BRB No. 14-0013

HARVEY BRAY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
METRO MACHINE CORPORATION	)	DATE ISSUED: July 11, 2014
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LIMITED	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

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

Gregory E. Camden (Montagna Klein Camden, LLP), Norfolk, Virginia, for claimant.

F. Nash Bilisoly and Kimberley Herson Timm (Vandeventer Black LLP), Norfolk, Virginia, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2013-LHC-00192) of Administrative Law Judge Kenneth A. Krantz 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 & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant fell at work on December 8, 2010, landing on his knees. Claimant went to employer's clinic where he was x-rayed, received medications, and returned to work with light-duty restrictions. Claimant continued to work and receive treatment for his knee conditions, and his doctor, Dr. Gibson, diagnosed, via MRI, multiple spurs, deteriorated cartilage, and stretched ligaments. He recommended claimant undergo a total knee replacement in January 2011, but claimant declined due to monetary concerns, and he continued working. Claimant also declined Dr. Gibson's October 2011 suggestion for total knee replacement surgery. On March 30, 2012, after claimant was observed using a cane at work, employer removed claimant from work and paid him temporary total disability benefits until October 7, 2012. On February 7, 2013, claimant underwent a total left knee replacement surgery, and he has plans to undergo total right knee replacement surgery. Claimant has not returned to work since March 30, 2012. Claimant filed a claim for compensation, alleging that the fall at work aggravated his pre-existing degenerative condition of the knees and resulted in the need for knee replacement surgery and an inability to return to his usual work.

The administrative law judge found that claimant presented sufficient evidence to establish that he fell at work and underwent total left knee replacement surgery; thus, he established a prima facie case for invocation of the Section 20(a), 33 U.S.C. §920(a), presumption. Decision and Order at 9. The administrative law judge also found that employer presented substantial evidence rebutting the Section 20(a) presumption based on the opinion of its expert, Dr. Cavazos, that claimant's pre-existing osteoarthritis was not aggravated by the workplace injury but, instead, followed its natural course of progression and resulted in the need for surgery. *Id.* at 10. On weighing the evidence as a whole, the administrative law judge gave greater weight to the opinion of Dr. Cavazos than to that of Dr. Gibson, as he found that Dr. Cavazos' opinion was well reasoned and supported by substantial medical evidence. *Id.* at 11-12. Claimant appeals the denial of benefits, and employer responds, urging affirmance.

Claimant contends the administrative law judge erred in finding that employer rebutted the Section 20(a) presumption with the opinion of Dr. Cavazos. Claimant asserts that Dr. Cavazos failed to note in his review of the records that claimant's condition continued to worsen during his employment and that the December 2010 fall played a role in accelerating the progress of claimant's degenerative arthritis. Once the Section 20(a) presumption has been invoked, linking a claimant's injury to his employment, as here, his employer may rebut the presumption with substantial evidence that the disability is not related to his employment. If a work-related injury contributes to, combines with, or aggravates a pre-existing condition, the entire resultant condition is compensable. *Newport News Shipbuilding & Dry Dock Co. v. Fishel*, 694 F.2d 327, 15 BRBS 52(CRT) (4th Cir. 1982); *Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966). In order to rebut the presumption, the employer must produce substantial

evidence that the work injury neither directly caused the injury nor aggravated the pre-existing condition. *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009). If the employer rebuts the presumption, it no longer controls and the issue of causation must be resolved on the evidence of 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 Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

Dr. Cavazos examined claimant in addition to reviewing his medical records, and he concluded that claimant's current knee condition is unrelated to his work accident and is the natural progression of his pre-existing degenerative condition. CX 5; EXs 6, 9. He noted that claimant's condition initiated with a football injury and that the progression of claimant's arthritis was well documented over the course of 30 years. Dr. Cavazos noted that x-ray and MRI evidence taken before and after the December 2010 fall did not reveal any acute changes attributable to the workplace fall but, rather, demonstrated a chronic condition which did not increase in severity after the fall. Indeed, Dr. Cavazos explained that claimant's osteoarthritis in his knees already was so severe that it could not worsen unless there was an acute injury, which did not happen here. EX 9. As Dr. Cavazos stated that claimant was able to work after his fall, and as he continued the same medications and treatment as before the fall, Dr. Cavazos determined that the fall did not aggravate claimant's pre-existing condition. CX 5; EX 6. Dr. Cavazos' opinion constitutes substantial evidence sufficient to rebut the Section 20(a) presumption. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT). Therefore, we affirm the administrative law judge's finding that employer has rebutted the Section 20(a) presumption.

Claimant next contends that, in weighing the evidence as a whole, the administrative law judge erred in giving less weight to Dr. Gibson's opinion. The administrative law judge found it clear that claimant has a well-documented history of bilateral osteoarthritis of the knees and that claimant received treatment for his knee pain over a 30-year period prior to the work fall. Decision and Order at 11. Next, the administrative law judge found that Dr. Lee had suggested knee replacement surgery as early as June 2008, EX 3, and that the x-rays and MRI demonstrated progressive degeneration of claimant's knees but did not reveal any specific damage caused by the workplace accident. The administrative law judge found that although Dr. Gibson opined that the workplace accident sped up the degenerative process, he did not give any reason for this conclusion, beyond this bare assessment. CX 3; EX 5. As he determined Dr. Cavazos' opinion was better reasoned and supported by the treatment records, the administrative law judge gave it greater weight than the opinion of Dr. Gibson.

It is well established that an administrative law judge is entitled to weigh the evidence and draw his own inferences and conclusions therefrom; he has the prerogative

to credit one medical opinion over that of another, and he is not bound to accept the opinion or theory of any particular medical examiner. *Pittman Mechanical Contractors, Inc. v. Director, OWCP*, 35 F.3d 122, 28 BRBS 89(CRT) (4th Cir. 1994); *Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 21 BRBS 10(CRT) (4th Cir. 1988). The administrative law judge rationally gave greater weight to Dr. Cavazos, whose opinion supports the finding that claimant's knee condition and resulting need for surgery are not related to the employment injury. As this finding is supported by substantial evidence, we affirm the denial of benefits.

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

SO ORDERED.

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BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge