

BRB No. 04-0868

ABEL ROSALEZ)
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Claimant-Petitioner)
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v.)
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UNITED STATES NAVY EXCHANGE) DATE ISSUED: 07/21/2005
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Self-Insured)
Employer-Respondent) DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits and Attorney Fees of Gerald M. Etchingham, Administrative Law Judge, United States Department of Labor.

James D. Coalwell, Ventura, California, for claimant.

William N. Brooks, II, Long Beach, California, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Awarding Benefits and Attorney Fees (2002-LHC-1179) of Administrative Law Judge Gerald M. Etchingham 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.*, as extended by the Non-Appropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *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).

Claimant worked as a mechanic for employer and was diagnosed with bilateral carpal tunnel syndrome as of May 30, 2001. He underwent right and left release surgeries in November 2002 and April 2003. In late April or in May 2003, claimant began developing different symptoms in his hands, including redness and swelling. The issues before the administrative law judge included whether there is any causal

relationship between claimant's work injuries and his new symptoms, entitling him to temporary total disability benefits after April 18, 2003. Decision and Order at 3. The administrative law judge found that claimant is entitled to temporary total disability benefits from November 25, 2002, through February 2, 2003, and from April 18, 2003, through July 16, 2003, the date he concluded claimant's condition reached maximum medical improvement. He denied benefits thereafter, finding that claimant's work-related condition had resolved, and his new symptoms, potentially a result of Raynaud's phenomenon or reflex sympathetic dystrophy (RSD), are not related to the work injuries or surgeries.¹ Decision and Order at 3-4, 20, 22. Claimant appeals the denial of continuing benefits, arguing that the administrative law judge erred in finding there is no causal relationship between the work injuries, the surgeries and the Raynaud's phenomenon or RSD symptoms. Employer responds, urging affirmance.

In determining whether an injury is work-related, a claimant is aided by the Section 20(a), 33 U.S.C. §920(a), presumption, which may be invoked only after he establishes a *prima facie* case. To establish a *prima facie* case, the claimant must show that he sustained a harm or pain and that conditions existed or an accident occurred at work which could have caused the harm or pain. *Bath Iron Works Corp. v. Brown*, 194 F.3d 1, 33 BRBS 162(CRT) (1st Cir. 1999); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); *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). Once the claimant establishes a *prima facie* case, Section 20(a) applies to relate his injury to his employment, and the employer can rebut this presumption by producing substantial evidence that the injury was not related to the employment. *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *see also American Grain Trimmers v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999) (*en banc*), cert. denied, 528 U.S. 1187 (2000). If the employer rebuts the presumption, it no longer controls and the issue of causation must be resolved on the evidence of record as a whole, with the claimant bearing the burden of persuasion. *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).

¹The administrative law judge also found that claimant's average weekly wage was \$600, and he is entitled to medical benefits for the treatment of his work-related carpal tunnel syndrome. Additionally, the administrative law judge determined that claimant failed to show that employer discriminated against him when it terminated his employment in October 2003. Decision and Order at 23-26. Claimant does not challenge these findings.

In this case, the administrative law judge invoked the Section 20(a) presumption based on his findings that claimant established a physical harm, *i.e.*, symptoms from Raynaud's phenomenon or RSD, and the existence of a work-related condition, *i.e.*, carpal tunnel syndrome and the resulting surgeries, that could have led to the harm. Decision and Order at 17. He then found that employer rebutted the presumption based on the opinion of Dr. Rosenberg, a board-certified orthopedic surgeon, who testified that no relationship exists between the carpal tunnel syndrome, the release surgeries and the symptoms of Raynaud's phenomenon or RSD. Decision and Order at 18-19. On the record as a whole, the administrative law judge credited the opinions of Dr. Rosenberg and Dr. Brenner, claimant's treating orthopedic surgeon, and found that claimant's disability related to his carpal tunnel syndrome had resolved, Cl. Ex. 11; Emp. Ex. 7. He also credited Dr. Rosenberg's opinion that Raynaud's phenomenon is not work-related, that claimant's symptoms did not suggest RSD and that if claimant had RSD, it was not work-related. Decision and Order at 19-20. On appeal, claimant argues that Dr. Rosenberg's opinion is insufficient to rebut the Section 20(a) presumption. We disagree.

Dr. Rosenberg examined claimant in September 2003 and reported that his carpal tunnel syndrome was effectively treated and had resolved with no permanent disability. Emp. Ex. 6. He testified that the symptoms in claimant's hands following the left release surgery were not suggestive of residual carpal tunnel syndrome but were, perhaps, the result of the development of Raynaud's phenomenon. He explained that Raynaud's phenomenon is an alteration in the function of the circulation, allowing either too little or too much blood flow, and in this case too much blood is flowing into claimant's hands. Emp. Ex. 15 at 12-13. When asked what causes Raynaud's phenomenon, Dr. Rosenberg said "I don't think anybody knows." *Id.* at 13. When asked whether the surgeries could have possibly been a cause of the condition, he agreed that the possibility exists because no one knows what causes it. However, he clearly stated that the surgeries were not the cause in this case because, he explained, had they been, then the right and left hands would have been affected at equal intervals after each surgery instead of being affected simultaneously after the left-hand surgery. *Id.* at 14-15. Specifically, he stated: the "long interval [following the right-hand surgery] indicates with a great deal of certainty that the surgery was not the inciting factor causing this problem." *Id.* at 15. Several times during his deposition, he stated that the Raynaud's symptoms were not related to either the carpal tunnel syndrome or the surgeries, and his opinion was based on a reasonable degree of medical certainty. *Id.* at 17, 33, 52-53, 57-58. Dr. Rosenberg also opined, to a reasonable degree of medical certainty, that claimant did not have RSD, explaining that his condition progressed in both extremities at the same time and thus lacked a temporal relationship to claimant's surgeries. Emp. Ex. 15 at 21-22, 34.

Contrary to claimant's assertion, Dr. Rosenberg's opinion constitutes substantial evidence sufficient to rebut the Section 20(a) presumption. *Duhagon*, 169 F.3d 615, 33 BRBS 1(CRT); *Rochester v. George Washington University*, 30 BRBS 233 (1997). That

he did not completely exclude the possibility that the Raynaud's condition was a complication of the work-related carpal tunnel surgeries does not render his opinion insufficient to rebut the presumption. *Bath Iron Works Corp. v. Director, OWCP [Harford]*, 137 F.3d 673, 32 BRBS 45(CRT) (1st Cir. 1998). Dr. Rosenberg clearly rendered the opinion, based on a reasonable degree of medical certainty, that the symptoms from the Raynaud's condition are not related to claimant's employment, Emp. Ex. 15 at 52, and his opinion is sufficient to rebut the Section 20(a) presumption. *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000). Because employer introduced substantial evidence in rebuttal of the Section 20(a) presumption, the administrative law judge properly considered the evidence on the record as a whole to determine whether claimant's symptoms are related to his employment.

Upon considering the entirety of the evidence, the administrative law judge concluded that claimant's symptoms are not work-related. He determined that Dr. Rosenberg has credentials superior to those of Dr. Salick, claimant's expert who is a board-certified disability analyst. Decision and Order at 15. Additionally, the administrative law judge found that Dr. Rosenberg's opinion was better reasoned than that of Dr. Salick because Dr. Salick summarily opined that claimant has RSD and that this condition is work-related, although he could not explain why the condition developed in both hands simultaneously as opposed to developing at consistent intervals following the respective surgeries. Decision and Order at 15, 19; Cl. Ex. 15. It is well established that an administrative law judge is entitled to evaluate the credibility of all witnesses and has considerable discretion in evaluating and weighing the evidence of record. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), cert. denied, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2^d Cir. 1961); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). It was rational for the administrative law judge to credit the opinion of Dr. Rosenberg in this case. See *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); see also *Lennon v. Waterfront Transport*, 20 F.3d 658, 28 BRBS 22(CRT) (5th Cir. 1994); *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), cert. denied, 440 U.S. 911 (1979). Claimant has shown no error in the administrative law judge's weighing of the evidence or in his credibility determinations, and we will not disturb his findings. *Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), aff'd, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Miffleton v. Briggs Ice Cream Co.*, 12 BRBS 445 (1980), aff'd, No. 80-1870 (D.C. Cir. 1981). We therefore affirm the administrative law judge's causation finding and the consequent determination that claimant is not entitled to disability benefits after July 16, 2003, when his work-related condition resolved, and that he is not entitled to any medical benefits for the treatment of his non work-related conditions.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge