BRB No. 89-1336

MALIN BASIL (Widow of RODNEY BASIL) Claimant-Petitioner v. FRANK E. BASIL, INCORPORATED OF DELAWARE and FRANK E. BASIL, INCORPORATED OF LIBERIA and SIYANCO and INSURANCE COMPANY OF NORTH AMERICA Employers/Carrier-Respondents	)	DATE ISSUED: DECISION and ORDER

Appeal of the Decision and Order of Glenn Robert Lawrence, Administrative Law Judge, United States Department of Labor.

James F. Lee, Jr. and William J. Carter (Carr, Goodson & Lee, P.C.), Washington, D.C., for claimant.

William J. Donnelly, Jr. (Martell, Donnelly, Grimaldi & Gallagher), Washington, D.C., for employers/carrier.

Before: BROWN and DOLDER, Administrative Appeals Judges, and LAWRENCE, Administrative Law Judge.*

*Sitting as a temporary Board member by designation of the Secretary of Labor. 20 C.F.R.

§801.201(d).

PER CURIAM:

Claimant appeals the Decision and Order (86-LHC-680) of Administrative Law Judge Glenn Robert Lawrence denying benefits 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.*, (1982), as extended by the District of Columbia Workmen's Compensation Act, 36 D.C. Code §501 *et seq.* (1973) (the Act).[1] 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. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant's husband, Rodney Basil (decedent), sustained fatal heart failure during the course of his employment with Frank E. Basil-Liberia on May 15, 1982.[2] The administrative law judge found that decedent died due to arrhythmia caused by pre-existing hypertension and coronary artery disease.[3] Decedent's coronary artery disease was found to be due to elevated cholesterol, hypertension, obesity and a genetic predisposition. Claimant contended that decedent's hypertension was aggravated by work-related stress, and that his coronary artery disease was aggravated by hypertension, obesity, smoking, and elevated cholesterol, which in turn, claimant argued, were aggravated by work-related stress. Specifically, claimant contended that from 1981 to the date of his death in May 1982, decedent's long work hours, work-related travel, frequent heated arguments with his father, and allegations of theft by a Saudi Arabian co-owner of Siyanco, established the existence of chronic work-related stress. Claimant sought widow's benefits under the Act pursuant to Section 9(b) of the Act, 33 U.S.C. §909(b).

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[1]Employers submitted a cross-appeal that was not timely filed. Their appeal was therefore dismissed by Board Order issued on February 27, 1991.

[2]The employers in this case, Frank E. Basil-Delaware, Frank E. Basil-Liberia, and Siyanco, were founded by Rodney Basil's father, Frank Basil. The administrative law judge found that each corporation is a separate entity. *See Penick v. Frank E. Basil, Inc. of Delaware, et al,* 579 F. Supp. 160 (D.C. 1984), *aff'd mem.*, 744 F.2d 878 (D.C. Cir. 1984). Their primary business is to provide construction, support and recruitment services to American corporations conducting business overseas pursuant to contracts awarded by the U.S. Department of Defense and the government of Saudi Arabia.

[3]Claimant alternatively contended before the administrative law judge that decedent died due, in part, to acute job stress from his excitement while inspecting a sailboat in Finland. Although the sailboat was paid for by Frank E. Basil-Liberia, the record establishes that decedent instigated the project and would be the primary user of the recreational sail boat. The administrative law judge found that the inspection was a pleasurable experience that did not contribute to decedent's death. Claimant does not appeal this finding.

This claim presented several contested issues. The administrative law judge found that decedent was an employee of Frank E. Basil-Liberia, that Frank E. Basil-Liberia is subject to the jurisdiction of the Act, as extended by the District of Columbia Workmen's Compensation Act, but not the jurisdiction of the Defense Base Act, 42 U.S.C. §1651 *et seq.*, and that claimant is a widow as defined by Section 2(16) of the Act, 33 U.S.C. §902(16).[4] He also determined that claimant was entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), that decedent's death was related to his employment, since the heart failure occurred at work. *See generally Darnell v. Bell Helicopter International, Inc.*, 16 BRBS 98 (1984), *aff'd sub nom. Bell Helicopter International, Inc. v. Jacobs*, 746 F.2d 1342, 17 BRBS 13 (CRT) (8th Cir. 1984).

The administrative law judge next determined that there was substantial evidence to rebut the Section 20(a) presumption, and he therefore weighed the relevant evidence as a whole. The administrative law judge rejected the factual basis of claimant's claim that decedent was subject to job stress by crediting the medical records of decedent's treating physician, Dr. Snow, and the testimony of company employees. Claimant's testimony that decedent suffered from stress was discredited because she had limited contact with him after their separation in May 1981 - one year before his death. The administrative law judge next addressed the medical evidence and testimony. He concluded that the opinions from employers' expert witnesses that decedent's heart failure was not work-related are entitled to greater weight based on their reasoning and superior qualifications to claimant's medical witness. He also found the opinion of decedent's treating physician that decedent's heart failure was not work-related was entitled to greater weight than the opinion of claimant's physician, who only reviewed the medical records. Finally, the administrative law judge rejected claimant's motion that he sanction employers for failing to comply with discovery orders that they turn over material relevant to the issues of jurisdiction, employer/employee relationship, and responsible employer.

On appeal, claimant argues that the administrative law judge erred in finding that chronic stress did not contribute to decedent's heart disease and death. Claimant also challenges the administrative law judge's findings that there is no jurisdiction under the Defense Base Act and that employer should not be sanctioned for failing to comply with discovery orders. Finally, claimant argues that she is entitled to entry of a default judgment against Frank E. Basil-Liberia and Siyanco because they allegedly failed to appear at the formal hearing and present substantial evidence to rebut the Section 20(a) presumption. Employers respond, urging affirmance.

First, we address claimant's challenge to the administrative law judge's finding that employer presented substantial evidence to rebut the Section 20(a) presumption and his conclusion that decedent's heart failure and death are not related to job stress. Claimant contends that the

[4]The administrative law judge found jurisdiction under the D.C. Act pursuant to *Director, OWCP v. National Van Lines*, 613 F.2d 972 (D.C. Cir. 1979), *cert. denied*, 448 U.S. 907, 100 S.Ct. 3049 (1980), which held that the District of Columbia Workmen's Compensation Act is entitled to the widest extra-territorial applications, and *Gustafson v. International Progress Enterprises*, 832 F. 2d 637, 20 BRBS 31 (CRT)(D.C. Cir. 1987), *rev'g* 18 BRBS 191 (1986), a case which the administrative law judge found closely analogous to the instant case.

administrative law judge erred, as a matter of law, by failing to construe conflicting evidence of job stress in her favor. Accordingly, claimant argues that the administrative law judge erred by not crediting the evidence that decedent was subject to job stress, and the medical evidence that stress contributed to decedent's heart disease and death.

It is well-established that resolving evidentiary conflicts is within the purview of the finder-of-fact. *See generally John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). Although claimant correctly asserts that the humanitarian purposes of the Act require that all doubtful questions of fact be resolved in her favor, the mere presence of conflicting evidence does not require a conclusion that there are doubts which must be resolved in claimant's favor. *See Wright v. Connolly Pacific Co.*, 25 BRBS 161, 168 (1991). Accordingly, we reject claimant's argument that the administrative law judge erred, as a matter of law, by crediting evidence that decedent was not subject to job stress and that his heart disease and death were not related to job stress.

In finding that claimant's evidence that decedent was under stress was not credible, the administrative law judge credited the testimony of Frank Basil and co-workers of decedent because they were in regular contact with him during the period from 1981 to May 1982 when claimant alleged that decedent's heart disease was aggravated by stress. Frank Basil, who was with decedent on May 13, 1982, testified that, prior to his son's death, decedent was neither tired nor depressed, and that he never complained of work pressure. Tr. at 542-543, 555. The administrative law judge also credited the corroborating testimony of Frederick Rockwell, who was employed by Frank E. Basil-Liberia as its general manager in Saudi Arabia from 1976 to 1984. Mr. Rockwell testified that in the week prior to his death decedent was in a relaxed mood. Tr. at 724-725. Donald Randall, general counsel for Frank E. Basil-Delaware, had worked with decedent since 1975. The administrative law judge credited his testimony that decedent never appeared depressed. Tr. at 317-18. Mr. Randall also testified that he never saw any signs of ill health, or of physical or psychological distress. Tr. at 316-17. The administrative law judge credited the supporting deposition testimony of General Morris Brady (retired), who was employed from October 1, 1981, by Frank E. Basil-Delaware in Saudi Arabia, and was with decedent at the time of his death. Ex. 33 at 3-4. General Brady testified that from October 1981 to May 1982, decedent appeared happy and emotionally stable; he watched his weight, exercised, and was never under pressure. Ex. 33 at 16, 21-22, 27-29. General Brady further testified that decedent

enjoyed his business success, delegated responsibility and was employed within his substantial business capabilities.[5] Ex. 33 at 17-20. We hold that the administrative law judge acted within his discredition as fact-finder in crediting this evidence, and we affirm the administrative law judge's conclusion that Rodney Basil was not under stress due to his working conditions. *See generally Wright*, 25 BRBS at 168.

Assuming, *arguendo*, that decedent was subject to on-the-job stress, the administrative law judge also credited medical evidence of record that decedent's heart disease and death were not related to job stress and his employment. In *Whitmore v. AFIA Worldwide Insurance*, 837 F.2d 513, 20 BRBS 84 (CRT)(D.C. Cir. 1983), the United States Court of Appeals for the District of Columbia Circuit affirmed the administrative law judge's denial of benefits based on the crediting of a medical opinion that the claimant's heart attack and subsequent arrhythmia were not due to chronic work-related stress. *Id.*, 837 F.2d at 515-516, 20 BRBS at 88-89 (CRT). In the instant case, Dr. Snow, decedent's treating physician, and Dr. Bacos, former Chief of the Department of Cardiology at the Washington Hospital Center, unequivocally stated that decedent's pre-existing heart disease and death were not caused or aggravated by chronic job stress. Tr. at 474-480, 524-525, 653-660, 681-682. Dr. Pearson, a cardiac epidemiologist and the director of the preventive cardiology center at Johns Hopkins University, concurred that decedent's heart disease and death were not due to work-related stress. Tr. at 863-865, 869-70, 890-95, 969, 983. Finally, Dr. Scherlis, who has served on numerous committees examining the relationship between heart disease and stress, opined that decedent's heart disease and death were not caused or aggravated by job stress. Tr. at 991-997, 1022-1031, Ex. 10 at C. He also stated several specific areas of disagreement with Dr. Bendersky, claimant's physician, who was the sole medical witness to link decedent's death to job stress. Tr. at 1008-1012. Accordingly, since the administrative law judge's decision to credit the medical opinions of Drs. Snow, Scherlis, Pearson and Bacos over the opinion of Dr. Bendersky is rational, it is affirmed.[6] *See Whitmore*, 837 F.2d at 516, 20 BRBS at 88 (CRT). We therefore affirm the administrative law judge's finding that employer rebutted the Section 20(a) presumption and his conclusion that decedent's heart disease and death were not work-related, as this evidence rules out a causal connection between decedent's employment and his death. *Id.*, 837 F.2d at 515-516, 20 BRBS 88-89 (CRT).

[5]The medical records of Dr. Snow, decedent's treating physician, were also credited. These records show that in 1977 (five years before his death) decedent denied having sleep or concentration difficulties, or having severe depression or nervousness. *See* Tr. at 202-203; Ex. 2.

[6]Claimant challenges the administrative law judge's discrediting of the opinion Dr. Bendersky, who opined that decedent's heart disease was aggravated by chronic work-related stress, which contributed to his death. Tr. at 197-200. Although the employee need not be subject to unusual or severe work stress for any resulting injury to be compensable, *see Cairns v. Matson Terminals, Inc.*, 21 BRBS 252, 256 (1988), in this case, the administrative law judge credited evidence that decedent was not at all subject to work-related stress and that, assuming, *arguendo*, the existence of stress, decedent's death was not work-related.

Claimant next contends that the administrative law judge erred by rejecting her argument that she is entitled to coverage under the Act, as extended by the Defense Base Act. Claimant raises this argument solely for purposes of contending that decedent's injury occurred in a zone of special danger. This doctrine provides that an injury occurs in the course of employment when the obligations or conditions of an employee's work create a zone of special danger. *See generally O'Leary v. Brown-Pacific-Mason*, 340 U.S. 504 (1951). Claimant contends that working conditions in Saudi Arabia and the company's involvement with a Saudi prince, who owned 50 percent of Siyanco, created such a zone, and that decedent's death in Finland does not take him out of coverage of the Defense Base Act.

We need not address whether this claim falls within the coverage provisions of the Defense Base Act. First, the administrative law judge found jurisdiction under the Act, as extended by the District of Columbia Workmen's Compensation Act. The United States Circuit Court of Appeals for the District of Columbia applies the zone of special danger doctrine to cases arising under this Act. *See, e.g., Director, OWCP v. Brandt Airflex Corp.*, 645 F.2d 1053, 13 BRBS 133 (D.C. Cir. 1981). Accordingly, claimant need not also establish coverage under the Defense Base Act for purposes of contending that decedent died in a zone of special danger. Secondly, we decline to address whether decedent was injured in a zone of special danger because the administrative law judge found that decedent died in the course of his employment, and this finding is not appealed. *See* Decision and Order at 7. The zone of special danger doctrine aids the employee in establishing that his injury occurred in the course of employment. It does not, however, affect the administrative law judge's finding that the injury did not arise out of decedent's employment, *i.e.*, the administrative law judge's finding that the death was not work-related. *See Durrah v. Washington Metropolitan Area Transit Authority*, 760 F.2d 322, 324 n.2, 17 BRBS 95, 97 n.2 (CRT)(D.C. Cir. 1985). Accordingly, whether decedent was injured in a zone of special danger does not alter the result in this case.

Claimant further argues that the administrative law judge erred by failing to impose sanctions on employers. Specifically, claimant argues that employers refused to cooperate with discovery orders that they turn over documents relevant to the contested issues of average weekly wage, decedent's employment relationship with Frank E. Basil-Delaware, Frank E. Basil-Liberia and Siyanco, Defense Base Act jurisdiction over Frank E. Basil-Liberia and Siyanco, and an alleged lack of separation between the three corporate entities.

The administrative law judge found that the request for sanctions was moot due to his finding that decedent's heart failure and death were not related to his employment with employers. He further found persuasive employers' argument that sanctions should not be imposed due to the doctrine of laches. At the formal hearing in February 1987 claimant was informed that decedent kept a business-related file at the office of Frank E. Basil-Delaware. Employer promptly arranged for claimant to review the file. Claimant, however, waited five months before seeking to admit documents found in the files, and she never sought additional discovery based on information obtained from the files. Claimant requested sanctions because employer failed to disclose the contents of this file pursuant to a prior discovery order.

The imposition of sanctions for failure to comply with discovery is governed by Section

27(b) of the Act. 33 U.S.C. §927(b). Where, as in the instant case, a party fails to timely comply with a discovery order to produce documents, the opposing party may request that the district director, administrative law judge or Board certify the facts to the district court having jurisdiction in the place where the presiding officer is sitting. 33 U.S.C. §927(b). Accordingly, Section 27 confers power to impose sanctions for failure to comply with discovery orders solely to the appropriate district court. *See Creasy v. J. W. Bateson Co.*, 14 BRBS 434, 436-437 (1981). In the instant case, claimant failed to request certification. Since the administrative law judge does not have the authority to impose sanctions, he properly denied claimant's motion for sanctions.[7]

Finally, claimant argues that she is entitled to an award of benefits, as a matter of law, against Frank E. Basil-Liberia and Siyanco. Claimant contends that because these parties failed to appear at the formal hearing, the absence of evidence presented by these employers to rebut the Section 20(a) presumption entitles her to entry of an award.

The administrative law judge did not address this argument. The Decision and Order, however, addresses all the evidence and finds no liability on the part of any of the three corporate entities. *See* Decision and Order at 9-13. The administrative law judge found that decedent was an employee of the three family-owned corporations. Decision and Order at 2-3. Furthermore, contrary to claimant's argument, the transcript establishes that the three corporate entities were represented by counsel. *See* Tr. at 6-7. Counsel for employers specifically reserved the right to withdraw from representing Frank E. Basil-Liberia and Siyanco should a conflict of interest develop during the course of the hearing. Tr. at 7. The record does not indicate that counsel withdrew his representation of any employer. Accordingly, as Siyanco and Frank E. Basil-Liberia were represented by counsel, and we have affirmed the administrative law judge's denial of her claim, we reject claimant's argument that she is entitled to a default judgment.

[7]Assuming, *arguendo*, that the administrative law judge could impose sanctions pursuant to Section 27, we hold that he rationally denied claimant's motion for sanctions. *See generally Martiniano v. Golten Marine Co.*, 23 BRBS 363 (1990).

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

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

LEONARD N. LAWRENCE
Administrative Law Judge