

NANCY RIGGS	)	
(Widow of ROBERT P. RIGGS, JR.)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND	)	DATE ISSUED: 01/31/2006
DRY DOCK COMPANY	)	
	)	
Self-Insured	)	
Employer-Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Jennifer West Vincent (Patten, Wornom, Hatten & Diamonstein, L.C.), Newport News, Virginia, for claimant.

Jonathan H. Walker (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for self-insured employer.

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2003-LHC-272) of Administrative Law Judge Paul H. Teitler 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 supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

This is the second time that this case has been appealed to the Board. Decedent worked for employer from 1961 through 1966, during which time his job duties exposed him to airborne asbestos fibers. On January 22, 1999, decedent was diagnosed with lung cancer. Following the decedent's death on March 1, 2001, claimant, decedent's widow,

filed a claim pursuant to Sections 8(c) and 9 of the Act, 33 U.S.C. §§908(c), 909, alleging that decedent's lung cancer and death were causally related to his occupational asbestos exposure. In his initial Decision and Order, the administrative law judge found claimant to be entitled to invocation of the Section 20(a) presumption, 33 U.S.C. §920(a), that decedent's lung cancer, and ultimately his death, were due at least in part to his asbestos exposure and that employer failed to rebut the presumption. Accordingly, the administrative law judge concluded that decedent's lung cancer and death were work-related as a matter of law, and he awarded claimant permanent partial disability and death benefits, as well as funeral expenses. 33 U.S.C. §§908(c), 909.

Employer appealed this decision, challenging the administrative law judge's determination that it failed to present evidence sufficient to establish rebuttal of the Section 20(a) presumption. The Board reversed this finding and remanded the case for the administrative law judge to weigh all the relevant evidence, without the benefit of the Section 20(a) presumption, and determine if claimant has met her burden of establishing that decedent's lung cancer was work-related. *Riggs v. Newport News Shipbuilding & Dry Dock Co.*, BRB No. 03-0859 (Aug. 24, 2004)(unpub.).

On remand, the administrative law judge set forth and considered at length the totality of the medical evidence and concluded that decedent's asbestos exposure is causally related to the non small cell lung cancer which led to decedent's death. Accordingly, the administrative law judge once again awarded claimant permanent partial disability and death benefits, as well as funeral expenses.

On appeal, employer challenges the administrative law judge's finding that decedent's lung cancer is causally related to his exposure to asbestos. Claimant responds, urging affirmance of the administrative law judge's decision.

Where, as in the instant case, claimant has established entitlement to invocation of the Section 20(a) presumption, *see Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1998), and employer has rebutted the presumption with substantial evidence that decedent's condition was not related to his employment, *see Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4<sup>th</sup> Cir. 1997), the administrative law judge must weigh all of the evidence and resolve the causation issue based on the record as a whole, with claimant bearing the burden of persuasion. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT); *see Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

Employer challenges the administrative law judge's finding that claimant established causation based on the record as a whole. Specifically, employer assigns error to the administrative law judge's decision to rely upon the opinions of Drs. Legier and Maddox over those of its medical experts, Drs. Churg and Wick. The administrative

law judge weighed all of the evidence of record and, giving greater weight to the opinions of Drs. Legier and Maddox, found that decedent's lung cancer was causally related to his exposure to asbestos while working for employer. Drs. Legier and Maddox both testified that, to within a reasonable degree of medical certainty, decedent's lung cancer was related to his exposure to asbestos. *See* Clt's Exs. 4, 6. In contrast, Drs. Churg and Wick opined that as decedent did not exhibit evidence of asbestosis, decedent's work-related exposure to asbestos was unrelated to his diagnosed lung cancer. *See* Emp's Exs. 9, 10. In finding the testimony of Drs. Legier and Maddox to be more persuasive than the testimony of Drs. Churg and Wick, the administrative law judge determined that all parties agree that biopsies performed on the decedent's right lung revealed asbestos bodies and pleural plaques, and that neither Dr. Churg nor Dr. Wick explained why it was their opinion that the presence of asbestos fibers and pleural plaques did not contribute in any way to decedent's lung cancer except to say that it was impossible for asbestos exposure to have contributed without a diagnosis of asbestosis. Decision and Order at 8-9.

We reject employer's assertion that the administrative law judge erred in weighing the evidence of record regarding the issue of causation. It is well established that the administrative law judge is entitled to weigh the medical evidence and draw his own inferences therefrom and is not bound to accept the opinion or theory of any particular medical examiner.<sup>1</sup> *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5<sup>th</sup> Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2<sup>d</sup> Cir. 1961). Moreover, it is impermissible for the Board to substitute its views for those of the administrative law judge; thus, the administrative law judge's findings may not be disregarded merely on the basis that other inferences might appear to be more reasonable. *See Newport News Shipbuilding & Dry Dock Co. v. Winn*, 326 F.3d 427, 37 BRBS 29(CRT) (4<sup>th</sup> Cir. 2003). In his decision, the administrative law judge discussed all of the relevant medical evidence contained in the record, addressed each of employer's contentions regarding the alleged causal relationship between decedent's lung cancer and his employment, rationally found when weighing the evidence that the opinions of Drs. Legier and Maddox were more persuasive than the contrary opinions of Drs. Churg and Wick, and his ultimate findings are supported by substantial evidence.<sup>2</sup> *See, e.g., Parks v. Newport*

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<sup>1</sup> While employer contends that the administrative law judge erred in failing to explain how Drs. Legier, Maddox, Churg and Wick are "equally qualified," *see* Decision and Order at 8, the administrative law judge specifically acknowledged that each of these physicians is Board-certified in anatomic and clinical pathology. *Id.* at 5-7.

<sup>2</sup> Citing to the United States Supreme Court's decision in *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994), employer alleges that the administrative law judge erred when, after noting that the Act must be liberally construed in favor of claimant, he impermissibly applied that proposition to his evaluation of the

*News Shipbuilding & Dry Dock Co.*, 32 BRBS 90 (1988), *aff'd mem.*, 202 F.3d 259 (4<sup>th</sup> Cir. 1999)(table). We therefore affirm the administrative law judge's conclusion that decedent's lung cancer, and consequent death, are related to his employment with employer. *Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT); *Flanagan v. McAllister Bros., Inc.*, 33 BRBS 209 (1999).

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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medical evidence of record since the medical community is divided on the issue raised in the case at bar. Contrary to employer's assertion of error, however, the administrative law judge did not employ the "true doubt" rule when weighing the evidence; rather, the administrative law judge's decision on remand reveals that he fully addressed and weighed all of the medical evidence presented by the parties and, after finding the medical experts of record to be equally qualified, he set forth rational reasons for his determination that claimant's witnesses were more persuasive. Decision and Order at 2-9.