

BRB No. 99-0957

CONCEPCION Z. GONZALES )  
(Widow of LOUIS A. GONZALES) )

and )

VICTORIA ZAMORA )  
(Mother-in-Law of LOUIS A. GONZALES)) )

Claimants-Petitioners )

v. )

BOYD CAMPBELL COMPANY, )  
INCORPORATED )

and )

SIGNAL MUTUAL INDEMNITY )  
ASSOCIATION, LIMITED )

Employer/Carrier- )  
Respondents )

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Richard D. Mills,  
Administrative Law Judge, United States Department of Labor.

Phil Watkins, Corpus Christi, Texas, for claimants.

David P. Ayers (Fulbright & Jaworski L.L.P.), Houston, Texas, for  
employer/carrier.

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

PER CURIAM:

Claimants appeal the Decision and Order Denying Benefits (98-LHC-1140) of  
Administrative Law Judge Richard D. Mills 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 if they 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).

Louis A. Gonzales (the decedent), who was employed by employer as a longshore superintendent, died while at work on June 26, 1995. Decedent’s death certificate lists the immediate cause of death as atherosclerotic cardiovascular disease. CX-6. Claimants thereafter sought death benefits pursuant to Section 9 of the Act, 33 U.S.C. §909 (1988), contending that decedent’s fatal heart attack was related to his employment with employer.

In his Decision and Order, the administrative law judge initially found claimants entitled to invocation of the presumption at Section 20(a), 33 U.S.C. §920(a), linking the decedent’s death to his employment. Next, the administrative law judge found the presumption rebutted by the opinion of Dr. Al-Bassam. The administrative law judge, in addressing the totality of the medical evidence, then credited Dr. Al-Bassam’s opinion over the contrary opinion of Dr. Anderson, in concluding that claimants failed to establish a causal link between the decedent’s employment and his death. The administrative law judge thus denied the claim for death benefits.

On appeal, claimants assign error to the administrative law judge’s determination that decedent’s death was not causally related to his employment. Employer responds, urging affirmance.

Section 9 of the Act provides for death benefits to certain survivors “if the injury causes death.” 33 U.S.C. §909 (1988). Upon invocation of the Section 20(a) presumption linking the decedent’s death to his employment, the burden shifts to employer to present substantial evidence that the decedent’s employment did not cause or contribute to his death. *See Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187 (CRT)(5th Cir. 1999); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59 (CRT)(5th Cir. 1998); *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert denied*, 429 U.S. 820 (1976). If the administrative law judge finds that the Section 20(a) presumption is rebutted, the administrative law judge must weigh all of the evidence contained in the record and resolve the causation issue based on the record as a whole. *Id.*; *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 257, 28 BRBS 43 (CRT)(1994); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990).

After determining that claimants, in the instant case, were entitled to invocation of the Section 20(a) presumption, the administrative law judge found that employer had rebutted that presumption. In finding rebuttal, the administrative law judge credited the medical opinion of Dr. Al-Bassam that decedent’s employment did not contribute to his death.

Claimants argue that Dr. Al-Bassam's testimony is insufficient to rebut the presumption.<sup>1</sup> We disagree. The United States Courts of Appeals for the Fifth Circuit, within whose jurisdiction the instant claim arises, has held that employer's burden on rebuttal is to present substantial evidence that the employee's employment neither caused nor aggravated his injury; employer is not required to "rule out" the possibility of a causal relationship between

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<sup>1</sup>In assigning error to the administrative law judge's finding of rebuttal, claimants also contend that the administrative law judge did not afford them the inference that decedent's death was causally related to his employment as required by the opinion in *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). Contrary to claimant's assertion, the administrative law judge's invocation of the Section 20(a) presumption linking decedent's death with his employment is fully consistent with the opinion of the United States Court of Appeals for the Fifth Circuit in *Donovan*. In finding the presumption invoked, the administrative law judge cited the opinion of the Fifth Circuit in *Gooden v. Director, OWCP*, 135 F.3d 1066, 1069, 32 BRBS 59, 61 (CRT)(5th Cir. 1998)(citing *Todd Shipyards*, 300 F.2d at 741 and *Southern Stevedoring Co. v. Henderson*, 175 F.2d 863 (5th Cir. 1949)), and acknowledged that a heart attack suffered in the course and scope of employment may be compensable, notwithstanding the existence of a pre-existing heart condition. *See* Decision and Order at 7. As the administrative law judge thus explicitly rejected employer's attempts to focus on decedent's pre-existing condition rather than on his death, *see* Decision and Order at 8, we reject claimants' related argument that the administrative law judge erroneously focused on decedent's underlying cardiovascular disease rather than on his fatal cardiac event.

the employment and the injury. *See Conoco*, 194 F.3d at 690, 33 BRBS at 191 (CRT); *American Grain Trimmers, Inc. v. OWCP*, 181 F.3d 810, 33 BRBS 71 (CRT) (7th Cir. 1999), *cert. denied*, 120 S.Ct. 1239 (2000); *Bath Iron Works Corp. v. Director, OWCP*, 109 F.3d 53, 31 BRBS 19 (CRT) (1st Cir. 1997). In the case at bar, the administrative law judge properly found employer's rebuttal burden satisfied by Dr. Al-Bassam's testimony that decedent's fatal heart attack resulted from his coronary artery disease, and that neither decedent's exertion prior to his heart attack nor the weather conditions on that day played any part in his death. *See generally Whitmore v. AFIA Worldwide Insurance*, 837 F.2d 513, 20 BRBS 84 (CRT)(D.C. Cir. 1988). Contrary to claimant's assertion that Dr. Al-Bassam's opinion is too equivocal to rebut the presumption, Dr. Al-Bassam's medical report and testimony, considered in their entirety, reflect that physician's opinion, expressed within a reasonable degree of medical certainty, that no causal relationship exists between decedent's employment and his death. *See Whitmore*, 837 F.2d at 516, 20 BRBS at 89 (CRT). As this opinion constitutes substantial evidence to rebut the presumption, we affirm the administrative law judge's determination that the Section 20(a) presumption is rebutted. *See generally Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

We next address claimants' contention that the administrative law judge erred in finding, based upon consideration of the record as a whole, that decedent's death was not work-related. After considering all of the medical evidence of record, the administrative law judge credited Dr. Al-Bassam's opinion that decedent's work-related activities played no part in his death over the contrary opinion of Dr. Anderson, who stated that the combination of heat and physical exertion experienced by the decedent on the day of his death triggered the fatal cardiac event suffered by decedent. Specifically, the administrative law judge credited Dr. Al-Bassam's explanation of the sequence of events leading to decedent's death. In this regard, Dr. Al-Bassam testified that decedent's coronary artery disease produced extreme narrowing of his coronary arteries, precipitating a thrombotic occlusion that led to a heart attack which was followed by fibrillation and death. The administrative law judge found Dr. Al-Bassam's explanation of decedent's death to be more persuasive than Dr. Anderson's opinion that, as a result of the combination of the high temperature and physical stress involved in climbing the ship's gangplank and steps, the supply of blood to decedent's heart was inadequate, leading to ventricular fibrillation followed by cardiac arrest.

It is well-established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences therefrom, and he is not bound to accept the opinion or theory of any particular medical examiner. *See Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 29 BRBS 79 (CRT)(5th Cir. 1995); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). In the instant case, we hold, first, that the administrative law judge rationally accorded greater weight to Dr. Al-Bassam's opinion on the basis of that physician's superior credentials as a Board-certified specialist in cardiovascular diseases.<sup>2</sup>

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<sup>2</sup>The administrative law judge noted that Dr. Anderson has been retired since 1995, is

*See Whitmore*, 837 F.3d at 516, 20 BRBS at 88 (CRT); Decision and Order at 9. Moreover, as substantial evidence supports the administrative law judge's finding that some of the assumptions underlying Dr. Anderson's opinion regarding the causation issue were incorrect, and as claimants do not challenge this finding on appeal, the administrative law judge's determination to give less weight on this basis to Dr. Anderson's opinion is affirmed. *See generally Mendoza*, 46 F.3d at 498, 29 BRBS at 79 (CRT); *Todd Shipyards Corp.*, 300 F.2d at 741. As Dr. Al-Bassam's testimony constitutes substantial evidence that decedent's fatal cardiac event had no relationship to his employment, we affirm the administrative law judge's determination, based on consideration of the record as a whole, that decedent's death was not work-related. *See Whitmore*, 837 F.3d at 516, 20 BRBS at 88 (CRT).

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not a specialist in cardiology, has not kept current on the diagnosis and treatment of cardiac patients, and has never performed research or authored literature in this field. *See* Decision and Order at 9.

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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JAMES F. BROWN  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge