BRB No. 91-0223

A.D. DAVIS, JR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TRANSOCEAN TERMINAL OPERATORS	)	DATE ISSUED:
	)	
and	)	
	)	
SIGNAL MUTUAL INSURANCE ASSOCIATION	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits and Order Denying Claimant's Motion for Reconsideration of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

Iris A. Tate (Wilkerson, Tate & Williams), New Orleans, Louisiana, for claimant.

Douglas P. Matthews (Lemle & Kelleher), New Orleans, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits and Order Denying Claimant's Motion for Reconsideration (82-LHC-682) of Administrative Law Judge James W. Kerr, Jr., 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.* 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 was employed in 1988 as a gearsman for employer with duties that included gathering cables, nets and bars used by the longshoremen. Tr. at 58. Claimant allegedly injured his

back on March 14, 1988, while lifting cable, and on March 17, 1988, when his foreman poked him with a stick causing him to lose his balance and fall. Tr. at 59, 61. In May 1988, claimant experienced back pain when he fell while getting out of bed. Thereafter, claimant filed a claim for compensation benefits under the Act.

In his Decision and Order, the administrative law judge determined that employer had rebutted the presumption contained in Section 20(a), 33 U.S.C. §920(a), of the Act. The administrative law judge then found, after evaluating the record as a whole, that claimant's injury did not arise out of or in the course of his employment; the claim for benefits was therefore denied. On appeal, claimant contends that the administrative law judge erred in determining that employer produced substantial evidence to rebut the Section 20(a) presumption and that, alternatively, the administrative law judge erred in evaluating the evidence as a whole after finding rebuttal. Employer responds, urging affirmance of the administrative law judge's Decision and Order.

Where, as in the instant case, claimant has established his *prima facie* case, *i.e.*, that claimant has sustained a harm and that an accident occurred or working conditions existed which could have caused the harm, claimant is entitled to the Section 20(a), 33 U.S.C. §920(a), presumption linking that harm to his employment. *See Kelaita v. Triple A Machine Shop*, 13 BRBS 326, 331 (1981).[1] Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment. *Sam v. Loffland Brothers Co.*, 19 BRBS 228 (1987). It is employer's burden on rebuttal to present specific and comprehensive evidence sufficient to sever the causal connection between the injury and the employment. *See Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). The unequivocal testimony of a physician that no relationship exists between an injury and a claimant's employment is sufficient to rebut the presumption. *See Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984). Employer can rebut the presumption by producing substantial evidence that claimant's back condition was caused by a subsequent, non work-related event. *See James v. Pate Stevedoring Co.*, 22 BRBS 271 (1989). If employer provides evidence that a subsequent event occurred which caused claimant's disabling condition, employer must come forward with substantial evidence that the first, work-related injury did not cause the second accident. *Id.* If the administrative law judge finds that the Section 20(a) presumption is rebutted, the administrative law judge must weigh all of the evidence and resolve the causation issue based on the record as a whole. *See Avondale Shipyards, Inc. v. Kennel*, 914 F.2d 88, 24 BRBS 46 (CRT)(5th Cir. 1990); *Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153 (1985).

[1]The administrative law judge credited the March 17, 1988 incident, as Mr. Duval testified that he witnessed the occurrence. The administrative law judge determined, however, that there was no March 14, 1988 incident, finding that claimant was not a credible witness. The administrative law judge stated that claimant's testimony that the incident had occurred and was reported to Mr. Duval was contradicted by the testimony of Mr. Duval that on March 14, claimant told him that he hurt his back during the weekend while helping a friend with a fence and that there was no accident reported to him that day by claimant.

In the instant case, claimant initially alleges that the administrative law judge erred in finding the Section 20(a) presumption rebutted. We disagree. The administrative law judge found that the testimony of Drs. Habig and Nutik was sufficient to rebut the presumption. Dr. Habig treated claimant following his March 17, 1988, work-incident in which claimant lost his balance and fell. In releasing claimant to return to work with no limitations during the first week of April, Dr. Habig testified that he could find no objective evidence of any disabling condition and that, although claimant may have suffered a back strain, claimant's condition would not preclude claimant from returning to work. Tr. at 49-50. Following claimant's non work-related fall out of bed in May 1988, Dr. Habig again examined claimant and opined that the definite change in claimant's objective symptoms were related to claimant's fall rather than the incident in March 1988. Tr. at 50, 52. In crediting the opinion of Dr. Habig, the administrative law judge specifically noted that that physician was the only doctor of record that had the opportunity to examine claimant both before and after his May 1988 fall. As this opinion constitutes substantial evidence severing the causal connection between claimant's injury and his employment, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebutted.[2] *See Phillips v. Newport News Shipbuilding and Dry Dock Co.*, 22 BRBS 94 (1988).

Claimant next alleges that the administrative law judge erred by failing to find that causation had been established on the record as a whole. We disagree. It was within the administrative law judge's discretion to credit the opinions of Drs. Habig and Nutik, over the opinions of Drs. Evans and Diaz, to find that claimant's back injury was not related to his employment with employer. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). The administrative law judge rationally determined that the opinions of Drs. Evans and Diaz were entitled to less weight based on claimant's failure to advise either physician of claimant's May 1988 non work-related fall and his prior back problems in 1987.[3] The administrative law judge also specifically noted that Dr. Evans, a family practitioner, deferred to the opinion of Dr. Diaz, an orthopedist, who qualified his opinion upon the available history as provided to him by claimant. It is well-established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences from it, and he is not bound to accept the opinion or theory of any particular medical examiner. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). As the administrative law judge's credibility determinations regarding the medical opinions of record are rational, we affirm the administrative law judge's determination that claimant's medical condition is not work-related.

---

[2]Dr. Nutik examined claimant in December 1988 and, after reviewing claimant's medical records and x-rays, opined that claimant's March 1988 incident had resolved itself and that he had doubts as to whether claimant's current condition is related to that incident. Although this opinion is equivocal, any reliance upon it by the administrative law judge is harmless, since Dr. Habig's testimony is sufficient to rebut the presumption.

[3]In finding that claimant was not a credible witness, the administrative law judge also noted that even during the hearing claimant denied having told the doctor at Hotel Dieu Hospital in December 1987 that he had suffered from lower back pain for two years and that this fact was documented by the hospital records. EX 1.

Accordingly, the administrative law judge's Decision and Order Denying Benefits and the Order Denying Claimant's Motion for Reconsideration are affirmed.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge