

BRB No. 98-0922

RUBEN C. CHAUVIN	)		
	)		
Claimant-Petitioner	)	DATE	ISSUED:
	)		
v.	)		
	)		
AVONDALE INDUSTRIES,	)		
INCORPORATED	)		
	)		
Self-Insured	)		
Employer-Respondent	)	DECISION and ORDER	

Appeal of the Decision and Order-Denying Benefits of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Frank A. Bruno, New Orleans, Louisiana, for claimant.

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

PER CURIAM:

Claimant appeals the Decision and Order-Denying Benefits (97-LHC-635) 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 if they 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).

Claimant worked as an electrician, electrical foreman, and production engineer for employer from 1953 until his retirement in 1993. He was found by the administrative law judge to be 68 years of age at the time of the October 21, 1997, hearing. On November 4, 1992, claimant underwent an audiological examination administered by Daniel Bode, M.A., a certified audiologist. CX 2. Based on the results of this testing, Mr. Bode diagnosed a 28.1 percent hearing loss for the right ear, and a 35.6 percent hearing loss for the left, which translated into a 29.4 percent

binaural hearing loss. Mr. Bode attributed this hearing loss to noise exposure during claimant's employment. Claimant's hearing was again tested on March 15, 1993, by William Seidmann, Ph.D.; that audiogram demonstrated a binaural hearing impairment of 16.6 percent. EX 3. Dr. Seidmann opined that claimant's hearing loss was not noise-related. Finally, audiometric testing was administered on June 2, 1995, by Dr. Ronald French. EX 2. This test revealed a 32.2 percent binaural loss, which Dr. French testified is not from noise exposure but from the normal aging process. EX 6 at 11-13, 18.

Claimant filed for benefits under the Act on November 24, 1992, seeking compensation for a work-related hearing loss consistent with his first audiogram.<sup>1</sup> The administrative law judge denied benefits, finding claimant failed to establish that his hearing loss is related to his exposure to noisy working conditions during the course of his employment for employer. Claimant appeals, contending that the administrative judge erred in finding that his hearing loss did not arise out of his employment. Employer has not responded to this appeal.

In the instant case, the administrative law judge properly invoked the Section 20(a), 33 U.S.C. §920(a), presumption as he found that claimant suffered a harm, specifically a loss of hearing, and that working conditions existed that could have caused this condition. *See generally Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991). Upon invocation of the presumption, the burden shifts to employer to present specific and comprehensive evidence sufficient to sever the causal connection between the injury and the employment. *See Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir), *cert. denied*, 429 U.S. 20 (1976). The unequivocal testimony of a physician that no relationship exists between an injury and a claimant's employment is sufficient to rebut the presumption. *See Keir v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984). If the administrative law judge finds that the Section 20(a) presumption is rebutted, the administrative law judge must weigh all the evidence contained in the record and resolve the causation issue based on the record as a whole. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990); *see also Director, OWCP, v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT)(1994).

In finding rebuttal, the administrative law judge relied upon the opinions of Drs. Seidmann and French, who opined that claimant does not have an occupational noise-induced hearing loss. EX 6 at 11-13, EX 7 at 16. Weighing the evidence as a whole, the administrative law judge credited the unequivocal opinions of Drs.

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<sup>1</sup>Employer paid benefits for a 16.6 percent impairment.

Seidmann and French over the opinion of Mr. Bode, stating that Drs. Seidmann and French have superior credentials and that Dr. Seidmann possesses more experience with industrial hearing loss. In challenging this finding claimant assigns error to the administrative law judge's decision not to rely on the report and testimony of Mr. Bode. It is well-established that an 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 *Todd Shipyards v. Donovan*, 300 F.2d 741 (5th Cir. 1962). In the instant case, the administrative law judge fully weighed the evidence, and his determination that claimant's hearing loss is unrelated to his employment with employer is supported by substantial evidence.

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge