

A. F. )  
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 Claimant-Petitioner )  
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 v. )  
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 ELECTRIC BOAT CORPORATION ) DATE ISSUED: 07/23/2008  
 )  
 Self-Insured )  
 Employer-Respondent ) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Daniel F. Sutton,  
Administrative Law Judge, United States Department of Labor.

Scott N. Roberts, Groton, Connecticut, for claimant.

Conrad M. Cutcliffe (Cutcliffe Glavin & Archetto), Providence, Rhode  
Island, for self-insured employer.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2006-LHC-01547) of  
Administrative Law Judge Daniel F. Sutton 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'Keefe v. Smith, Hinchman &  
Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant has worked for employer as a welder since 2000. Claimant sought  
medical treatment in March 2005 for pain radiating from his neck to his shoulders. Dr.  
Doberstein diagnosed a herniated disc at C6-7, and he performed an anterior cervical  
discectomy and fusion on April 27, 2005. Dr. Doberstein stated that claimant's disability  
in 2005 was not work-related. CX 8 at 18. Claimant returned to work for employer  
without restrictions on July 5, 2005. Claimant stopped working on February 14, 2006,

due to neck pain.<sup>1</sup> He was examined the next day by Dr. Moran. Dr. Moran recommended that claimant not return to work for a month. Dr. Doberstein released claimant to return to work with restrictions on March 28, 2006. Employer, however, did not allow claimant to return to work with restrictions. Claimant underwent physical therapy, and he returned to work on May 30, 2006. He sought benefits under the Act for temporary total disability, 33 U.S.C. §908(b), from February 15 to May 29, 2006, alleging that his employment aggravated his underlying condition.

In his decision, the administrative law judge found claimant entitled to the Section 20(a) presumption linking his disabling neck condition to his employment. 33 U.S.C. §920(a). The administrative law judge found claimant's assertions that his neck condition is related to his employment because his welding duties required him to work in positions that are physically uncomfortable, and that he "kinked" his neck at work on February 13, 2006, sufficient to invoke the Section 20(a) presumption. The administrative law judge found that employer established rebuttal of the presumption based on Dr. Moran's checking the "No" box with respect to whether claimant's neck condition was work-related on a form he completed for submission to the Rhode Island Temporary Disability Insurance Division. EX 12 at 21.

Upon weighing the evidence, the administrative law judge found there is no evidence supporting claimant's claim except claimant's testimony that his work activities aggravated his neck and Dr. Doberstein's deposition testimony that he imposed work restrictions because overhead work and work requiring neck extension could aggravate claimant's condition. Tr. at 37-40, 51, 54; CX 8 at 10. The administrative law judge found claimant's testimony of an injury at work inconsistent with contemporaneous statements he made to Dr. Moran and Dr. Willetts that no new or specific injury preceded the onset on his neck pain in February 2006. EXs 7 at 2; 12 at 4. The administrative law judge found claimant's evidence outweighed by the only medical evidence that specifically addressed the cause of claimant's neck symptoms, which is the form completed by Dr. Moran wherein he attested that claimant's neck condition is not related to his employment. Accordingly, the administrative law judge found that claimant's cervical condition that resulted in a period of temporary total disability from February 14, to May 29, 2006, was not related to his employment, and he denied benefits.

On appeal, claimant challenges the administrative law judge's weighing of the evidence as a whole to find that claimant's neck condition is not related to his employment. Employer responds, urging affirmance of the denial of the claim.

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<sup>1</sup> The parties stipulated that claimant's alleged injury occurred at employer's facility in Quonset Point, Rhode Island. Decision and Order at 2.

Once, as here, the Section 20(a) presumption is invoked, the burden shifts to employer to produce substantial evidence demonstrating that claimant's employment did not cause or contribute to his injury. See *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1<sup>st</sup> Cir. 2004); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5<sup>th</sup> Cir. 1999). Once the administrative law judge finds that the Section 20(a) presumption is rebutted,<sup>2</sup> then all relevant evidence must be weighed to determine if a causal relationship has been established, with claimant bearing the burden of persuasion. See *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4<sup>th</sup> Cir. 1997); see also *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). If a work-related injury aggravates a pre-existing condition, employer is liable for the entire resultant disability. See, e.g., *Morehead Marine Services v. Washnock*, 135 F.3d 366, 32 BRBS 8(CRT) (6<sup>th</sup> Cir. 1998).

Claimant contends that his testimony and the deposition testimony of Dr. Doberstein establish that claimant's neck pain was caused by his working conditions for employer, and that the administrative law judge's reliance on the notations of Dr. Willetts and the opinion of Dr. Moran does not constitute substantial evidence to support the denial of the claim. We disagree. The Board is not empowered to reweigh the evidence, but must accept the rational inferences and findings of fact of the administrative law judge that are supported by the record. See *Sealand Terminals, Inc. v. Gasparic*, 7 F.3d 321, 28 BRBS 7(CRT) (2<sup>d</sup> Cir. 1993); *Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994). That the evidence is susceptible to other findings or inferences does not demonstrate error in the administrative law judge's decision. See, e.g., *Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 29 BRBS 79(CRT) (5<sup>th</sup> Cir. 1995).

In this case, the administrative law judge properly found that the only medical evidence supporting a causal connection between claimant's work and his disabling condition is claimant's testimony that his work aggravated his neck, Tr. at 37-40, 51, and Dr. Doberstein's statement that he gave claimant temporary restrictions in March 2006 of no overhead work and no prolonged neck extension or flexion because such activities would tend to aggravate his symptoms. Decision and Order at 4. However, the administrative law judge found that, on deposition, Dr. Doberstein did not testify that claimant's February 2006 neck condition was aggravated by his work. The administrative law judge therefore credited the specific statement by Dr. Moran, a treating physician, that claimant's neck symptomatology was not work-related.

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<sup>2</sup> Claimant does not challenge the administrative law judge's finding that employer established rebuttal of the Section 20(a) presumption.

Claimant acknowledges that Dr. Moran indicated on the state form that claimant's condition was not work-related but asserts that Dr. Moran's office notes in March and April 2006 reflect that claimant felt his condition was work-related but feared losing his job. Claimant concedes that he made inconsistent statements regarding the cause of his injury, but attempts to explain this fact through allegations regarding his job fears. Claimant also asserts that the administrative law judge erred in not considering testimony that the type of work claimant performed could have aggravated his condition. These assertions are insufficient to establish error in the administrative law judge's finding that claimant did not prove that his neck condition was in fact aggravated by his employment. The administrative law judge found claimant's testimony of a specific "neck kink" injury on February 13, 2006, outweighed by contemporaneous statements he made to Drs. Moran and Willetts. Specifically, Dr. Moran's February 15, 2006, office note states that claimant presents with neck pain and, "no specific injury," EX 12 at 4, and, as discussed, Dr. Moran completed a February 27, 2006, form attesting that the injury was not work-related. Dr. Willetts examined claimant on February 16 and March 14, 2006. In his report, he noted claimant's history that recently, "his neck pain flared-up with no new injury." EX 7 at 2. Based on the record in this case, we affirm as supported by substantial evidence and rational the administrative law judge's finding that claimant did not establish by a preponderance of the evidence that his cervical spine symptoms in 2006 were caused or aggravated by his employment for employer. *See Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615, 33 BRBS 1(CRT) (9<sup>th</sup> Cir. 1999); *Rochester v. George Washington Univ.*, 30 BRBS 233 (1997). Accordingly, we affirm the administrative law judge's denial of benefits.

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge