

BRB No. 05-0751

DANNY GREGORY, SR.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
M. J. HOGAN & COMPANY)	DATE ISSUED: 05/11/2006
)	
and)	
)	
SIGNAL MUTUAL INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order of Larry W. Price, Administrative Law Judge, United States Department of Labor.

Ralph R. Lorberbaum (Zipperer, Lorberbaum & Beauvais), Savannah, Georgia, for claimant.

G. Mason White and James D. Kreyenbuhl (Brennan, Harris & Rominger LLP), Savannah, Georgia, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (2004-LHC-02426) of Administrative Law Judge Larry W. Price 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 which 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 injured his left knee on April 7, 2002, during the course of his employment for employer as a longshoreman. Prior to this injury, claimant had sustained injuries to his lower back and right knee. Claimant alleged that after his work-related left knee injury he experienced right knee pain as a consequence of using a cane to support his left knee. Claimant underwent left knee replacement surgery on September 3, 2002. Claimant further alleged the onset of lower back pain in the fall of 2003 due to his left knee injury. Employer paid claimant compensation for temporary total disability from April 22, 2002 to August 24, 2003, and for a 37 percent impairment of the left knee. 33 U.S.C. §908(b), (c)(2). Claimant asserted that pre-existing right knee and lower back conditions were aggravated by the work injury, and that he is unable to return to his former longshore employment.

In his decision, the administrative law judge found that claimant invoked the Section 20(a), 33 U.S.C. §920(a), presumption linking his right knee and lower back conditions to the work injury. The administrative law judge found that employer established rebuttal of the presumption based on the opinion of Dr. Holtzclaw. The administrative law judge found, based on the record as a whole, that the evidence does not establish that claimant's back and right knee conditions were aggravated by the work injury. The administrative law judge found that claimant is unable to return to his usual employment due to his work injury, but that employer established the availability of suitable alternate employment and that claimant is not entitled to any additional scheduled benefits. Finally, the administrative law judge rejected claimant's request for a change of physician from Dr. Holtzclaw. *See* 33 U.S.C. §907(c)(2).

On appeal, claimant challenges the administrative law judge's finding that his right knee and back conditions were not aggravated by the work injury. Employer responds, urging affirmance.

Claimant asserts that Dr. Allcock's opinion establishes that claimant's back condition was aggravated by his work injury, and that "common sense" establishes that his pre-existing conditions were aggravated by the work injury as he was able to work until the work injury occurred. Upon invocation of the Section 20(a) presumption, as here, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Brown v. Jacksonville Shipyards, Inc.*, 893 F.2d 294, 23 BRBS 22(CRT) (11th Cir. 1990); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000). Employer is liable for the resulting sequelae of the original injury, or for the work-related aggravation of a pre-existing condition. *Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45(CRT) (5th Cir. 1986) (*en banc*); *Seguro v. Universal Maritime Service Corp.*, 36 BRBS 28 (2002); *Bass v. Broadway Maintenance*, 28 BRBS 11 (1994). 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. *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).

In finding that employer rebutted the Section 20(a) presumption, the administrative law judge relied upon the opinion of Dr. Holtzclaw, claimant's treating physician for his left knee injury, who opined that claimant's right knee arthritis and degenerative back condition were not aggravated by claimant's work-related left knee injury. EX M at 16-17. As Dr. Holtzclaw's opinion constitutes substantial evidence that claimant's right knee and back conditions were not aggravated by the April 7, 2002, work injury, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebutted. *See O'Kelley*, 34 BRBS 39; *Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999).

Next, after considering all of the evidence of record, the administrative law judge credited Dr. Holtzclaw's opinion that claimant's work injury had no effect on his underlying back condition, over the contrary opinion of Dr. Allcock. The administrative law judge based this determination on Dr. Holtzclaw's expertise as an orthopedic surgeon and familiarity with claimant's left knee condition both before and after the 2002 knee replacement surgery, whereas Dr. Allcock, an osteopath, did not examine claimant until April 2004. Decision and Order at 12. The administrative law judge also found that claimant's extensive history of back problems supports Dr. Holtzclaw's opinion that any back pain is related solely to his previous injuries. Tr. at 43-45; EX M at 24-25. The administrative law judge further credited Dr. Holtzclaw's opinion that any pain in claimant's right knee is not related to the left knee injury. Decision and Order at 13. Dr. Holtzclaw testified on deposition that claimant made a complete recovery from his total knee replacement surgery and was not putting any additional stress on his right knee.¹ Tr. at 45-46; EXs D, M at 17. Finally, the administrative law judge found that videotape surveillance conducted from January to March 2004 buttresses employer's contention that claimant's left knee has healed and that he does not favor it. Decision and Order at 13-14; EX P.

¹ Dr. Holtzclaw did opine that claimant's left knee injury and surgery may have temporarily exacerbated claimant's pre-existing right knee and lower back conditions. EX M at 24-25. However, he stated that as claimant made a complete recovery from knee replacement surgery, any current right knee and back problems are not related to claimant's left knee injury. *Id.* at 16-17. Thus, any temporary disability attributable to the aggravating effects of claimant's left knee injury on his pre-existing right knee and back conditions was subsumed within employer's payment of compensation for temporary total disability from April 22, 2002 to August 24, 2003.

In adjudicating a claim, it is well established that an administrative law judge is entitled to weigh the evidence and is not bound to accept the opinion or theory of any particular medical examiner; rather, the administrative law judge may draw his own inferences and conclusions from the evidence. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2^d Cir. 1961). In this case, the administrative law judge's decision to credit the opinion of Dr. Holtzclaw over the contrary opinion of Dr. Allcock, and claimant's testimony that his right knee and back were aggravated by the work injury, is within his discretion as fact finder. *Id.* Moreover, the administrative law judge was not required to infer a relationship between the work injury and the back and right knee conditions merely because claimant was able to work with these conditions prior to the occurrence of the left knee injury. Rather, the administrative law judge found that the left knee injury resulted in claimant's inability to work for employer. Decision and Order at 15. We therefore affirm the administrative law judge's determination, based on the record as a whole, that claimant's current right knee and back conditions are not causally related to his April 7, 2002, work accident. *See generally Lennon v. Waterfront Transport*, 20 F.3d 658, 28 BRBS 22(CRT) (5th Cir. 1994); *Manente v. Sea-Land Service, Inc.*, 39 BRBS 1 (2004).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge