BRB No. 05-0204

EDWARD E. POOL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 10/20/2005
	)	
LAMBERT POINT DOCKS, INCORPORATED	)	
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Richard E. Huddleston, Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Montagna Klein Camden L.L.P.), Norfolk, Virginia, for claimant.

Christopher R. Hedrick (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (2003-LHC-1479) of Administrative Law Judge Richard E. Huddleston 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 commenced his employment with employer in November 1978, at which time he was hired as an assistant superintendent supervising employer's pier. Shortly thereafter, claimant was promoted to superintendent of employer's Sewell's Point facility. Upon employer's sale of that facility in 1993, claimant returned to employer's

facility at Lambert's Point Docks; however, since employer already employed a superintendent at that location, it created the position of safety coordinator for claimant. Claimant stated that his work environment became stressful soon after employer hired Bob Jones as general superintendent;[1] specifically, claimant stated that Mr. Jones "wrote up" claimant on multiple occasions for problems associated with claimant's work performance, and that Mr. Jones repeatedly berated him. Mr. Jones became employer's president in 1991, and claimant testified that Mr. Jones thereafter continued to complain about the manner in which claimant performed his job. Additionally, claimant was denied merit increases and a bonus, and he received multiple reprimands for his work performance and for leaking information to union officials regarding confidential management negotiations. Claimant's alleged problems culminated in a meeting held on January 26, 1998, during which time he was informed that he would not receive an increase in salary due to his mishandling of a project for General Motors that involved the unloading of locomotive assemblies. Claimant testified that he felt anxious following this meeting and that he sought a medical consultation with Dr. Waldrop on that same day. On February 3, 1998, claimant returned to work, but was informed that his position had been abolished by employer. Claimant, who was informed by employer that if he did not resign he would be terminated, ultimately signed a resignation letter in April 1998. In December 2002, claimant filed a claim under the Act for a psychiatric condition occurring on or about January 27, 1998; subsequently, claimant amended his claim to assert that his purported psychological condition was due to the stressful work environment that he experienced while working for employer.

In his Decision and Order, the administrative law judge accepted the parties' stipulations that the Section 20(a) presumption of causation was invoked and that employer produced substantial evidence to rebut the presumption. 33 U.S.C. §920(a). After considering the totality of the evidence, the administrative law judge determined that claimant failed to establish that his psychological condition is related to his working conditions with employer; rather, the administrative law judge found that the events surrounding claimant's termination in 1998 constituted the only work-related source of stress that affected his mental health. Citing *Marino v. Navy Exch.*, 20 BRBS 166 (1988), the administrative law judge concluded that claimant did not demonstrate the existence of working conditions which could form the basis for a compensable claim under the Act. Accordingly, the administrative law judge denied claimant's claim for disability benefits.

On appeal, claimant challenges the administrative law judge's denial of his claim, contending that the administrative law judge erred in his consideration of the evidence of record. Specifically, claimant contends that the administrative law judge erred by failing

[1] Claimant opined that Mr. Jones was hired approximately five or six years after claimant commenced employment with employer. *See* Tr. at 41.

to give determinative weight to the opinion of his treating physician, Dr. Waldrop. Additionally, claimant asserts error in the administrative law judge's decision to reject his testimony in favor of that of his co-workers regarding claimant's working conditions. Employer responds, urging affirmance.

It is well established that a psychological impairment which is work-related is compensable under the Act. *See, e.g., American Nat'l Red Cross v. Hagen*, 327 F.2d 559 (7th Cir. 1967); *Sewell v. Noncommissioned Officers' Open Mess, McChord Air Force Base*, 32 BRBS 134 (1998) (*en banc*) (Brown and McGranery, JJ., dissenting), *aff'g on recon. en banc* 32 BRBS 127 (1997) (McGranery, J., dissenting); *see also Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 89(CRT) (2d Cir. 1997). Furthermore, the Section 20(a) presumption is applicable in psychological injury cases. *Sewell*, 32 BRBS at 135. However, where, as here, the Section 20(a) presumption is rebutted, it no longer controls and the issue of causation must be resolved on the evidence of record as a whole, with claimant bearing the burden of persuasion. *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).

The administrative law judge set forth in great detail the testimony of claimant and four of his co-workers, Mssrs. Lynch, Powell, Perry and Taylor, and discussed as well claimant's personnel records.[2] *See* Decision and Order at 2-12. With respect to the working conditions with employer that claimant alleged were stressful to him, the administrative law judge found claimant's testimony to be unreliable. Specifically, the administrative law judge found that while claimant testified that Mr. Jones was "out to get him," Mssrs. Perry and Powell testified that Mr. Jones would nearly always side with claimant when disputes arose, that Mr. Jones was lax with claimant, and that Mr. Jones rarely held claimant accountable for his job responsibilities. Moreover, the administrative law judge found it to be illogical that, if Mr. Jones were "out to get" claimant, the position of safety coordinator would have been specifically created by employer in order to accommodate claimant when, in 1993, claimant transferred to the Lambert's Point facility from the Sewell's Point location.[3] *Id.* at 18. The administrative

[2] At the time of the formal hearing, Mr. Lynch was employed by employer as an assistant superintendent, Mr. Powell was employed as a superintendent, and Mr. Perry was employed in employer's maintenance division. Mr. Taylor was employed as a superintendent for employer from May 1992 until January 1999, and as a general superintendent from January 1999 to May 1992.

[3] Claimant additionally posited that the changes made to his 1996 and 1997 work evaluations by Mr. Jones after claimant had discussed those evaluations with Mr. Taylor establish evidence of stressful working conditions; the administrative law judge found,

law judge also found that claimant's acknowledgement that he could occasionally be found sleeping or reading the newspaper during working hours suggested that claimant was actually quite relaxed in his working environment. *Id.* at 19. Regarding claimant's assertion that the ordering of labor was a stressful event, the administrative law judge found that claimant had been performing this task during the 20 years that he was employed by employer, and that Mssrs. Powell and Taylor described this duty as routine and straightforward. The administrative law judge further noted that, although claimant complained of frustration due to his unsuccessful attempts to secure employment following his termination by employer, claimant testified at the formal hearing that he in fact had not sought employment since his 1998 termination. *Id.*

In addressing the medical evidence of record, the administrative law judge credited Dr. Mansheim, who opined that the only employment event contributing to claimant's depression was the event on January 26, 1998, concerning his mishandling of the General Motors project, which led to his dismissal.[4] The administrative law judge gave less weight to the contrary opinion of Dr. Waldrop that the totality of claimant's working conditions caused his depression. In weighing this evidence, the administrative law judge acknowledged that both Dr. Mansheim and Dr. Waldrop possess impressive credentials, and that both physicians are Board-certified. The administrative law judge relied, however, on the testimony of Dr. Mansheim, finding that only he referenced laboratory studies relevant to claimant's alcohol and drug use.[5] In contrast, the administrative law judge accorded Dr. Waldrop's opinion less weight because it is based almost exclusively on the unreliable information provided to him by claimant, Dr. Waldrop did not have the benefit of reviewing claimant's personnel records, and Dr. Waldrop was unaware of claimant's substance abuse problems prior to his deposition. Decision and Order at 19-20. The administrative law judge therefore concluded that the only employment-related stress that claimant established was the loss of his job in 1998 due to his mishandling of the General Motors project. As such personnel actions are not

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however, that claimant conceded that these actions did not cause him stress since he was unaware of these changes at the time they were made. Decision and Order at 19.

[4] Dr. Mansheim also attributed claimant's depression to medical and family problems and to substance abuse. EX 20.

[5] A drug screening test performed upon claimant's hospitalization on February 7, 1998, revealed methadone as well as high levels of benzodiazepine and cocaine in claimant's system. Liver enzyme studies indicated alcohol dependency of a long-standing duration. At the formal hearing, claimant testified to prior marijuana and cocaine use, as well as to a significant use of alcohol.

"working conditions" under the Act, the administrative law judge denied claimant's claim for benefits. *See Marino*, 20 BRBS 166.

The administrative law judge is entitled to evaluate the credibility of all witnesses and to weigh the evidence. He is not bound to accept the opinion or theory of any particular witness; 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 (2d Cir. 1961). The administrative law judge discussed all of the relevant lay and medical evidence of record and his rejection of claimant's testimony and his crediting of Dr. Mansheim are rational. *Id.* Thus, the administrative law judge's finding that claimant failed to establish that his current psychological condition is causally related to general working conditions with employer, other than the events surrounding his termination in 1998, is supported by substantial evidence and is affirmed. We therefore affirm the administrative law judge's finding that claimant is not entitled to benefits under the Act for his current psychological condition.[6] *Marino*, 20 BRBS 166; *see also Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000); *Rochester v. Geo. Washington Univ.*, 30 BRBS 233 (1997).

[6] In *Marino*, the Board explained that a legitimate personnel action or termination is not the type of activity intended to give rise to a workers' compensation claim; to hold otherwise, the Board stated, would unfairly hinder an employer from making legitimate personnel decisions. 20 BRBS at 168. Subsequently, the Board has explained that *Marino* is not limited only to actual termination proceedings, but that "disciplinary actions may involve personnel actions such as counseling, training and warnings." *Sewell v. Noncommissioned Officers' Open Mess, McChord Air Force Base*, 32 BRBS 134, 136 n.3 (1998) (Brown and McGranery, JJ., dissenting), *aff'g on recon. en banc* 32 BRBS 127 (1997) (McGranery, J., dissenting). As the administrative law judge's finding that the events surrounding claimant's termination constituted a legitimate personnel action, and that consequently any negative effect those events had on claimant's mental health is not compensable under the Act pursuant to *Marino*, is unchallenged by claimant on appeal, it is affirmed. *See* Decision and Order at 21.

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge