

BRUCE B. PARKER)
)
 Claimant-Respondent)
)
 v.)
)
 BATH IRON WORKS CORPORATION) DATE ISSUED: 06/28/2011
)
 Self-Insured)
 Employer-Petitioner) DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits and the Order Denying Motion to Reconsider of Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

James W. Case (McTeague, Higbee, Case, Cohen, Whitney & Toker, P.A.), Topsham, Maine, for claimant.

Stephen Hessert and Kevin M. Gillis (Norman, Hanson & Detroy, LLC), Portland, Maine, for self-insured employer.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits and the Order Denying Motion to Reconsider (2009-LHC-00878) of Administrative Law Judge Jonathan C. Calianos 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 alleged that his employment for employer as a welder on July 28, 2008 resulted in the onset of hemoptysis, *i.e.*, the coughing up of blood, which rendered him temporarily totally disabled for the period of July 28 through August 14, 2008. Specifically, claimant testified that, on July 28, 2008, while setting up his welding equipment in a passageway of a vessel and thereafter while welding in an adjacent loader

room, he was exposed to a strong odor of epoxy which he believed came from a new floor that had been installed in an adjoining room. Claimant suffered his first episode of hemoptysis within two hours of his initial exposure to epoxy fumes, but he completed his work shift. At the close of his work day, claimant was again in the passageway when he experienced another episode of hemoptysis. Claimant continued to experience coughing episodes that evening; upon seeking medical treatment the following day, blood tests revealed that claimant's level of Coumadin was below therapeutic levels.¹ Claimant's coughing episodes continued and he was hospitalized on August 4, 2008. Claimant was released to return to work on August 13, 2008. On August 15, 2008, claimant returned to work and he has not suffered any subsequent episodes of hemoptysis. Claimant filed a claim under the Act seeking temporary total disability benefits for the period of July 28 to August 14, 2008, and medical expenses.

In his Decision and Order, the administrative law judge found that claimant is entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption, that employer established rebuttal of the presumption, and that, based on the record as a whole, claimant established a causal relationship between his employment with employer and his hemoptysis. Further, the administrative law judge accepted the parties' stipulation that claimant was temporarily totally disabled during the period of July 28 to August 14, 2008, and that claimant returned to work for employer on August 15, 2008. Accordingly, the administrative law judge awarded claimant temporary total disability compensation from July 28 to August 14, 2008, as well as reasonable and necessary medical expenses associated with his condition. 33 U.S.C. §§908(b), 907. Employer filed a motion for reconsideration, which the administrative law judge denied.

On appeal, employer contends the administrative law judge erred in finding that claimant sustained a compensable injury related to his employment. Claimant responds urging affirmance of the administrative law judge's decision in its entirety. Employer has filed a reply to claimant's response.

Claimant bears the burden of proving the existence of an injury or harm and that a work-related accident occurred or that working conditions existed which could have caused the harm, in order to establish a *prima facie* case. See *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Bath Iron Works v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996). If these two elements are established, the Section

¹ Claimant, who has a history of atrial fibrillation, has periodically been prescribed Coumadin, a blood thinner. Claimant was last prescribed Coumadin on June 26, 2008, when he again began to experience atrial fibrillation.

20(a), 33 U.S.C. §920(a), presumption applies to link claimant's injury or harm with his employment. *Preston*, 380 F.3d 597, 38 BRBS 60(CRT). Claimant is not required to prove that working conditions in fact caused his harm in order to invoke the Section 20(a) presumption; rather, claimant need only establish the existence of working conditions which could have caused the harm alleged. *See Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1993). The "working conditions" prong of a claimant's *prima facie* case requires that the administrative law judge determine whether employment events which could have caused the harm sustained by claimant in fact occurred. *See Bolden*, 30 BRBS 71.

In this case, the parties agree that claimant sustained a harm, hemoptysis, the onset of which occurred on July 28, 2008. Employer challenges the administrative law judge's determination that claimant established the working conditions prong of his *prima facie* case. Specifically, employer contends that claimant's exposure to fumes on July 28, 2008, cannot satisfy his burden on this issue since claimant did not establish that his exposure to fumes was capable of causing his hemoptysis.

We reject this contention. In his decision, the administrative law judge relied on the testimony of claimant, the opinions of the physicians who examined claimant in the weeks following his exposure, and the information contained in the Material Safety Data Sheets (MSDS) for the epoxy that resulted in the fumes claimant inhaled, in finding that claimant established that the epoxy fumes could have caused his hemoptysis. Decision and Order at 6 - 7. In this regard, claimant testified that he was exposed to fumes on July 28, 2008, and that he soon thereafter began coughing up blood. The medical records documenting claimant's treatment following this work incident reiterate claimant's onset of hemoptysis following his exposure to fumes and state that claimant's condition may have been precipitated by that exposure. CXs 1 at 6, 14, 16; 5 at 80 - 81, 83. The MSDS state that prolonged or excessive inhalation of the components of the epoxy used by employer may cause respiratory tract irritation. CX 14 at 360 - 361, 363 - 364. Claimant's claim that his hemoptysis is work-related, therefore, goes beyond "mere fancy" and is sufficient to bring the claim within the scope of Section 20(a). *Champion v. S & M Traylor Bros.*, 690 F.2d 285 (D.C. Cir. 1982); *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968). Thus, as the administrative law judge's finding that claimant's exposure to fumes on July 28, 2008, could have caused his hemoptysis is supported by substantial evidence and accords with law, we reject employer's contention of error. The administrative law judge's finding that claimant is entitled to application of the Section 20(a) presumption is affirmed.

Upon invocation of the Section 20(a) presumption, the burden shifts to employer to rebut it with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Preston*, 380 F.3d 597, 38 BRBS 60(CRT); *Sprague*

v. Director, OWCP; 688 F.2d 862, 15 BRBS 11(CRT) (1st Cir. 1982). If the administrative law judge finds that the Section 20(a) presumption is rebutted, he must weigh all of the evidence in the record and resolve the causation issue based on the record as a whole, with claimant bearing the burden of persuasion. *Bath Iron Works v. Brown*, 194 F.3d 1, 33 BRBS 162(CRT) (1st Cir. 1999).

The administrative law judge found that employer established rebuttal of the Section 20(a) presumption based on the opinion of Dr. Harbison. The administrative law judge then weighed the record as a whole and, relying on the medical reports of Dr. Sreden and the Technical Data Sheet and MSDS regarding the epoxy compound, found that claimant's hemoptysis was related to his exposure on July 28, 2008, to workplace fumes. The Technical Data Sheet states that the epoxy at issue here is a toxic material, that it should be allowed to dry for a minimum of 24 to 48 hours before turning on air conditioning, and that the prolonged breathing of the epoxy's vapors should be avoided. CX 14 at 358 – 359. The MSDS for the epoxy warn against breathing the epoxy's vapor and state that prolonged or excessive inhalation may cause respiratory tract irritation.² *Id.* at 360 - 361, 363 - 364. Dr. Sreden opined that claimant's hemoptysis likely occurred secondary to his work-related inhalation exposure. CX 5 at 80 – 84. In declining to credit the contrary opinion of Dr. Harbison, that claimant's hemoptysis was caused by his use of Coumadin, the administrative law judge acknowledged the testimony of Dr. Burns, claimant's treating cardiologist, who opined that Coumadin was unlikely to be the cause of claimant's condition because claimant had tolerated that medication for an extended period of time without incident and that, moreover, claimant's use of Coumadin in July 2008 was less than his prescribed dosage. CXs 3, 15.

We reject employer's assertion that the administrative law judge erred in weighing the evidence of record regarding the issue of causation. It is well-established that the administrative law judge is entitled to weigh the medical evidence and draw his own inferences therefrom and is not bound to accept the opinion or theory of any particular medical examiner. *See Bath Iron Works Corp. v. Director, OWCP*, 244 F.3d 222, 35 BRBS 35(CRT) (1st Cir. 2001); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). Moreover, it is impermissible for the Board to substitute its views for those of the administrative law judge; thus, the administrative law judge's findings may not be disregarded merely on the basis that other inferences might appear to be more reasonable. *See Sprague*, 688 F.2d 862, 15 BRBS 11(CRT). The administrative law judge addressed all the relevant evidence regarding the causal relationship between claimant's hemoptysis and his work-related exposure to epoxy fumes, his weighing of the evidence is rational, and his findings are supported by substantial evidence. We therefore affirm the

² The epoxy at issue contains both Part A and Part B. CX 14 at 358. The MSDS for Part B states that this component is toxic by inhalation. *Id.* at 363.

administrative law judge's conclusion that claimant's hemoptysis and consequent medical treatment were related to his employment with employer. *See generally Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT) (9th Cir. 2010); *Service Employees Int'l, Inc. v. Director, OWCP*, 595 F.3d 447, 44 BRBS 1(CRT) (2^d Cir. 2010). Therefore, we affirm the administrative law judge's award of temporary total disability and medical benefits to claimant for the period of July 28 through August 14, 2008.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits and Order Denying Motion to Reconsider are affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge