

BRB No. 98-1229

L. C. WADE, JR.	)	
	)	
Claimant-Petitioner	)	DATE ISSUED: <u>May 17, 1999</u>
	)	
v.	)	
	)	
AVONDALE INDUSTRIES,	)	
INCORPORATED	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

William Mustian III (Stanga & Mustian, P.L.C.), Metairie, Louisiana, for claimant.

Joseph J. Lowenthal, Jr. (Jones, Walker, Waechter, Poitevent, Carrere & Denegre), New Orleans, Louisiana, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (97-LHC-2136) of Administrative Law Judge Clement J. Kennington 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 rational, supported by substantial evidence, and 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 shipfitter, suffered a crush injury to his left index finger on February 29,

1996, during the course of his employment with employer. Following treatment and surgery to his finger, claimant was released to return to his usual job duties on July 15, 1996, but was terminated for violation of the company drug policy. Claimant alleges that in addition to the injury to his finger, he suffered shoulder and neck injuries which prevent his returning to his previous employment. Claimant sought compensation for temporary total disability, as well as for reasonable and necessary medical expenses related to his neck and shoulder condition.<sup>1</sup>

In his decision, the administrative law judge found that claimant established entitlement to the Section 20(a), 33 U.S.C. §920(a), presumption by establishing his *prima facie* case based upon his neck and shoulder pain and the work-related incident.<sup>2</sup> After determining that employer presented sufficient evidence to rebut the presumption, the administrative law judge weighed all of the evidence and concluded that claimant failed to establish a causal relationship on the record as a whole. Accordingly, he denied benefits related to claimant's neck and shoulder conditions.

On appeal, claimant challenges the administrative law judge finding that his present shoulder and neck conditions did not arise out of his work accident. Claimant also contends that his finger injury prevents his return to his usual work. Employer responds, urging affirmance.

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 neck and shoulder pain, and that an accident occurred which could have caused his condition. *See*

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<sup>1</sup>The parties stipulated that, based upon the crush injury to his finger, employer paid claimant temporary total disability compensation from February 29 to July 15, 1996, and an award under the schedule for a 44 percent impairment to his index finger, EX 10, as well as related medical benefits. Decision and Order at 2.

<sup>2</sup>Claimant's contention that his general working conditions gave rise to his neck and shoulder condition was neither raised before the administrative law judge nor fully briefed on appeal; this contention, therefore, will not be addressed.

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 *Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984). If the presumption is rebutted, the administrative law judge must weigh all of the relevant evidence and resolve the causation issue based on the record as a whole. See *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 270 (1990); see also *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT)(1994).

Claimant initially argues that the administrative law judge erred in finding the Section 20(a) presumption rebutted. We disagree. In finding rebuttal, the administrative law judge relied upon the opinion of Dr. Russo, who testified that, within a reasonable degree of medical certainty, claimant's neck and shoulder complaints are unrelated to his February 29, 1996, work incident. EX R at 24, 29. Although Dr. Russo stated that trauma or repetitive motion may aggravate an arthritic condition, he could determine no mechanism of injury based on the work incident that would have caused claimant's complaints. *Id.* at 55. As this opinion constitutes substantial evidence sufficient to rebut the presumption, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebutted. See generally *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

Claimant also challenges the administrative law judge's finding that causation was not established on the record as a whole; specifically, claimant assigns error to the administrative law judge's decision not to rely upon the testimony of Dr. Watermeier. After considering all of the medical evidence of record, the administrative law judge credited the opinion of Dr. Russo over the opinion of Dr. Watermeier, stating that Dr. Watermeier's opinion was unpersuasive in that he changed his diagnosis twice and relied primarily on claimant's subjective complaints which the administrative law judge found lack credibility. In contrast, the administrative law judge found that Dr. Russo's opinion was supported by the lack of objective evidence and claimant's failure to report a shoulder or neck condition for two months post-incident. It is well-established that the administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences from the evidence. See *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1983). In the instant case, the administrative law judge's credibility determinations are rational. Accordingly, we affirm the administrative law judge's determination that claimant's present shoulder and neck conditions are unrelated to the February 29, 1996, work accident as it is supported by substantial evidence.

Lastly, claimant contends that he is unable to return to his pre-injury job because of

his finger, shoulder, and neck conditions. It is well established that claimant has the burden of establishing the nature and extent of any disability sustained as a result of a work-related injury. *See Anderson v. Todd Shipyard Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding & Const. Co.*, 17 BRBS 56 (1985). In order to establish a *prima facie* case of total disability, claimant bears the burden of establishing that he is unable to return to his usual work. *See Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988). In the instant case, however, claimant has set forth no evidence of record that would support a conclusion that he is unable to return to his usual employment duties because of an impairment to his finger. In this regard, we note that Dr. McAlvanah, who treated claimant for his finger injury, released him to return to his regular job duties on July 15, 1996. JX 5 at 16. Moreover, the restrictions placed on claimant by Dr. Watermeier limiting claimant's lifting, pushing, pulling and overhead work are related solely to claimant's non work-related neck and shoulder conditions. Dr. Watermeier placed no restrictions on claimant related to his finger condition. *See Watermeier Dep.* at 10-11, 21. Claimant has thus failed to meet his burden in this case. *See Greenwich Collieries*, 512 U.S. at 267, 28 BRBS at 43 (CRT). Accordingly, we affirm the administrative law judge's determination that claimant is entitled to no further disability compensation for the injury sustained to his finger.

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge