

J.Z.)
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 Claimant-Petitioner)
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 v.)
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 MORAN ENVIRONMENTAL) DATE ISSUED: 07/17/2008
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 and)
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 SPECIALITY INSURANCE COMPANY)
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 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Decision and Order and Order Denying Reconsideration of Stuart A. Levin, Administrative Law Judge, United States Department of Labor.

J.Z., Jacksonville, Florida, *pro se*.

Edward S. Mallow (Eraclides, Johns, Hall, Gelman, Johannessen & Kempner, L.L.P.), Jacksonville, Florida, for employer/carrier.

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

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order and Order Denying Reconsideration (2004-LHC-1386) of Administrative Law Judge Stuart A. Levin 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.* (the Act). In an appeal by a claimant without legal representation, we will review the findings of fact and conclusions of law of the administrative law judge to determine if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). If they are, they must be affirmed.

Claimant, a marine foreman/tank cleaner, alleges that his exposure to toxic chemicals and noxious fumes during the course of his employment caused and/or contributed to his totally disabling chronic obstructive pulmonary disease (COPD). Claimant ceased working for employer in August 2002 and has been unable to work due to his COPD since August 6, 2004. Claimant first experienced breathing problems months after his employment with employer ended. Employer thus countered that any breathing problems claimant may suffer are not the result of his employment but of his extensive smoking history.

In his Decision and Order, the administrative law judge found that claimant is entitled to invocation of the Section 20(a) presumption, 33 U.S.C. §920(a), linking his COPD to his exposure at work. The administrative law judge found, however, that employer rebutted the Section 20(a) presumption, and that, upon weighing the relevant evidence, claimant failed to establish that his COPD is work-related. Accordingly, the administrative law judge denied the claim. Upon claimant's motion for reconsideration, the administrative law judge, *inter alia*,¹ addressed claimant's objections to the consideration of the evidence and found no errors in either the depiction of the evidence presented or the analysis of the issues. Accordingly, he affirmed the denial of benefits.

Claimant appeals the denial of benefits. Employer responds, urging affirmance of the administrative law judge's decision.

Once, as here, claimant establishes his *prima facie* case, he is entitled to the Section 20(a) presumption that his condition is causally related to his employment. 33 U.S.C. §920(a); *see Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *see generally U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). The burden then shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or contributed to by his employment. *Brown v. Jacksonville Shipyards, Inc.*, 893 F.2d 294, 23 BRBS 22(CRT) (11th Cir. 1990). If the administrative law judge finds the Section 20(a) presumption rebutted, it drops from the case and the administrative law judge must weigh all of the relevant evidence and resolve the causation issue based upon the record as a whole, with claimant bearing the burden of persuasion. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th

¹ The administrative law judge also addressed employer's objections to claimant's *pro se* request for reconsideration, finding claimant acted entirely within his rights and that employer was not prejudiced by claimant's actions. He, therefore, addressed the merits of claimant's request.

Cir. 1997); *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

We affirm the administrative law judge's finding that employer rebutted the Section 20(a) presumption based upon the opinion of Dr. Wolfe. Dr. Wolfe, a specialist in internal and pulmonary medicine, opined that claimant's work exposures neither caused nor contributed to his COPD. JX A at 10-11. Dr. Wolfe based his opinion on the fact that claimant did not suffer any effects from exposure until months after he had ceased working for employer, noting that the toxins with which claimant may have come in contact cause immediate and acute symptoms. *Id.* As Dr. Wolfe's opinion, given to a reasonable degree of medical certainty, constitutes substantial evidence that claimant's COPD is not related to his work exposure, the administrative law judge properly found the Section 20(a) presumption rebutted. *O'Kelley v. Dept. of the Army/NAF*, 34 BRBS 39 (2000).

Upon weighing the evidence as a whole, the administrative law judge discussed the opinions of Drs. Porcase, Jackler and Wolfe and found that claimant did not establish that his COPD is work-related. Dr. Wolfe stated that the extensive period of time between the workplace exposures and claimant's first sustaining pulmonary symptoms demonstrates that claimant's condition is unrelated to any workplace exposures. JX A at 10-11. Claimant's treating physician, Dr. Porcase, who is Board-certified in family practice, opined that cigarette smoking was the major cause of claimant's pulmonary condition, JX C at 7, 12, but that anything that claimant inhaled would have contributed to his condition. *Id.* at 14. Dr. Jackler's opinion agreed in part with both Dr. Wolfe and Dr. Porcase in that he felt that claimant's lack of complaints of any type of breathing problem for approximately eleven months after his last exposure is convincing evidence that it was not the job exposure that was causing his COPD, JX D at 11, but that, in general, exposure to pulmonotoxins would contribute to pre-existing COPD. EX 3. The administrative law judge found Dr. Wolfe's opinion is supported by claimant's work history documenting the chemicals to which claimant may have been exposed as well as claimant's medical history regarding the absence of any symptoms for an extended period beyond his date of last employment. The administrative law judge, therefore, found Dr. Wolfe's opinion better reasoned and explained and more comprehensive than the opinions of Drs. Porcase and Jackler. The administrative law judge accorded determinative weight to Dr. Wolfe's opinion and thus, concluded that claimant failed to establish that any workplace exposures caused or contributed to claimant's COPD.

Moreover, the administrative law judge fully discussed claimant's concerns regarding possible inaccuracies in both the history of his symptomology and in the chemicals to which he may have been exposed. Order Denying Recon. at 4-5. Despite any discrepancies in the record, the administrative law judge found that claimant testified

that he lost no time from work due to any breathing difficulties, reported no problems to employer, and did not seek any medical treatment for breathing problems while employed. HT at 37, 39-40, 57-58. The administrative law judge found this testimony medically significant and supportive of Dr. Wolfe's opinion that workplace exposures did not contribute to claimant's pulmonary condition.

It is well-established that the administrative law judge is entitled to determine the weight to be accorded to the evidence of record and that the Board cannot reweigh the evidence. *See Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). The administrative law judge's decision to credit the opinion of Dr. Wolfe is rational, as it is supported by claimant's treatment records noting the delayed onset of his COPD in relation to his exposure. *See Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991). As the administrative law judge's finding that claimant's COPD is not related to his work exposure is supported by substantial evidence, we affirm the administrative law judge's denial of benefits.²

² Claimant contends his attorney did not adequately represent him before the administrative law judge. The administrative law judge acknowledged that counsel apparently withdrew from the case abruptly, without filing a post-hearing brief. Order Denying Recon. at 2-3. Nonetheless, the administrative law judge explained how his decision denying benefits was based on his full consideration of the medical opinions of evidence rather than on any defects in counsel's representation of claimant. If claimant obtains any additional evidence, he may seek modification pursuant to Section 22 of the Act, 33 U.S.C. §922, within one year of the final denial of his claim.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge