U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 18-0225

CLEM BROWN, III	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 10/19/2018
	)	
SGS PETROLEUM SERVICE CORPORATION	)	
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LIMITED	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order and the Decision and Order Denying Claimant's Motion for Reconsideration of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

Franklin G. Shaw, Walter J. Leger, Jr., and Walter J. Leger, III (Leger & Shaw), Covington, Louisiana, for claimant.

Edward S. Johnson and Christopher Williams (Johnson, Yacoubian & Paysse), New Orleans, Louisiana, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order and the Decision and Order Denying Claimant's Motion for Reconsideration (2017-LHC-00071) 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 findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant alleged he sustained injuries to his right shoulder, neck and stomach as a result of an accident on June 12, 2014, while he was working for employer as a loader/tanker man. Claimant stated he was cranking up a winch to place a ladder on a barge when he heard something pop in his right shoulder and stopped working. CX 1; HT at 37. The next day, Dr. Lee diagnosed a right shoulder strain and released claimant to work as tolerated. For the next two weeks, claimant performed light-duty work for employer. When his pain did not improve, claimant visited his primary care physician on June 25, 2014, who referred him to an orthopedist.

Claimant saw orthopedist Dr. Rodriquez on July 3, 2014, who diagnosed a torn right rotator cuff and recommended surgery, which occurred on August 19, 2014. Claimant stated the surgery improved his right shoulder but left him with neck pain that radiated into his arms. Claimant thereafter sought treatment of his neck pain with Dr. Schexnayder, who recommended physical therapy, and, after that provided only limited relief, referred claimant to neurosurgeon Dr. Scrantz. Dr. Scrantz, in turn, recommended that claimant see Dr. Pham, a pain management specialist, who prescribed epidural steroid injections which eased claimant's neck pain for a while. Claimant's continued complaints of neck and arm pain, however, prompted Dr. Scrantz to recommend neck surgery,[1] and Drs. Scrantz and Pham each opined claimant was not to return to work pending that procedure.

Claimant filed a claim seeking benefits for his work-related right shoulder injury, as well as for his alleged work-related neck pain. Employer voluntarily paid temporary total disability benefits from July 27, 2014 to February 27, 2016, and ongoing permanent partial disability benefits from February 28, 2016, for claimant's work-related right shoulder injury. Employer, however, controverted claimant's claim that his neck

[1]After the formal hearing, Dr. Scrantz performed surgery on claimant's neck on March 15, 2018. *See* Cl. Brief at 24.

condition, and the need for the recommended C5-7 surgery, is related to the June 12, 2014 work accident.[2]

The administrative law judge found claimant sustained a work-related injury to his right shoulder and thus awarded claimant benefits for that condition. Pertinent to this appeal, the administrative law judge found claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), that his neck and radicular symptoms are related to the June 12, 2014 work accident, that employer established rebuttal thereof, and that claimant did not show by a preponderance of the evidence that those conditions are work-related. He thus denied benefits for claimant's neck and radicular symptoms. The administrative law judge denied claimant's motion for reconsideration.

On appeal, claimant challenges the finding that employer rebutted the Section 20(a) presumption linking his neck and radicular symptoms to his June 12, 2014 work accident. Employer responds, urging affirmance of the administrative law judge's decision. Claimant filed a reply brief.

Claimant contends the administrative law judge erred in finding that employer rebutted the Section 20(a) presumption because it did not offer evidence that claimant's neck problems were not made symptomatic by the June 12, 2014 work accident. Claimant maintains the opinions of Drs. Schroeder and Tender do not constitute substantial evidence sufficient to rebut the Section 20(a) presumption because they reached their conclusions without considering all of the existing medical reports, they denied claimant's reports of documented radicular symptoms, and they conceded that symptoms of a torn rotator cuff and cervical nerve root impingement can both cause the right shoulder pain which claimant reported immediately following the June 12, 2014 work accident.

Once, as here, claimant establishes a prima facie case, Section 20(a) applies to relate the injury to the work accident and employer can rebut this presumption by producing substantial evidence that the injury is not related to the work accident. *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). Substantial evidence is "that relevant evidence -- more than a scintilla but less than a preponderance -- that would cause a reasonable person to accept the fact-finding." *Ceres Gulf, Inc. v. Director, OWCP* [*Plaisance*], 683 F.3d 225, 228, 46 BRBS 25, 27(CRT) (5th Cir. 2012).[3] The employer's

[2]Employer, however, paid medical benefits for treatment of claimant's neck pain until Dr. Scrantz's February 23, 2016 recommendation that claimant undergo a cervical fusion from C5-7.

[3]In *Plaisance*, the Fifth Circuit, within whose jurisdiction this case arises, stated that in order to rebut the Section 20(a) presumption, an employer must "advance evidence to

burden is one of production, not persuasion; once the employer produces substantial evidence of the absence of a causal relationship, the Section 20(a) presumption is rebutted. *Id.*, 683 F.3d at 231, 46 BRBS at 28-29(CRT); *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert. denied*, 540 U.S. 1056 (2003); *Conoco*, 194 F.3d 684, 33 BRBS 187(CRT). If the employer rebuts the presumption, it no longer controls, and the issue of whether there is a causal relationship must be resolved on the evidence of record as a whole, with the claimant bearing the burden of persuasion. *Plaisance*, 683 F.3d 225, 46 BRBS 25(CRT); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

The administrative law judge found employer presented substantial evidence to rebut the Section 20(a) presumption that claimant's neck condition was caused by his working conditions or that it was made symptomatic by such conditions. In reaching this conclusion, the administrative law judge relied on the absence of neck complaints from the date of injury, June 12, 2014, until November 2014, when claimant first reported neck pain to his physical therapist, as well as the opinions of Drs. Tender and Schroeder, who each opined that claimant's neck and radicular symptoms were not caused by the June 2014 work accident. EXs 16, 19. The administrative law judge also found it significant that the medical records of claimant's treating physician, Dr. Schexnayder, indicate claimant stated that his neck pain began only two weeks prior to January 8, 2015, or in late 2014. The administrative law judge further found that Drs. Scrantz, Tender and Schroeder each stated that claimant's right hand numbness could have been caused by claimant's right shoulder injury. Moreover, the administrative law judge found that Drs. Tender and Schroeder stated that for there to be a connection between claimant's neck pain and the work accident and injury, claimant's neck symptoms should have arisen within days of the event, rather than in November 2014, when claimant first complained of neck pain.

The opinions of Drs. Schroeder and Tender constitute substantial evidence to rebut the Section 20(a) presumption.[4] Dr. Schroeder stated, "I don't think [claimant] had an

---

throw factual doubt on the prima facie case." *Plaisance*, 683 F.3d at 231, 46 BRBS at 29(CRT).

[4]Contrary to claimant's contentions, Drs. Schroeder and Tender each stated the bases for their conclusions, which included consideration of the medical records of Drs. Schexnayder and Rodriguez, and a review of claimant's statements regarding his alleged radicular symptoms. *See generally* EXs 13, 14, 16, 19. Additionally, Dr. Rodriguez's reports do not note posterior scapular pain, but only anterior right shoulder pain, *see* EXs 7; 17, Dep. at 11, 63, which Dr. Schroeder stated indicated a shoulder injury and would not be indicative of any neck injury. EX 16, Dep. at 12. Moreover, Drs. Schroeder and Tender were made aware of the fact that claimant had been asymptomatic with regard to neck pain

injury to his neck, nor an aggravation to his neck and certainly not one to lead to a two or three-level cervical fusion" as a result of the June 12, 2014 work accident or rotator cuff injury. EX 16, Dep. at 91. Dr. Tender stated that claimant's neck pain and radiculopathy are not related to the June 12, 2014 work accident, and that "it's unlikely" that the work accident and shoulder injury aggravated any symptoms related to claimant's underlying cervical degenerative condition. EX 19, Dep. at 28-29. These statements are sufficient to "throw factual doubt on claimant's prima facie case" that his neck symptoms, cervical condition, and/or radiculopathy are related to the June 12, 2014 incident at work. *Plaisance*, 683 F.3d at 231, 46 BRBS at 29(CRT). Thus, substantial evidence supports the conclusion employer produced sufficient evidence that claimant's neck problems were not made symptomatic by the June 12, 2014 work accident. We therefore affirm the administrative law judge's finding that employer rebutted the Section 20(a) presumption. *Id.* As claimant does not raise any specific contentions with regard to the administrative law judge's finding based on the record as a whole that claimant's neck and radicular symptoms are not related to his June 12, 2014 accident, it is affirmed. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007). Consequently, the denial of benefits for claimant's neck condition is affirmed.

for twenty years prior to the work accident, but that did not alter their opinions as to the lack of a causal connection between the June 2014 accident and claimant's neck pain. EX 16, Dep. at 93; EX 19, Dep. at 74, 80.

Accordingly, the administrative law judge's Decision and Order and Decision and Order Denying Claimant's Motion for Reconsideration are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge