BRB No. 05-0784

BIERRI J. BRILLA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BAY SHIPBUILDING COMPANY	)	DATE ISSUED: 06/26/2006
	)	
and	)	
	)	
SENTRY INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order-Denying Benefits of Stephen L. Purcell, Administrative Law Judge, United States Department of Labor.

Bierri J. Brilla, Sturgeon Bay, Wisconsin, *pro se.*

Daniel L. Grant (Garofalo, Schreiber, Hart & Storm, Chartered), Chicago, Illinois, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order-Denying Benefits (2004-LHC-1322) of Administrative Law Judge Stephen L. Purcell 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). In an appeal by a claimant without representation by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); 20 C.F.R. §§802.211(e), 802.220; *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). If they are, they must be affirmed.

Claimant alleged that he injured his right knee at work on January 21, 2003, when he attempted to climb onto a forklift, his knee "went sideways," and he experienced

severe pain in his knee. Tr. at 28-29. Subsequently, Dr. Grace, an orthopedic surgeon diagnosed claimant with a torn medial meniscus and femoral patellar chondromalacia, and he performed surgeries on claimant's right knee on March 26, 2003 and September 17, 2003. CX 2 at 8, 11. Employer voluntarily paid temporary total disability and medical benefits for the March 26, 2003 right knee surgery, as well as for a work-related shoulder injury for which claimant had surgery the same day. After claimant's shoulder restrictions were lifted, but claimant was still undergoing treatment for his right knee, employer disputed claimant's entitlement to additional disability benefits. Claimant filed a claim for benefits under the Act, in which he alleged entitlement to: (1) temporary total disability benefits from October 28, 2003 through May 17, 2004; (2) permanent partial disability benefits for a 7.5 percent permanent impairment of the right knee;[1] (3) unpaid medical expenses; and (4) a subrogation claim by employer's group health insurance carrier, CMS, for medical and short-term disability benefits paid to claimant. Tr. at 10-11.

In his Decision and Order, the administrative law judge found that claimant presented sufficient evidence to establish his *prima facie* case and he thus invoked the Section 20(a) presumption linking claimant's meniscus tear to the work incident on January 21, 2003. 33 U.S.C. §920(a). Nonetheless, the administrative law judge found that employer presented sufficient evidence in the opinions of Drs. Aschliman and Clark to establish rebuttal of the Section 20(a) presumption. On weighing the evidence as a whole, the administrative law judge found that claimant failed to prove by a preponderance of the evidence that his torn meniscus and femoral patellar chondromalacia are causally related to the January 21, 2003, forklift incident. Therefore, the administrative law judge denied benefits.

Claimant, appearing without representation, appeals the administrative law judge's denial of benefits. Employer responds, urging affirmance of the administrative law judge's decision.

Once the Section 20(a) presumption is invoked, as in this case, employer bears the burden of producing substantial evidence that the claimant's condition was not caused or aggravated by his employment. *American Grain Trimmers v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999), *cert. denied*, 528 U.S. 1187 (2000). The administrative law judge found that the opinions of Drs. Aschliman and Clark rebut the Section 20(a) presumption. Dr. Aschliman opined that claimant's right knee condition cannot be reasonably related to the work activities on January 21, 2003, and that claimant had a pre-existing meniscal tear that at the very most was transiently aggravated by the

[1] The parties stipulated that claimant reached maximum medical improvement on May 12, 2004.

incident at work. EX 2. He stated claimant would have recovered from this aggravation within a few minutes. He further stated that surgery was required for the pre-existing condition and not for the temporary aggravation. EX 3. Dr. Clark opined that claimant's current knee condition is not the result of his stepping on or off a forklift on January 21, 2003. EX 4. With regard to an aggravation claim, Dr. Clark stated that at the incident may have caused a "simple temporary aggravation" and that no medical treatment would have been necessary for this. EX 7. We affirm the administrative law judge's rational finding that employer produced substantial evidence that the knee condition which required treatment and disabled claimant was not caused or aggravated by the work incident. Thus, we affirm the administrative law judge's finding that employer established rebuttal of the Section 20(a) presumption. *Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999).

Having found the Section 20(a) presumption rebutted, the presumption dropped from the case, and the administrative law judge considered the causation issue based on the evidence as a whole. *See Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). The administrative law judge credited the opinions of Drs. Aschliman and Clark and found that claimant did not establish that his knee condition was caused or aggravated by the January 21, 2003, work incident. Thus, he found that claimant is not entitled to additional disability or medical benefits. The administrative law judge is entitled to determine the weight to be accorded to the medical evidence of record. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963). The Board may not reweigh the evidence but may inquire only as to whether substantial evidence supports the administrative law judge's decision. *See Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994). As the administrative law judge rationally credited the opinions of Drs. Aschliman and Clark, and as they constitute substantial evidence that the forklift incident did not cause or aggravate claimant's knee condition, we affirm the denial of benefits.[2]

[2] The administrative law judge found that claimant did not make any claim for a work-related knee injury that may have occurred prior to January 23, 2003. This finding is based on claimant's counsel explicitly stating that claimant's alleged April 2002 injury was not at issue before the administrative law judge. Tr. at 41. Claimant reported to the clinic with knee complaints in April 2002, and employer filed a First Report of Injury Form and authorized medical treatment. EX 5 at 3; EX 6 at 12. The parties stipulated that claimant filed a claim for compensation on February 4, 2003. Decision and Order at 2. This form was not admitted into evidence. We thus address only the 2003 injury, and claimant must properly raise this injury, if he seeks compensation. *See* 33 U.S.C. §§913(a); 922.

See, e.g., Hice v. Director, OWCP, 48 F.Supp.2d 501 (D. Md. 1999); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000).

Accordingly, we affirm the administrative law judge's Decision and Order-Denying Benefits.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge