

MOLLEEN IVICEVICH)
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 Claimant-Petitioner)
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 v.)
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 EAGLE MARINE SERVICES) DATE ISSUED: May 12, 2005
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 Self-Insured)
 Employer-Respondent) DECISION and ORDER

Appeal of Decision and Order Denying Benefits of Anne Beytin Torkington, Administrative Law Judge, United States Department of Labor.

James M. McAdams (Pierry, Moorhead, McAdams & Shenoi, LLP), Wilmington, California, for claimant.

Daniel F. Valenzuela (Samuelsen, Gonzalez, Valenzuela & Brown), San Pedro, California, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (2002-LHC-2343) of Administrative Law Judge Anne Beytin Torkington 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, a marine clerk, alleged that she sustained a psychological injury due to a work-related incident with an outside truck driver on October 12, 2000, and its aftermath at work through November 6, 2000, during which time she alleged she was harassed by

employer's security guards.¹ Claimant sought compensation benefits for total disability commencing on November 7, 2000, and medical benefits for psychiatric care.

In her Decision and Order, the administrative law judge found claimant entitled to invocation of the Section 20(a) presumption linking a psychological condition to her employment, based on the opinions of Drs. Coffee and Curtis. The administrative law judge found that employer established rebuttal of the presumption based on the opinions of Drs. Klemes and Franklin. On weighing the evidence as a whole, the administrative law judge rejected the opinions of Drs. Coffee and Curtis in favor of those of Drs. Klemes and Franklin, who both opined that claimant suffers from an "occupational problem" characterized by feelings of anger and resentment toward her employer, rather than a psychological injury. The administrative law judge also found that, assuming claimant sustained some form of work-related psychological injury, she failed to show that her injury is disabling in an economic sense. Therefore, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in crediting the opinions of Drs. Klemes and Franklin over those of Drs. Coffee and Curtis. Claimant further contends that the administrative law judge improperly disregarded claimant's testimony concerning her condition. Employer responds, urging affirmance of the administrative law judge's decision.

A psychological impairment that is work-related is compensable under the Act. *American National Red Cross v. Hagen*, 327 F.2d 559 (7th Cir. 1964); *Manship v. Norfolk & Western Ry.Co.*, 30 BRBS 175 (1996); *see generally Konno v. Young Bros., Ltd.*, 28 BRBS 57 (1994). Once, as here, the Section 20(a) presumption is invoked and rebutted, claimant bears the burden of persuading the administrative law judge that her condition is work-related based on the record as a whole. *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); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996).

¹ Claimant told the truck driver to wait in line, and he called her a name and did not get back in line. Claimant was informed by security guards that they would escort the driver off the premises, but when claimant later exited a restroom, the driver was standing outside. Claimant again called security who then ensured that the driver left. Claimant testified that employer's security guards thereafter treated her poorly. Tr. at 31-39. Claimant became discouraged with employer's lack of attention to her complaints and sought a doctor's note. Claimant was subsequently fired and reinstated by employer *Id.* at 41. As a result of the work events, claimant filed a grievance and an arbitrator awarded her one week of back wages. *Id.* at 42.

The administrative law judge extensively discussed the medical evidence in this case. Dr. Coffee, claimant's treating psychiatrist, opined that claimant has major, single episode, depression and, possibly, agoraphobia due to the work incident. CX 9-12, 22-23, 37. Dr. Curtis examined claimant on two occasions at the behest of claimant's counsel. Dr. Curtis stated that claimant has a depressive disorder with anxiety, which was caused by claimant's employment. CX 3 at 22. In contrast, Drs. Klemes and Franklin, who examined claimant on employer's behalf, both opined that claimant does not have a work-related mental disorder. Dr. Klemes deposed that claimant showed no signs of anxiety or depression, EX 1 at 8; EX 5 at 26-27, 57, and he disagreed with Dr. Coffee that agoraphobia is associated with depression. *Id.* at 79-84. Dr. Klemes stated that claimant informed him that she would like to return to work if more security was provided. He therefore characterized claimant's condition as an "occupational problem." EX 1 at 4, 8; EX 5 at 22-23. Dr. Franklin similarly reported that claimant was not depressed, but was angry about the way employer treated her. EX 3 at 33. He stated that claimant would return to work if employer apologized, acknowledged that her safety had been jeopardized, and hired additional security guards. *Id.* at 21.

In weighing this medical evidence, the administrative law judge first discussed precedent concerning the weight to be accorded to the opinion of the treating physician, here, Dr. Coffee. *See Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir. 1998), *amended*, 164 F.3d 480, 32 BRBS 144(CRT) (9th Cir. 1999), *cert. denied*, 528 U.S. 809 (1999). The administrative law judge's finding that she need not give the treating physician's opinion conclusive weight when it is contradicted by other medical evidence which the administrative law judge rationally finds more convincing is in accordance with law. *See Connett v. Barnhart*, 340 F.3d 871 (9th Cir. 2003); *see also Black & Decker Disability Plan v. Nord*, 538 U.S. 822 (2003). Thus, we reject claimant's contention that the administrative law judge was required to credit the opinion of Dr. Coffee.

In according less weight to the opinion of Dr. Coffee, the administrative law judge first stated that it was based solely on claimant's subjective statements and not on any objective observations made by Dr. Coffee. While an administrative law judge may not reject a psychiatrist's uncontroverted opinion solely because it is based on a claimant's subjective complaints, *see Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 84(CRT) (2^d Cir. 1997), in this case, Dr. Curtis and Dr. Klemes assessed claimant's subjective complaints in light of objective tests and observations whereas Dr. Coffee did not. Moreover, the administrative law judge rejected Dr. Coffee's diagnoses and causation opinion based on Dr. Klemes's statements regarding the inconsistencies between Dr. Coffee's diagnoses and treatment plans. Decision and Order at 10.

In assessing the weight to be accorded to the remaining three opinions of record, the administrative law judge gave greatest weight to Dr. Klemes's opinion that claimant

is not depressed or anxious, as she found it to be the more thorough and clear opinion.² *Id.* at 11. The administrative law judge noted that the opinion was based on the physician's assessment of whether claimant's behavior and reported activities outside his office were consistent with her complaints, and Dr. Klemes stated why these were inconsistent with a diagnosis of depression. The administrative law judge found Dr. Klemes's opinion bolstered by that of Dr. Franklin, who reported claimant's anger at employer and claimant's statement that she is not depressed. Thus, the administrative law judge found that the medical evidence does not establish that claimant has a work-related psychological impairment, but that claimant is merely angry at and resentful of her treatment by employer.³ Finally, the administrative law judge found that the lay testimony of record is consistent with the assessments of Drs. Klemes and Frank that claimant is angry at that way she was treated.

We affirm the administrative law judge's finding that claimant failed to establish that she has a work-related psychological condition as it is rational, supported by substantial evidence, and in accordance with law. The administrative law judge is entitled to determine the weight to be accorded to the medical evidence and the Board must respect the administrative law judge's evaluation of the evidence if her conclusions are rational, supported by substantial evidence, and in accordance with law. *See Crescent Wharf & Warehouse Co. v. Cyr*, 200 F.2d 633 (9th Cir. 1953); *see also Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994); *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). In this case, the administrative law judge provided rational reasons for crediting the opinion of Dr. Klemes, as supported by that of Dr. Franklin, and claimant has not raised any reversible error in the administrative law judge's consideration of the evidence. As the administrative law judge's finding that claimant did not establish that she has a work-related psychological condition is supported by substantial evidence, we affirm it and the consequent denial of benefits.⁴

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

² Dr. Klemes reported that claimant would like to return to work, provided additional security was made available. EX 1 at 4.

³ The administrative law judge acknowledged that employer treated claimant poorly. Decision and Order at 3.

⁴ Consequently, we need not address claimant's contentions of error concerning the administrative law judge's alternate finding that claimant is not economically disabled by any alleged psychological condition.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Law Judge