BRB No. 12-0328

RANDALL BLANKENSHIP	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ELECTRIC BOAT CORPORATION	)	DATE ISSUED: 03/14/2013
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Colleen A. Geraghty, Administrative Law Judge, United States Department of Labor.

Scott N. Roberts (Law Office of Scott Roberts, LLC), Groton, Connecticut, for claimant.

Robert J. Quigley (McKenney, Quigley, Izzo & Clarkin), Providence, Rhode Island, for self-insured employer.

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

PER CURIAM

Claimant appeals the Decision and Order Denying Benefits (2012-LHC-01123) of Administrative Law Judge Colleen A. Geraghty 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 worked for employer as a rigger for 23 years until employer's physician, Dr. McKee, suggested a change of duties based on claimant's complaints that he was having a significant loss of strength in his right hand and arm and pain radiating from his right elbow. Tr. at 30-31. In 1998, claimant was transferred out of rigging and into transportation, with duties as a heavy equipment operator. Tr. at 31, 57. Despite the transfer, claimant continued to have pain and, ultimately, had cervical spine surgery in February 2011. Tr. at 28-29. Claimant remained absent from work until approximately

mid-May 2011 when he returned to full-duty work with no restrictions as a result of his neck surgery. Tr. at 36-37, 41, 48. In August 2011, claimant reported to the dispensary with several joint/neurological-related complaints regarding his spine and left foot,[1] and Dr. Andrews, employer's site medical doctor, pulled him from work pending a medical review. Cl. Ex. 2. In response to Dr. Andrew's letter of September 2011 requesting information from claimant's physicians, Drs. Coppes and Doberstein both replied that claimant was able to return to his usual work.[2] Cl. Exs. 2, 7, 9; Emp. Exs. 10-11. Claimant filed a claim for temporary total disability benefits from February 17 through May 16, 2011, and from August 23, 2011, and continuing, and medical benefits.

The administrative judge determined that claimant established a prima facie case that his pain is work-related and invoked the Section 20(a), 33 U.S.C. §920(a), presumption.[3] She then found that employer rebutted the presumption with Dr. Morgan's opinion that claimant's pain and symptoms are due to the underlying degenerative condition and not to his work activities. Based on the record as a whole, the administrative law judge credited Dr. Morgan's opinion over claimant's subjective complaints, and, in the absence of any opinions on aggravation by claimant's physicians, found that claimant failed to establish by a preponderance of the evidence that his work activities aggravated his underlying disease or contributed to his need for cervical spinal surgery. Decision and Order at 12-14. Claimant appeals the denial of benefits, and employer responds, urging affirmance.

Claimant contends the administrative law judge erred in denying benefits because she did not consider claimant's testimony regarding his post-surgical interaction with Dr. Andrews or the doctor's admission that employer was unable to accommodate claimant by removing him to other work to alleviate his work-related pain. Employer responds, urging affirmance of the administrative law judge's decision. We affirm the administrative law judge's decision.

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[1]Claimant has been diagnosed with a variety of degenerative diseases of the spine, as well as hammertoe in his left foot, and progressive atrophy and weakness in his right arm. Emp. Ex. 2.

[2]Although Dr. Doberstein appears to have indicated that a change of duties would be helpful, he nevertheless also indicated that claimant had no restrictions and could resume his normal duties. Emp. Ex. 10.

[3]The administrative law judge found it undisputed that claimant has degenerative disease of the cervical spine which caused neck pain and right arm muscle atrophy and weakness. The administrative law judge also found that claimant showed conditions at his work which could have aggravated the cervical condition, as he had to drive a forklift over poor roads which caused jarring of the upper body. Decision and Order at 12.

In determining whether an injury is work-related, a claimant is aided by the Section 20(a) presumption, which is invoked after he establishes a prima facie case. *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 44 BRBS 13(CRT) (1st Cir. 2010); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). Once the presumption is invoked, as here, the employer may rebut it by producing substantial evidence that working conditions neither directly caused the injury nor aggravated the pre-existing condition to result in injury. *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004). If the employer rebuts the presumption, it no longer controls, and the issue of whether there is a relationship between the injury and the employment must be resolved on the record as a whole, with the claimant bearing the burden of persuasion. *Id.; see Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). Under the aggravation rule, if a work-related injury contributes to, combines with or aggravates a pre-existing condition, the entire resultant disability is compensable. *Gardner v. Director, OWCP*, 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981). If the claimant's disability is due solely to the natural progression of a prior injury or condition, the employer is not liable for the disabling condition. *Obert v. John T. Clark & Sons of Maryland*, 23 BRBS 157 (1990).

Initially, we note that claimant does not challenge the administrative law judge's finding that Dr. Morgan's opinion rebuts the Section 20(a) presumption. Dr. Morgan stated that claimant's work for employer as a forklift driver did not aggravate his underlying degenerative disease, cause pain, or contribute to the need for cervical spine surgery. Emp. Exs. 2-3. This finding is supported by substantial evidence and is affirmed as unchallenged on appeal. *See generally Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007). As the Section 20(a) presumption has been rebutted, it falls out of the case, and the case must be decided on the record as a whole. *Bath Iron Works Corp. v. Director, OWCP [Harford]*, 137 F.3d 673, 32 BRBS 45(CRT) (1st Cir. 1998); *Moore*, 126 F.3d 256, 31 BRBS 119(CRT).

It is well established that an administrative law judge is entitled to evaluate the credibility of all witnesses, including medical witnesses, and has considerable discretion in evaluating and weighing the evidence of record. *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *see also Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). In this case, the administrative law judge was persuaded by Dr. Morgan's opinion that claimant's work activities did not aggravate his underlying disease and necessitate surgery. Specifically, she acknowledged that Dr. Morgan is a neurologist and a clinical professor, and she credited his opinion that claimant's surgery was necessary because of the damage caused by the underlying disease process – that is, the damaged discs caused

pinched nerves, radiculopathy, right arm atrophy, muscle weakness and pain.[4] Thus, she concluded that the symptoms and pain claimant experienced prior to his surgery were due to the degenerative process and not to his work. Although the administrative law judge accepted claimant's testimony that he felt pain while working following his surgery, she again credited Dr. Morgan's opinion that the continuing complaints of pain were not related to claimant's job activities but were due to the underlying disease process. Additionally, the administrative law judge noted that none of claimant's doctors expressed an opinion that claimant's work affected his condition. Decision and Order at 14; Emp. Exs. 10-11.

Claimant does not dispute the administrative law judge's findings as to Dr. Morgan's opinion, nor does he dispute that his treating physicians did not offer any opinions as to whether his work aggravated his condition. Rather, claimant argues only that the opinion of Dr. Andrews supports his assertion that his work aggravated his cervical condition and that the administrative law judge did not address Dr. Andrew's opinion.[5] We reject claimant's assertion. In a letter, Dr. Andrews merely stated the facts as they were – that claimant had various complaints and due to those complaints she had to remove him from work until he was examined and cleared to return to work. While she described claimant's work activities and acknowledged there was no light-duty work for claimant, she did not render an opinion whether claimant's condition and complaints were work-related. Cl. Ex. 2. As claimant has offered no opinion to counter Dr. Morgan's opinion that claimant's condition was not aggravated by his work and is due to the natural progression of his underlying degenerative disease, we affirm the administrative law judge's reliance on Dr. Morgan's opinion, as it is rational and supported by substantial evidence. *Harford*, 137 F.3d 673, 32 BRBS 45(CRT). Therefore, we affirm the denial of disability and medical benefits. *Id.; Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000).

[4]Dr. Morgan stated that claimant's arm atrophy and muscle weakness are caused by a narrowing of the pathway through which the nerves travel, and that there is no medical support for a finding that jarring from driving a forklift over poor roads impacts, in any way, this degenerative process. He relied upon his review of diagnostic tests, his examination of claimant, and his understanding that claimant said he experienced pain with work and non-work activities. Emp. Ex. 3.

[5]Claimant states that the administrative law judge did not address claimant's testimony regarding his interaction with Dr. Andrews. Tr. at 42-44. However, that testimony merely states that claimant visited Dr. Andrews with complaints, that she took him out of work, that employer had no light-duty work for him, and that she thought his foot problem was related to arthritis.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge