U.S. Department of Labor

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

BRB No. 15-0324

JAMES SUTHERLAND	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: Jan. 19, 2016
ELECTRIC BOAT CORPORATION	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

Scott N. Roberts (The Law Offices of Scott Roberts, L.L.C.), Groton, Connecticut, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2014-LHC-01337) of Administrative Law Judge Jonathan C. Calianos 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, who had pre-existing severe osteoarthritis of the knees, passed a pre-employment physical examination and began working as a shipfitter for employer on September 10, 2012. On September 19, 2013, claimant saw Dr. Arcand with complaints of severe, persistent bilateral knee pain, prompting Dr. Arcand to perform total knee replacements on claimant's right knee on November 25, 2013, and on his left

knee on December 23, 2013. Claimant filed a claim under the Act alleging that his work for employer, specifically his having to walk up and down stairs, and squat, crawl and kneel for extended periods, aggravated his pre-existing bilateral knee conditions and thus, contributed to the need for the 2013 total knee replacement surgeries. Employer controverted the claim on the ground that the 2013 surgical procedures to claimant's knees were due entirely to the natural progression of his pre-existing bilateral osteoarthritic condition.

In his decision, the administrative law judge applied Section 20(a) of the Act, 33 U.S.C. §920(a), to presume that claimant's condition is related to his work for employer, but that employer rebutted the presumption. The administrative law judge then found that claimant did not establish, by a preponderance of the evidence, that his work activities with employer caused him to have increased pain beyond that caused by his underlying condition or that the surgeries were necessitated by a work-related aggravation of claimant's pre-existing condition. Accordingly, the administrative law judge denied the claim for benefits. Claimant appeals the denial of benefits, and employer responds, urging affirmance.

In determining whether an injury is work-related, a claimant is aided by the Section 20(a) presumption, which is invoked after he establishes a prima facie case. *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 44 BRBS 13(CRT) (1st Cir. 2010); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). Under the aggravation rule, if a work-related injury contributes to, combines with, or aggravates a pre-existing condition, the entire resultant disability is compensable. *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004); *Gardner v. Director, OWCP*, 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981). Once the presumption is invoked, as here, the employer may rebut it by producing substantial evidence that working conditions neither directly caused the injury nor aggravated the pre-existing condition to result in injury. *Preston*, 380 F.3d 597, 38 BRBS 60(CRT). If the employer rebuts the presumption, it no longer controls, and the issue of whether there is a relationship between the injury and the employment must be resolved on the record as a whole, with the claimant bearing the burden of persuasion. *Id.*; *see Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). If the claimant's disability is due solely to the natural progression of a prior injury or condition, the employer is not liable for the disabling condition. *Obert v. John T. Clark & Sons of Maryland*, 23 BRBS 157 (1990).

Claimant does not challenge the administrative law judge's finding that the opinion of Dr. Lifrak rebuts the Section 20(a) presumption, and we affirm that finding. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007). Accordingly, we need

address only claimant's argument that the administrative law judge erred in weighing the evidence as a whole. *Bath Iron Works Corp. v. Director, OWCP [Harford]*, 137 F.3d 673, 32 BRBS 45(CRT) (1st Cir. 1998). It is well-established that an administrative law judge is entitled to determine the weight to be accorded to the evidence of record. *See, e.g., Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). The Board is not permitted to re-weigh the evidence if substantial evidence supports the administrative law judge's findings. *See Sprague v. Director, OWCP*, 688 F.2d 862, 15 BRBS 11(CRT) (1st Cir. 1982); *see also generally Bath Iron Works Corp. v. Director, OWCP [Jones]*, 193 F.3d 27, 34 BRBS 1(CRT) (1st Cir. 1999); *Director, OWCP v. Jaffe New York Decorating*, 25 F.3d 1080, 28 BRBS 30(CRT) (D.C. Cir. 1994); *Miffleton v. Briggs Ice Cream Co.*, 12 BRBS 445 (1980), *aff'd*, 659 F.2d 252 (D.C. Cir. 1981).

In this case, the administrative law judge reviewed all the relevant evidence, *see* Decision and Order at 8-11, and substantial evidence supports his determination that claimant did not establish that his bilateral knee pain and joint replacement surgeries were related to his employment. Specifically, the administrative law judge rationally credited Dr. Lifrak's opinion that claimant's work for employer "did not worsen, aggravate, cause or hasten his knee arthritis which would require the need for knee replacement surgery." EX 1, Dep. at 34; *see Sprague*, 688 F.2d 862, 15 BRBS 11(CRT). The administrative law judge found this opinion supported, in part, by the opinions of Drs. Arcand and Willetts,[1] as well as claimant's testimony regarding the extent of his pain.[2] We thus affirm the administrative law judge's finding that claimant did not

[1]The administrative law judge found that Drs. Arcand, Willetts and Lifrak opined that claimant had severe bilateral osteoarthritis prior to working for employer and that the March 27, 2012 x-ray showed that claimant had little to no remaining cartilage in his knees. EX 5 at 5, 12-13; CX 2 at 3; CX 6 at 6-9; EX 1 at 9-10, 13, 33. Additionally, the administrative law judge found that all three physicians agreed that this degree of osteoarthritis and the lack of cartilage protection can cause the pain claimant experienced prior to his knee replacement surgeries. CX 5 at 21; EX 1 at 18; CX 6 at 10-11, 29. Dr. Lifrak further explained that it is normal to have pain all the time, both at and outside of work, as part of the natural progression of the arthritis. EX 1 at 13.

[2]The administrative law judge relied on claimant's admission that his pain was constant, whether or not he was at work, and statements that he, in fact, would get some pain relief when concentrating on his work duties. HT at 45, 48; CX 4 at 30, 37-38, 39. It is well-established that the administrative law judge is entitled to assess the credibility of all witnesses, and has considerable discretion in evaluating the evidence of record. *See Bath Iron Works Corp. v. U.S. Dept. of Labor*, 336 F.3d 51, 56, 37 BRBS 67, 70(CRT) (1st Cir. 2003); *Bath Iron Works Corp. v. Director, OWCP*, 244 F.3d 222, 231, 35 BRBS

establish that his work for employer caused an aggravation of claimant's arthritis or increased his bilateral knee pain beyond that caused by his underlying severe osteoarthritic condition. As claimant did not establish a relationship between his bilateral knee conditions and his employment, we affirm the denial of benefits. *Harford*, 137 F.3d 673, 32 BRBS 45(CRT); *Sprague*, 688 F.2d 862, 15 BRBS 11(CRT); *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171 (2001); *Duhagon v. Metropolitan Stevedore Co*., 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Santoro v. Maher Terminals, Inc*., 30 BRBS 171 (1996).

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

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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RYAN GILLIGAN
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge

35, 40-41(CRT) (1st Cir. 2001). Crediting this testimony, the administrative law judge accorded diminished weight to Dr. Willett's opinion, that the increase in pain from March 2012 to September 2013 was likely due to a combination of continued arthritic deterioration and his work activities for employer, because it was based on the physician's understanding that claimant hurt more after work and less after a weekend of not working, rather than "at a nine [on a scale of 1 to 10] consistently all of the time." HT at 45; CX 4 at 30, 39.