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| HELEN STEELE |) | |
| (Widow of CHARLES STEELE) |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| ELECTRIC BOAT CORPORATION |) | DATE ISSUED: 10/31/2006 |
| |) | |
| Self-Insured |) | |
| Employer-Respondent |) | DECISION and ORDER |

Appeal of the Decision and Order (Upon Remand by the Benefits Review Board) of Janice K. Bullard, Administrative Law Judge, United States Department of Labor.

Stephen C. Embry (Embry & Neusner), Groton, Connecticut, for claimant.

Mark Oberlatz (Murphy and Beane), New London, Connecticut, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (Upon Remand by the Benefits Review Board) (2003-LHC-1392) of Administrative Law Judge Janice K. Bullard 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). This is the second time this case has been before the Board.

Claimant's husband, the decedent, worked as a shipfitter for employer for 23 years during which time he was exposed to asbestos, welding fumes, and other irritants. He retired in 1982. The decedent also had a lengthy history of cigarette smoking. The decedent developed chronic obstructive pulmonary disease (COPD), emphysema, and a

lung nodule. Decedent died on February 2, 2002; the cause of death was listed as respiratory failure due to lung cancer with secondary causes being COPD and cardiovascular attack. Claimant filed a claim for benefits contending that prior to his death the decedent was permanently partially disabled due to a work-related pulmonary condition and that he died as a result of that condition. 33 U.S.C. §§908(c)(23), 909.

In her first decision, the administrative law judge found that decedent's death was not due to work-related cancer or asbestosis. Claimant appealed. On appeal, the Board affirmed the administrative law judge's finding that decedent's disability and death were not due to work-related lung cancer or asbestosis, but remanded the case for the administrative law judge to address whether decedent's work-related exposure to welding fumes and other irritants contributed to his respiratory impairments and whether they caused or hastened decedent's death. *Steele v. Electric Boat Co.*, BRB No. 04-0583 (Apr. 14, 2004)(unpub.).

On remand, the administrative law judge found that decedent was not disabled as a result of his exposure to welding fumes, grinding dusts, and/or other occupational irritants. She further found that the decedent's death was neither caused nor hastened by his exposure to these pollutants. Thus, the administrative law judge denied disability compensation and death benefits.

Claimant appeals, arguing that the administrative law judge erred in finding that employer established rebuttal of the Section 20(a) presumption, 33 U.S.C. §920(a). Claimant also contends that the administrative law judge's weighing of the evidence as a whole cannot be affirmed. Employer responds, urging affirmance of the denial of benefits.

In establishing that an injury and/or death is causally related to employment, claimant is aided by the Section 20(a) presumption, which provides a presumed causal nexus between the injury or death and the employment. In this case, the administrative law judge properly found that claimant invoked the Section 20(a) presumption based upon the decedent's pulmonary condition and death therefrom and working conditions, *i.e.*, exposure to noxious fumes, in the course of his employment. *Richardson v. Newport News Shipbuilding & Dry Dock Co.* 39 BRBS 74 (2005).

Upon invocation of the Section 20(a) presumption, the burden shifts to employer to rebut the presumption with substantial evidence that the decedent's injury was not caused or aggravated, and that the death was not caused or hastened, by the conditions of his employment. *See Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT)(1st Cir. 2004); *Bath Iron Works Corp. v. Director, OWCP [Harford]*, 137 F.3d 673, 32 BRBS 45(CRT) (1st Cir. 1998); *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). If employer produces such

substantial evidence, the presumption falls from the case and the administrative law judge must weigh all of the evidence, with claimant bearing the burden of persuasion on the issue of the work-relatedness of the decedent's disability and death. *See, e.g., Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997).

The administrative law judge found that employer established rebuttal of the Section 20(a) presumption based, *inter alia*, upon the opinion of Dr. Teiger. EX 3. Claimant contends that Dr. Teiger's opinion is insufficient to rebut the Section 20(a) presumption because he addresses the impact of only asbestos exposure on decedent's condition. We reject this contention. Although the primary focus of the physicians' opinions was on the role asbestos exposure may have played in contributing to decedent's respiratory condition, Dr. Teiger specifically stated:

I believe that there is no data in any of his records to support the notion that any of [the decedent's] illness or specifically his lung disease was at all due to any occupational exposures, either to asbestos or other fumes or grinding dusts at [employer's facility].

EX 3 at 3. In addition, Dr. Teiger attributed the decedent's lung condition to his cigarette smoking. EX 3. As Dr. Teiger states that the decedent's lung condition was not due at all to exposure to harmful substances such as fumes and grinding dust in the workplace, it is sufficient to rebut the Section 20(a) presumption. *Harford*, 137 F.3d 673, 32 BRBS 45(CRT); *see also Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *O'Kelley v. Dept. of the Army/NAF*, 34 BRBS 39 (2000).

After weighing the medical evidence as a whole, the administrative law judge credited the opinion of Dr. Teiger that decedent's pulmonary condition is not causally related to workplace exposure to fumes and dusts. The administrative law judge found Dr. Teiger's opinion to be well reasoned, fully explained and credible. In contrast, the administrative law judge found that Drs. Daum and Kamireddy offered no objective support for their opinions that the exposures contributed to decedent's respiratory disability and death. CXs 2, 11; *see* Decision and Order at 4.

It is well established that an administrative law judge is not bound to accept the opinion or theory of any particular medical examiner; rather, the administrative law judge is entitled to weigh the evidence and to draw inferences therefrom. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 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 493 (2^d Cir. 1961). In this case, the administrative law judge addressed each of the medical opinions of record and rationally credited the opinion of

Dr. Teiger that there is no a causal relationship between the decedent's workplace exposures to dusts and fumes and his lung condition or death. We therefore affirm the administrative law judge's finding that claimant did not establish that decedent's death and disability are work-related and the resultant denial of benefits. *Sistrunk v. Ingalls Shipbuilding Corp.*, 35 BRBS 171 (2001).

Claimant's counsel filed a fee petition for work performed before the Board in the prior appeal, BRB No. 04-0583. As we affirm the administrative law judge's denial of benefits, claimant is not entitled to an attorney's fee for work performed before the Board. 33 U.S.C. §928; 20 C.F.R. §802.203.

Accordingly, the administrative law judge's Decision and Order (Upon Remand from the Benefits Review Board) is affirmed. The petition for an attorney's fee is denied.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge