BRB No. 92-2534

MAYNARD H. SMITH	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATION	)	DATE ISSUED:
	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Additional Benefits of Kenneth A. Jennings, Administrative Law Judge, United States Department of Labor.

A. Scott Cumbest (Cumbest, Cumbest, Hunter & McCormick), Pascagoula, Mississippi, for claimant.

Ronald T. Russell (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Additional Benefits (90-LHC-2167) of Administrative Law Judge Kenneth A. Jennings 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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, a pipefitter, slipped and fell from a ladder on March 9, 1987 causing him to fall approximately five feet and fracture his right wrist when he used his right hand to brace his fall. Claimant has not returned to work since his injury occurred. Employer voluntarily paid temporary total disability benefits for claimant's wrist injury as well as benefits for a twenty percent permanent partial disability to claimant's right hand. 33 U.S.C. §908(c)(3). Subsequently, claimant filed a claim for benefits contending that he sustained a back injury arising out of the same accident.

In his Decision and Order, the administrative law judge determined that employer rebutted the presumption of causation contained in Section 20(a), 33 U.S.C. §920(a). After evaluating the

record as a whole, the administrative law judge then found that claimant's back condition did not arise out of or in the course of his employment. The instant claim was therefore denied.

On appeal, claimant argues the administrative law judge erred in finding that employer established rebuttal and that causation failed to establish causation based on the record as a whole. Employer responds, urging affirmance of the denial.

In the instant case, the administrative law judge properly invoked the Section 20(a), 33 U.S.C. §920(a), presumption as he found that claimant suffered a harm, specifically back pain, and that an accident occurred which could have caused this condition. *See generally Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991). Upon invocation of the presumption, the burden shifts to employer to present specific and comprehensive evidence sufficient to sever the causal connection between the injury and the employment, and therefore, to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment. *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). If the administrative law judge finds that the Section 20(a) presumption is rebutted, the administrative law judge must weigh all of the evidence contained in the record and resolve the causation issue based on the record as a whole. *See Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153 (1985).

Claimant initially asserts that the administrative law judge erred in finding the Section 20(a) presumption rebutted. We disagree. The administrative law judge determined that the testimony of Dr. Enger was sufficient to rebut the presumption. Dr. Enger opined that claimant's back condition is not causally related to his March 1987 work injury. *See* Emp. Ex. 16 at 27-28. As this opinion constitutes substantial evidence sufficient to sever the causal connection between claimant's employment and his back condition, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebutted. *See Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

Claimant alleges further that the administrative law judge erred by failing to find that causation had been established based on the record as a whole. We disagree. After setting forth the medical evidence of record, the administrative law judge credited the opinion of Dr. Enger, claimant's treating physician, over the opinion of Dr. Kee, who opined that claimant's back condition is a result of his March 1987 work accident. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). It is well established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences therefrom, *Fyall v. Delta Marine, Inc.*, 18 BRBS 241 (1986), 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). In the instant case, the administrative law judge's credibility determinations regarding the medical opinions of record are neither inherently incredible nor patently unreasonable; accordingly, we affirm the administrative law judge's determination that

claimant's back condition is not work-related.[1]

Accordingly, the Decision and Order Denying Additional Benefits of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

[1]Although claimant additionally asserts that the administrative law judge erred in failing to resolve all factual doubt in his favor, the United States Supreme Court determined that the "true doubt rule" is invalid because it conflicts with Section 7(c) of the Administrative Procedure Act, 5 U.S.C. §556(d), which requires that the party seeking the award bear the burden of persuasion. *Director, OWCP v. Greenwich Collieries*, U.S. , 114 S.Ct. 2251, 28 BRBS 43 (CRT) (1994).