BRB No. 97-1480

ROBERT L. BOYCE	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
CERES MARINE TERMINALS, INCORPORATED	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Vivian Schreter-Murray, Administrative Law Judge, United States Department of Labor.

Gerald F. Gay (Arnold, Bacot, Gay & Darby, P.A.), Baltimore, Maryland, for claimant.

Thomas G. Young, III (Young & Valkenet, L.L.C.), Baltimore, Maryland, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (96-LHC-2705; 96-LHC-2706) of Administrative Law Judge Vivian Schreter-Murray 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 findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant was injured on January 6, 1995, when he was struck on the left wrist with a lashing bar. On January 24, 1995, claimant complained of a headache and pain in his left shoulder radiating down his arm, with tingling in his fingers. After conservative treatment,

physical therapy, surgery consisting of a discectomy and cervical fusion at C5-6, and approximately 11 days in a work hardening program, claimant was released for work without restrictions in February 1996. He returned to longshore work one day for three hours and the next day for two hours, but alleged he was unable to perform the work. He left longshore work and began to work full time driving a wheelchair van for Advanced Care. Claimant sought permanent partial disability benefits under the Act, due to pain in his neck and left upper extremity allegedly stemming from the work accident.

In her Decision and Order, the administrative law judge invoked the Section 20(a), 33 U.S.C. §920(a), presumption linking claimant's neck and arm pain to the work accident, but she found that Dr. Weiner's opinion rebutted that presumption. Moreover, the administrative law judge found that Dr. Weiner's opinion that claimant's cervical spondylosis is entirely degenerative in nature and is not due to any trauma is entitled to more weight than Dr. Slaughter's opinion that claimant's symptoms are work-related, and she thus concluded that claimant's symptoms are not work-related. In addition, based on Dr. Weiner's opinion as supported by the surveillance tapes, the administrative law judge found that claimant is not restricted from returning to his usual employment as a lasher. Thus, the administrative law judge denied benefits under the Act.

Claimant contends on appeal that the administrative law judge erred in finding the Section 20(a) presumption rebutted, noting that Dr. Weiner testified that it is both possible and conceivable that claimant's cervical problem is related to the work accident. Alternatively, claimant contends that even if this opinion is sufficient to rebut the presumption, the weight of the evidence compels a decision in claimant's favor. Claimant also contends that the administrative law judge erred in finding that claimant can return to work as a lasher. Employer responds, urging affirmance of the administrative law judge's Decision and Order.

Initially, claimant contends that the administrative law judge erred in finding that Dr. Weiner's opinion is sufficient to rebut the Section 20(a) presumption. Section 20(a) provides claimant with a presumption that his injury is causally related to his employment. *Kubin v. Pro-Football, Inc.*, 29 BRBS 117 (1995). Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut it with substantial evidence that claimant's condition is not caused or aggravated by the employment event. *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). When employer produces such substantial evidence, the presumption drops out of the case, and the administrative law judge must weigh all of the evidence relevant to the causation issue, and render a decision supported by the record. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119 (CRT) (4th Cir. 1997); *MacDonald v. Trailer Marine Transport Corp.,* 18 BRBS 259 (1986), *aff'd mem. sub nom. Trailer Marine Transport Corp. v. Benefits Review Board*, 819 F.2d 1148 (11th Cir. 1987).

The administrative law judge's finding that the Section 20(a) presumption is invoked is unchallenged on appeal.[1] Thus, the burden shifted to employer to rebut the presumption. In this regard, the administrative law judge found Dr. Weiner's opinion sufficient for rebuttal. Dr. Weiner, a reviewing physician, opined that claimant's cervical spine pathology was entirely degenerative in nature and was not due to any trauma. He noted that claimant's complaints were not attributable to the C5-6 degenerative pathology, or any other medically identifiable cause, and that the surgery had not been well advised in light of the imaging studies and lack of correlation between symptoms and pathology. H. Tr. at 151. He noted that Dr. Slaughter had to "crack through" the bony spur that had already naturally fused claimant's C5-6 vertebrae, that claimant's symptoms were on the wrong side of the body for the right-sided pathology, the symptoms took two to three weeks to develop, and that a sudden sharp turn of the head would be unlikely to affect the C5-6 disc, as this movement takes place for the most part at C1-2. Contrary to claimant's contention, although Dr. Weiner testified that "anything is possible," H. Tr. at 156, 157, when asked by the administrative law judge to render an opinion "aside from speculation" as to whether there is a causal relationship, Dr. Weiner testified that there is "not a clear cut way that you can connect the two," H. Tr. at 158, and that the cervical problem, if there is one, is not related to the work injury. H. Tr. at 161. Thus, as Dr. Weiner's opinion rules out a connection between the work accident and claimant's injury, we affirm the administrative law judge's finding that it is sufficient to rebut the Section 20(a) presumption. *See generally Duhagon v. Metropolitan Stevedore Co.,* 31 BRBS 98 (1997); *Phillips v. Newport News Shipbuilding & Dry Dock Co.,* 22 BRBS 94 (1988).

---

[1]The administrative law judge found the presumption invoked based on the opinion of Dr. Slaughter. Based on claimant's complaints and objective imaging, Dr. Slaughter, claimant's treating neurosurgeon, opined that claimant suffers from cervical spondylosis with spinal stenosis at C5-C6, narrowing of the right C6 foramina and mild narrowing of the left C6 foramina where the nerve exits. Cl. Ex. 14 at 8. Dr. Slaughter opined that there was a "pre-existing degree of instability" but that the trauma created a "degree of symptomatology," which required surgery for stabilization. Cl. Ex. 14 at 32-33.

The administrative law judge also reviewed the evidence as a whole and concluded that the evidence does not establish that claimant's injuries are causally related to his work accident. The administrative law judge noted that claimant complained of pain in the left shoulder radiating into his left elbow and fingers, but that claimant's complaints and description of the accident on January 6, 1995, have varied over time. The administrative law judge reviewed the evidence of record and concluded that Dr. Weiner's opinion is well reasoned, and consistent with and supported by the objective medical evidence and surveillance films. She noted that Dr. Slaughter's theory of "pre-existing instability and malalignment" suggests that the force of the assumed sudden movement of claimant's head/neck at the time of injury threw claimant's C5-6 vertebrae out of alignment, thereby precipitating the symptoms. However, as Dr. Weiner pointed out, claimant's C5-6 vertebrae had long been immobilized or "naturally fused." Therefore, the administrative law judge found that Dr. Slaughter's theory of the injury, which was based solely on claimant's description of the accident, is untenable and not credible. Moreover, based on Dr. Weiner's opinion, the administrative law judge found that claimant's complaints do not fit the objective pathology. Thus, the administrative law judge rejected Dr. Slaughter's opinion as it is inconsistent with the medical record. In addition, the administrative law judge found that claimant's testimony was not credible as it was "vague, inconsistent, contrary, confused and overall incredible." Decision and Order at 10. The administrative law judge noted that claimant supplied diverse histories of the injury and alleges symptoms that are anatomically inconsistent, and she concluded that claimant's testimony is at odds with his demonstrated physical capacity and the normal, objective, neurological findings recorded.[2] As the administrative law judge reviewed all the evidence of record, and rationally accorded greater weight to the opinion of Dr. Weiner as it is supported by the objective evidence of record, we reject claimant's contention that the administrative law judge erred in finding that the weight of the evidence fails to establish a causal relationship between the accident of January 24, 1995, and claimant's cervical symptoms. *See generally John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). Therefore, as it is supported by substantial evidence, we affirm the administrative law judge's denial of benefits.[3]

---

[2]The record includes surveillance films showing claimant climbing ladders and hanging siding on his house.

[3]As we affirm the administrative law judge's finding that claimant's

symptomology is not work-related, we need not address claimant's contentions regarding whether his current condition prevents him from returning to his usual longshore duties.

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge