's left medial meniscal tear also was not work-related. *Id.* at 15. Dr. Froehlich also conducted a review of claimant's medical records and spoke to claimant briefly over the phone, although he did not examine claimant in person. EX 7 at 5. Dr. Froehlich, testifying by deposition, agreed that bow-leggedness is a risk factor for the development of arthritis and opined to a reasonable degree of medical certainty that claimant's knee condition is not related to his work because there was no specific work injury that could be found to be responsible. *Id.* at 18.

accept [it] as adequate to support a conclusion." *Brown*, 194 F.3d at 5, 33 BRBS at 165(CRT). A physician's testimony regarding the lack of a causal nexus, given with a reasonable degree of medical certainty, is sufficient to rebut the Section 20(a) presumption. *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000).

Claimant specifically argues that the opinions of Drs. Lifrak and Froehlich cannot be considered substantial evidence because they failed to address whether claimant's disabling knee pain, as opposed to his meniscus tears, was caused or aggravated by his work. Claimant asserts that the administrative law judge erred in accepting Drs. Lifrak and Froehlich's opinions because both doctors incorrectly focused solely on claimant's meniscus tears and his progressing osteoarthritis rather than on the pain in his knees that ultimately led claimant to stop working. Claimant cites the *Fields* case to support making a distinction between pain and osteoarthritis. *See Fields*, 599 F.3d at 55, 44 BRBS at 17(CRT) ("The Board's focus on the distinction between Fields's osteoarthritis and his pain was sound.").

We reject claimant's argument. In *Fields*, the physician did not address the issue of Fields's disabling pain at all, even while acknowledging that it was "possible" for physical activity to trigger pain in an osteoarthritic individual. *Fields*, 599 F.3d at 56, 44 BRBS at 17(CRT). In contrast, here, Dr. Lifrak specifically addressed the fact that claimant's knee pain had not improved even though claimant had stopped working to support his belief that claimant's work duties had not caused his pain, stating that it indicated a situation where claimant's knees would have hurt regardless of what sort of work he performed. EX 6 at 15, 36. The opinions of Drs. Lifrak and Froehlich do not support claimant's contention that they entirely overlooked the issue of claimant's knee pain; indeed, Dr. Lifrak addressed the issue of pain and Dr. Froehlich also specifically addressed the issue of claimant's arthritis being symptomatic. EX 6 at 13-15, EX 7 at 14-17. Drs. Lifrak and Froehlich were both deposed and cross-examined thoroughly as to their opinions regarding claimant's condition and it would be reasonable for a fact-finder to conclude, as the administrative law judge did, that their opinions constitute substantial evidence to rebut the Section 20(a) presumption. *See Sprague v. Director, OWCP*, 688 F.2d 862, 866-68, 15 BRBS 11, 15(CRT) (1st Cir. 1982) (affirming the administrative law judge's finding that the employer had introduced substantial evidence to rebut where two physicians opined that the employee's death was not caused by a work-related injury). Accordingly, we affirm the administrative law judge's finding that employer presented substantial evidence to rebut the Section 20(a) presumption.

Claimant next asserts that the administrative law judge incorrectly determined that claimant failed to meet his burden of persuasion in establishing that his employment aggravated and contributed to his disabling knee pain and resulting knee surgeries. Claimant specifically assigns error to the fact that the administrative law judge chose to discount an internet article by the Arthritis Foundation that listed repetitive bending,

kneeling, and heavy lifting as among the causes of osteoarthritis. Additionally, claimant argues that the administrative law judge's decision to credit the opinion of Dr. Froehlich disagreeing with the study was irrational given the fact that Dr. Froehlich is himself a member of the Arthritis Foundation. The administrative law judge noted Dr. Froehlich's disagreement with the article and further found that the article did not merit much weight because it was "a generalized statement, lacks specificity, and fails to identify the basis, in terms of studies or medical literature, underpinning its premise." Decision and Order at 14.

Claimant's argument is unavailing because of the discretion given to the administrative law judge in weighing the evidence and making credibility assessments. *See Sprague*, 688 F.2d at 868, 15 BRBS at15(CRT). The administrative law judge rationally concluded that the report of the Arthritis Foundation was very general and had no citations to support its conclusions. Additionally, the administrative law judge noted that the generalized statement in the article was directly contradicted by the opinions of both Drs. Lifrak and Froehlich denying a causal link between claimant's knee condition and his employment. Furthermore, we are not convinced by claimant's contention that Dr. Froehlich's membership in the Arthritis Foundation necessarily makes reliance on his opinion disagreeing with the article irrational. There is no indication that Dr. Froehlich himself had anything to do with the writing of the article that would presume his endorsement of, or agreement with, the article's statements. The administrative law judge's decision to discount the article was neither irrational nor unsupported by the evidence in the record. *See generally Ceres Gulf, Inc. v. Director, OWCP [Plaisance]*, 683 F.3d 225, 228, 46 BRBS 25, 27(CRT) (5th Cir. 2012) (stating that the Board is required to uphold the factual findings of the administrative law judge if they are supported by substantial evidence).

Claimant also asserts that the administrative law judge erred in giving greater weight to the opinions of Drs. Lifrak and Froehlich than to the opinion of Dr. Smith, claimant's treating physician. We disagree. Although an administrative law judge may give special weight to a treating physician's opinion, he is not required to do so. *See O'Kelley*, 34 BRBS 39 ("[A]n administrative law judge is not required to find determinative the opinion of employer's medical expert simply because the expert is more highly trained or is claimant's treating physician."); *see also Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 501, 29 BRBS 79, 81 (CRT) (5th Cir. 1995) ("[W]here the testimony of medical experts is at issue, the administrative law judge is entitled to accept any part of an expert's testimony or reject it completely.") *cf. Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir. 1998), *amended*, 164 F.3d 480, 32 BRBS 144(CRT) (9th Cir. 1999), *cert. denied*, 528 U.S. 809 (1999) (special weight given to treating physician's opinion where options for treatment were at issue). Here, the administrative law judge noted that both Drs. Lifrak and Froehlich disagreed with Dr. Smith regarding the causal relationship between claimant's work duties and his knee conditions. She specifically

underscored that all the medical experts, including Dr. Smith, acknowledged that a bow-legged individual who had undergone a meniscus removal surgery, such as claimant, would inevitably develop osteoarthritis. The administrative law judge concluded that Dr. Smith's opinion did not accord sufficient weight to the contribution of claimant's bow-leggedness toward his arthritis. Her decision to accord greater weight to the opinions of Drs. Lifrak, and Froehlich than to the opinion of Dr. Smith is within the scope of the administrative law judge's duty to independently weigh all of the evidence in the record. *See Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042, 31 BRBS 84, 89(CRT) (2d Cir. 1997) ("As a fact-finder, the ALJ has the discretion to evaluate the credibility of a claimant and to arrive at an independent judgment, in light of medical findings and other evidence.") (internal quotations omitted).

In this case, the administrative law judge reviewed claimant's work history and his medical records at some length and fully weighed the evidence when addressing the issue of whether claimant's knee condition was aggravated by his work. The Board is not empowered to reweigh the evidence. *See Ceres Gulf, Inc. [Plaisance]*, 683 F.3d at 228, 46 BRBS at 27 ("The [administrative law judge] is . . . the factfinder who is exclusively entitled to assess both the weight of the evidence and the credibility of witnesses."). The administrative law judge's conclusion that claimant failed to meet his burden of persuasion as to the issue of causation is supported by substantial evidence in the record, namely the opinions of both Drs. Lifrak and Froehlich. *See Rainey v. Director, OWCP*, 517 F.3d 632, 634, 42 BRBS 11, 12(CRT) (2d Cir. 2008) ("Pursuant to the 'substantial evidence' standard, if the decision of the administrative law judge is supported by substantial evidence, is not irrational, and is in accordance with the law, the decision must be affirmed.") (internal quotations omitted). Accordingly, we affirm the administrative law judge's finding based on the evidence as a whole that claimant did not establish that his knee conditions are work-related. We therefore affirm the denial of medical and disability benefits.

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

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge