BRB No. 98-0872

NOLAN BRIDGEWATER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	DATE ISSUED:
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits, Order on Claimant's Request for Rehearing, and Decisions on Motions for Reconsideration of David W. DiNardi, Administrative Law Judge, United States Department of Labor.

Curtis L. Hays, Biloxi, Mississippi, for claimant.

Paul B. Howell (Franke, Rainey & Salloum, PLLC), Gulfport, Mississippi, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order - Awarding Benefits, Order on Claimant's Request for Rehearing, and Decisions on Motions for Reconsideration (96-LHC-0339) of Administrative Law Judge David W. DiNardi 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, a painter, slipped on March 21, 1991, allegedly injuring both his knees and

his back. In his first decision awarding benefits, the administrative law judge found that claimant did not suffer a work-related injury to his back and was entitled only to compensation for a 30 percent impairment to his legs under the schedule, 33 U.S.C. §908(c)(2), (19). By Order of May 15, 1997, the administrative law judge denied claimant's motion for reconsideration, but thereafter granted a request for rehearing, based upon claimant's allegations that he was prevented from attending his own hearing and presenting his own testimony and that he had new evidence addressing the connection between his back condition and the work incident.

Following the reconvened hearing, the administrative law judge issued a second Decision on Motion for Reconsideration. In that decision, the administrative law judge again invoked the Section 20(a), 33 U.S.C. §920(a), presumption to link claimant's current back condition and the work accident but found it rebutted by substantial evidence. Based upon his weighing of the evidence as a whole, the administrative law judge concluded that claimant failed to establish a work-related back injury. He then held that employer established the availability of suitable alternate employment and that claimant, therefore, retained a residual work capacity; accordingly, claimant was entitled only to an award under the schedule for his knee impairment. As this amount had been fully paid by employer, the administrative law judge found claimant entitled to no further compensation and that as claimant had not successfully prosecuted his claim, his attorney was not entitled to a fee.

Claimant now appeals, arguing that the administrative law judge erred in finding that employer rebutted the Section 20(a) presumption and in his weighing of the evidence with regard to claimant's alleged back injury. Employer responds, urging affirmance.

It is claimant's burden to prove 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). Once claimant establishes his *prima facie* case, Section 20(a) provides him with a presumption that his condition is causally related to his employment. *See Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991). Where the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was neither caused nor aggravated by his employment. *See Brown v. Jacksonville Shipyards, Inc.*, 893 F.2d 294, 23 BRBS 22 (CRT)(11th Cir. 1990); *Manship v. Norfolk & Western Railway Co.*, 30 BRBS 175 (1996). It is employer's burden on rebuttal to present specific and comprehensive evidence sufficient to sever the causal connection between the injury and the employment. *See Peterson v. General Dynamics Corp.*, 25 BRBS 71 (1991), *aff'd sub nom. Ins. Co. of North America v. U.S. Dept. of Labor*, 969 F.2d 1400, 26 BRBS 12 (CRT)(2d Cir. 1992), *cert. denied*, 113 S.Ct. 1253 (1993). The testimony of a physician that no relationship exists between an injury and a claimant's employment is sufficient to rebut the presumption. *See*

Kier v. Bethlehem Steel Corp., 16 BRBS 128 (1984). If the administrative law judge finds that the Section 20(a) presumption is rebutted, he must weigh all of the evidence and resolve the causation issue based on the record as a whole.[1] *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 270 (1990).

In the instant case, in his initial decision the administrative law judge invoked the Section 20(a) presumption but found that the record evidence was sufficient to rebut it. The administrative law judge noted the lapse of time between the accident and claimant's first reports of pain and the fact that the records of Drs. Ray, West, Rutledge, Enger, Park and Longnecker did not relate claimant's back problems to his work-related knee injury. He further found that Drs. Ray and Rutledge opined that there was no causal relationship between claimant's work-related injury and his back relationship or between claimant's work-related injury and his back pain, finding Dr. Ray most persuasive. On reconsideration, the administrative law judge again relied on this evidence, as well as discussing the new evidence submitted by claimant, concluding that employer rebutted the presumption and that causation was not established on the record as a whole. Claimant contends that employer failed to rebut the presumption, asserting it did not produce any affirmative evidence that his pain was not caused by his accident.

We affirm the administrative law judge's finding, as the opinions of Drs. Ray and Rutledge are sufficient to establish rebuttal. Dr. Ray, claimant's treating physician, opined that he did not find any evidence that his back problems are directly related to his original injury, EX 12, and Dr. Rutledge concluded that claimant's complaints of back pain are not connected with his accident nor with his knees. EX 14. Weighing the evidence as a whole, the administrative law judge discussed the medical evidence supporting claimant's assertion of a work-related back condition, but found it unpersuasive given the great time lapse between the incident and claimant's reporting the problem. He also noted that most of the notations were based on claimant's self-reporting. Moreover, the administrative law judge did not find credible claimant's allegation that he complained of the back injury at the time of the incident and to various physicians thereafter, but that evidence of these complaints was either stolen or removed from the records.

[1]Claimant's argument that all doubts must resolved in his favor is without merit. *See Director, OWCP v. Greenwich Collieries*, 521 U.S. 267, 28 BRBS 43 (CRT)(1994).

In adjudicating a claim, the administrative law judge is entitled to weigh the medical evidence and draw his own inferences from it, *see Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988), and he is not bound to accept the opinion or theory of any particular witness. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). In this case, the administrative law judge provided valid reasons for crediting the opinions of Drs. Rutledge and Ray, and these opinions provide substantial evidence in support of his finding that claimant's back condition is not work-related. Accordingly, we affirm the administrative law judge's conclusion that causation was not established.[2]

Accordingly, the administrative law judge's decisions denying further compensation are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

[2]As claimant does not appeal the administrative law judge's findings concerning suitable alternate employment, they are hereby affirmed.