U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 17-0458

ERICK SHLANG	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MITRE CORPORATION	)	DATE ISSUED: Feb. 13, 2018
	)	
and	)	
	)	
CHUBB INDEMNITY INSURANCE COMPANY	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Christopher Larsen, Administrative Law Judge, United States Department of Labor.

Timothy Quinn, Denver, Colorado, for claimant.

Robert N. Dengler (Flicker, Garelick & Associates, LLP), New York, New York, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2015-LDA-00803) of Administrative Law Judge Christopher Larsen 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.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *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 hired by employer as a mechanical engineer in June 2010. He was assigned to work in Qatar four times from September 2011 to May 2013. Claimant testified that the air quality in Qatar was poor, and temperatures reached 100 degrees. Tr. at 18, 40. He was able to exercise indoors during a month-long September 2011 trip and did not experience respiratory symptoms. *Id*. at 18, 34. Claimant returned to Qatar for another month from February to March 2012. He exercised outdoors during this trip because the temperature was cooler, and did not experience any respiratory symptoms. *Id*. at 18-19, 34. Claimant first noticed respiratory symptoms while mountain biking at home in Colorado after the second trip to Qatar. *Id*. at 19, 30. He was diagnosed by Dr. Hoffman in June 2012 with exercise-induced asthma. EX 1 at 3. Claimant returned to Qatar for a week in October 2012, but did not experience respiratory symptoms. Tr. at 39. Claimant was assigned to work in Qatar in June 2013; he testified he immediately felt respiratory symptoms, which he testified were related to a cold he had contracted before he left for Qatar or while in transit. *Id*. at 22-23, 31-33. Claimant filed a claim alleging that his asthma is related to his employment in Qatar in February and March 2012, and that, as a result, further work in Qatar is precluded.[1] JX 3; CX 17.

In his decision, the administrative law judge found claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), based on the opinion of Dr. Rose that claimant's work in Qatar contributed to his asthma. Decision and Order at 6. The administrative law judge found the presumption rebutted by the deposition testimony of Dr. Schwartz that "there is no medical or scientific theory indicating a causal relationship between [claimant's] employment and his respiratory injury." *Id*. at 7. The administrative law judge concluded, "[T]here is no demonstrable or reliable baseline to show a causal connection to [claimant's] employment and his subsequent illness." *Id*. at 8. Moreover, the work-relatedness of claimant's asthma to his short-term exposure to polluted air in Qatar "is unsupported by any scientific or medical theory." *Id*. The administrative law judge found, therefore, that claimant did not establish that he has a work-related respiratory injury. *Id*.

On appeal, claimant alleges error in the administrative law judge's consideration of the evidence and in his conclusion that he did not establish that his asthma is related, at least in part, to his employment in Qatar.[2] Employer responds, urging affirmance of the administrative law judge's decision. Claimant filed a reply brief.

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[1] Claimant continues to work for employer in areas other than the Middle East.

[2] Specifically, claimant asserts that the administrative law judge failed to address his aggravation argument, erred in finding that Dr. Rose's causation opinion is unsupported by any scientific or medical theory, and erroneously gave weight to Dr. Newcomer's initial diagnosis of exercise-induced asthma over his subsequent opinion that claimant has allergies. Claimant also asserts that the administrative law judge made

Once, as in this case, the administrative law judge finds the Section 20(a) presumption invoked and rebutted, it drops from the case.[3] *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT) (9th Cir. 2010). The administrative law judge then must weigh all the relevant evidence and resolve the causation issue, based on the record as a whole, with claimant bearing the burden of persuading the administrative law judge that he has a work related injury. *Id*.; *see also 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).

The Board has reviewed the administrative law judge's decision and claimant's contentions in view of the evidence of record. We affirm, as claimant has not demonstrated reversible error in the administrative law judge's conclusions. 20 C.F.R. §802.404(b). Substantial evidence supports the findings regarding the absence of any asthma-related respiratory symptoms while claimant was in Qatar and of any non-speculative medical or scientific evidence specifically addressing whether claimant's short-term, non-continuous exposure to air pollution in Qatar could cause, or contribute to, the asthma claimant experienced in Colorado. Moreover, the opinion of Dr. Schwartz, that claimant's asthma is not related to his employment in Qatar, constitutes substantial evidence supporting the administrative law judge's conclusion that claimant did not establish he has a work-related respiratory injury, based on the record as a whole. *Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171 (2001). The administrative law judge is vested with the authority to make findings of fact and to draw rational inferences from the record; the Board may not substitute its views for those of the administrative law judge. *See, e.g., Sestich v. Long Beach Container Terminal*, 289 F.3d 1157, 36 BRBS 15(CRT) (9th Cir. 2002); *Duhagon*, 169 F.3d 615, 33 BRBS 1(CRT). Therefore, as the administrative law judge's finding that claimant did not establish he has a work-related respiratory injury is rational, supported by substantial evidence, and in accordance with law, it is affirmed.[4] *Ogawa*, 608 F.3d 642, 44 BRBS

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erroneous factual findings in the order of events and that his combined short-term exposures to air pollution in Qatar equates to long-term exposure. Claimant further asserts that the administrative law judge erred by not also addressing his need for medical treatment and medication and his entitlement to a nominal award.

[3] Claimant does not challenge the administrative law judge's finding that employer rebutted the Section 20(a) presumption.

[4] Thus, claimant is not entitled to medical or disability benefits and the administrative law judge did not err in not addressing these issues.

47(CRT); *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).

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

SO ORDERED.

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BETTY JEAN HALL
Administrative Appeals Judge

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RYAN GILLIGAN
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge