

CARMEN KEITH HICKS)	
)	
Claimant-Petitioner)	
)	
v.)	
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HALTER MARINE GROUP, INCORPORATED)	DATE ISSUED: <u>JUN 14, 2004</u>
)	
and)	
)	
MISSISSIPPI INSURANCE GUARANTY ASSOCIATION)	
)	
Employer/Carrier- Respondents)	DECISION and ORDER

Appeal of the Decision and Order on Remand of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Tommy Dulin (Dulin and Dulin, Ltd.), Gulfport, Mississippi, for claimant.

Karl R. Steinberger (Colingo, Williams, Heidelberg, Steinberger & McElhaney, P.A.), Pascagoula, Mississippi, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand (2000-LHC-1110) of Administrative Law Judge C. Richard Avery 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).

This case is on appeal for the second time. Claimant, a safety medic, alleged that he

injured his back at work on May 27, 1998, and that this injury resulted in many physical and psychological injuries. The administrative law judge initially denied benefits, finding that although claimant established that the temporary aggravation of his pre-existing back condition was work-related, he did not establish that he was entitled to disability or medical benefits due to this temporary aggravation. The administrative law judge did not find any other condition to be work-related.

Upon claimant's appeal, the Board affirmed the administrative law judge's denial of benefits for claimant's physical injuries. *Hicks v. Halter Marine Group, Inc.*, BRB No. 02-0435 (Jan. 23, 2003)(unpub.). With respect to claimant's psychological injuries, the Board held that invocation of the Section 20(a), 33 U.S.C. §920(a), presumption was established as a matter of law and remanded the case to the administrative law judge to determine if the opinion of Dr. Maggio, a psychiatrist, is sufficient to establish rebuttal. If so, the Board instructed the administrative law judge to evaluate the evidence and determine if claimant is entitled to disability and/or medical benefits for his psychological condition.

On remand, the administrative law judge denied benefits for claimant's psychological condition. The administrative law judge found that Dr. Maggio's opinion is sufficient to establish rebuttal and that the weight of the evidence establishes that claimant's psychological condition is not work-related.

In the instant appeal, claimant challenges the administrative law judge's denial of benefits for his psychological condition. Employer responds in support of the administrative law judge's denial. Section 20(a) provides claimant with a presumption that the injury he sustained is causally related to his employment if he establishes a *prima facie* case by showing that he suffered an injury and that a work accident occurred which could have caused the injury or aggravated a pre-existing condition. *See Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert. denied*, 124 S.Ct. 825 (2003); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); *American Grain Trimmers, Inc. v. Director, OWCP [Janich]*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999), *cert. denied*, 528 U.S. 1187 (2000). Once claimant has invoked the Section 20(a) presumption, the burden shifts to employer to rebut it with substantial evidence to the contrary. *See Ortco Contractors*, 332 F.3d 283, 37 BRBS 35(CRT); *Conoco, Inc.*, 194 F.3d 684, 33 BRBS 187(CRT). If the administrative law judge finds that the Section 20(a) presumption is rebutted, then all relevant evidence must be weighed to determine if a causal relationship has been established, with claimant bearing the burden of persuasion. *See Port Cooper/T. Smith Stevedoring Co., Inc. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). In arriving at his decision, the administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence. *See Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th

Cir. 1991); *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963).

After a review of the administrative law judge's decision, the relevant evidence, and the parties' briefs, we affirm the administrative law judge's denial of benefits for claimant's psychological condition.¹ The administrative law judge rationally found that employer established rebuttal of the Section 20(a) presumption based on the opinion of its psychiatric expert, Dr. Maggio, who stated that all of claimant's problems are a result of his pre-existing personality disorder, that the work injury did not cause any psychiatric condition, and that claimant's pre-existing personality disorder causes him to claim that all of his physical and psychological injuries are work-related. *See Ortco Contractors*, 332 F.3d 283, 37 BRBS 35(CRT); *Conoco, Inc.*, 194 F.3d 684, 33 BRBS 187(CRT); Decision and Order on Remand at 2-3; Emp. Ex. 6 at 10-11. On weighing the evidence, the administrative law judge rationally credited the opinion of Dr. Maggio over that of Dr. Pyles, claimant's treating psychiatrist, who opined that there was some contribution from the work accident to claimant's psychological condition. *See Mijangos*, 948 F.2d 941, 25 BRBS 78(CRT); *Calbeck*, 306 F.2d 693; Decision and Order on Remand at 3-4; Emp. Exs. 6 at 10-11; 14 at 61-63. The administrative law judge rationally questioned Dr. Pyles's belief that claimant's psychological condition was caused by his chronic pain syndrome which in turn was caused by the work accident as it was based on information provided by claimant whom the administrative law judge found not credible. The administrative law judge also found Dr. Pyles's opinion questionable because Dr. McCloskey, claimant's back surgeon, opined that, at most, the work accident temporarily aggravated claimant's pre-existing back condition. Decision and Order on Remand at 3-4; Emp. Exs. 4 at 22-23; 14 at 41-42. The administrative law judge lastly considered that Dr. Pyles saw claimant more than once whereas Dr. Maggio saw claimant only once but the administrative law judge accurately noted that Dr. Maggio spent more time with claimant than Dr. Pyles before arriving at his diagnosis. Decision and Order on Remand at 4; Emp. Ex. 14 at 16-17, 23, 69; Emp. Br. at 22, 23. As the administrative law judge rationally found that Dr. Maggio's opinion rebuts the Section 20(a) presumption and the administrative law judge credited Dr. Maggio's opinion over that of Dr. Pyles, we affirm the administrative law judge's finding that claimant's psychological condition is not work-related.

¹ Dr. Maggio diagnosed claimant with adjustment, pain, and personality disorders. Emp. Ex. 6 at 9. Dr. Pyles diagnosed claimant with depression. Emp. Ex. 14 at 40; Cl. Ex. 18 at 6.

Accordingly, the administrative law judge's Decision and Order on Remand is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge