BRB Nos. 98-0163 and
98-0163A

MELINDA BLACK (Widow of EDWARD E. BLACK)	)	
Claimant-Petitioner Cross-Respondent	)	DATE ISSUED: _____
v.	)	
MARATHON OIL COMPANY	)	
and	)	
I.T.T. HARTFORD INSURANCE COMPANY	)	
Employer/Carrier-Respondents Cross-Petitioners	)	DECISION and ORDER

Appeals of the Decision and Order Denying Benefits of James. W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

James E. Hasser, Jr. and Stuart Y. Luckie (Diamond, Hasser & Frost), Mobile, Alabama, for claimant.

Mark K. Eckels and Benford L. Samuels, Jr. (Boyd & Jenerette, P.A.), Jacksonville, Florida, for employer/carrier.

Before: BROWN and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals, and employer cross-appeals the Decision and Order Denying Benefits (94-LHC-3284) of Administrative Law Judge James W. Kerr, Jr., 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).

In May 1987, decedent, a machine maintenance mechanic and Vietnam veteran, was exposed to mercury while working for employer, when a manometer on a compressor he was servicing malfunctioned. Immediately thereafter, decedent began a previously scheduled three-week vacation, during which time he was described by his wife (claimant) as acting confused, in a daze, and out of touch with reality. When decedent returned to work on June 18, 1987, he experienced hallucinations, and asked to be taken back to shore. On June 22, 1987, decedent was seen by Dr. Johnson, his family physician, who referred him to Dr. Ramone, a psychiatrist, who diagnosed post-traumatic stress syndrome. On July 1, 1987, after employer informed him that he would have to be evaluated by the company physicians before he would be able to return to work, decedent tendered his resignation.

Thereafter, decedent's condition continued to deteriorate; he experienced hand tremors, weight loss, insomnia, vision problems, bleeding gums, nausea, and a sore throat. On October 20, 1987, October 15, 1988, and March 28, 1989, decedent was hospitalized at the Veteran's Administration Hospital in Tuscaloosa, Alabama, where he was diagnosed as having bipolar and schizo affective disorder, and was prescribed various psychotropic medications. After each of his hospitalizations, decedent received ongoing outpatient psychiatric care from various physicians. In 1988 and 1991, decedent underwent blood tests to detect mercury; the results of these tests were normal.

On June 10, 1993, decedent began treatment with Dr. Owens, a psychiatrist, who disagreed with the prior diagnosis of bipolar disorder. Believing that decedent's problems were due to mercury poisoning, Dr. Owens took decedent off the previously prescribed medication regime. Thereafter, on July 12, 1993, and December 28, 1993, respectively, a First Report of Injury and Claim Form were filed on decedent's behalf, which alleged that decedent suffered from disabling psychiatric problems due to mercury poisoning. From July 15, 1994, until July 26, 1994, decedent was again hospitalized on a psychiatric basis at the Southeast Alabama Medical Center. On October 21, 1994, decedent died as a result of a self-inflicted gunshot wound, and claimant immediately filed a claim for death benefits under the Act. The disability and death claims were referred to the Office of Administrative Law Judges for a formal hearing.

In his Decision and Order, the administrative law judge initially determined that the disability and death benefits claims were timely. He then determined that, while employer conceded that claimant was entitled to application of the statutory presumption contained in Section 20(a) of the Act, 33 U.S.C. §920(a), employer rebutted the presumption through the medical opinions of Drs. Miller, Augenstein and Harbison. Based on his evaluation of the record as a whole, the administrative law judge concluded that claimant had not met her burden of establishing by a preponderance of the evidence that decedent's death and disability were due to work-related mercury poisoning, and he denied benefits accordingly.

On appeal, claimant challenges the administrative law judge's finding that employer rebutted the Section 20(a) presumption based on the testimony provided by Drs Miller, Augenstein and Harbison. In the alternative, claimant avers that even if the administrative law judge properly found that employer rebutted the Section 20(a) presumption, he erred in evaluating the record as a whole, inasmuch as Dr. Owens was decedent's treating physician, whereas Drs. Miller, Augenstein, and Harbison neither examined decedent nor reviewed all of his medical records.[1] Employer responds, urging affirmance. Moreover, employer argues on cross-appeal that, even if decedent's death and disability are work-related, claimant is not entitled to compensation because the administrative law judge erred in finding that the claims were timely under Section 13 of the Act, 33 U.S.C. §913. Claimant replies, urging that the administrative law judge's findings regarding the timeliness of the claims be affirmed.

Pursuant to Section 20(a), claimant is entitled to a presumption that decedent's disability and death arose from his employment if she establishes that he suffered a harm and worked under conditions which could have caused that harm. In order to rebut the presumption, employer must present specific and comprehensive evidence that decedent's employment neither directly caused his

[1]Claimant also avers that inasmuch as Dr. Harbison testified that it is impossible to render an opinion regarding whether a person's problems are due to mercury exposure in the absence of evidence documenting the dose and duration of such exposure, but nonetheless rendered such an opinion, his opinion should be disregarded. Dr. Harbison, however, specifically testified that after reviewing decedent's medical records and the results of his blood tests and autopsy, he had sufficient information to allow him to render an opinion that decedent's disability and death were not caused, contributed to, or aggravated by exposure to mercury. Tr. at 474, 481, 485.

condition,nor aggravated, accelerated, or combined with it to result in his disability and death. *See, e.g., Rajotte v. General Dynamics Corp.*, 18 BRBS 85 (1986). If work exposure to a harmful substance played a causative role in the development of the condition leading to decedent's death, such that it hastened death, then the death is work-related. *Fineman v. Newport News Shipbuilding & Dry Dock Co*., 27 BRBS 104 (1993). If the presumption is rebutted, the administrative law judge must weigh the evidence in the record as a whole and render a decision supported by substantial evidence. *See Del Vecchio v. Bowers*, 196 U.S. 280 (1935).

After review of the Decision and Order in light of claimant's arguments and the evidence of record, we affirm the administrative law judge's denial of benefits because his finding that decedent's psychological problems and resultant suicide are not due to work-related mercury poisoning is rational, supported by substantial evidence, and in accordance with applicable law. *See O'Keeffe*, 380 U.S. at 359. In the present case, employer conceded that claimant was entitled to the Section 20(a) presumption. Thus, the relevant inquiry is whether employer met its burden of rebutting the presumption with substantial countervailing evidence. *Merrill v. Todd Pacific Shipyards Corp.,* 25 BRBS 140, 144 (1991). After considering the relevant evidence, the administrative law judge rationally determined that employer had rebutted the Section 20(a) presumption based on the testimony of Dr. Miller, a Board-eligible psychiatrist, Dr. Augenstein, a Board-certified physician in emergency medicine and toxicology, and Dr. Harbison, a medical doctor and expert in both toxicology and pharmacology. These doctors opined that neither the behavioral changes decedent exhibited nor his death was related in any way to mercury poisoning. Tr. at 362, 479, 481; CX-45 at 15-17, 23, 58. In so concluding, after reviewing decedent's medical records each noted that decedent had not exhibited the classic physical or psychiatric symptoms associated with toxic exposure to mercury. Moreover, Drs. Augenstein and Harbison opined that if decedent's work-related exposure had been at a toxic level, his blood tests in 1988 and 1991 would still have shown abnormal mercury levels.[2] Tr. at 461-462; CX-45 at 58. In addition, Drs. Miller and Augenstein opined that the temporal relationship also ruled out

[2]Dr. Harbison explained that in order to have behavioral changes due to mercury exposure, it is necessary that the blood level of mercury be more than 200 nanograms per milliliter and that personal sensitivity is not a factor until after this threshold is reached. Tr. at 456. Based upon the results of decedent's blood tests and extrapolating backwards based on mercury's 40 to 60 day half-life, Dr. Harbison opined that this threshold level of toxicity was never reached in the case of decedent. Tr. at 459, 460-461.

mercury as the cause of decedent's death and disability because the effects of mercury are transitory and decedent continued to deteriorate despite the fact that he had no additional exposure Tr. at 397; CX-45 at 16.[3] Dr. Harbison provided similar testimony, stating that mercury could not have been responsible for any psychological manifestations decedent exhibited after 1989 because it was no longer present in his system, noting that the effects of mercury, even if the threshold level of toxicity is reached, are transient and temporary. Tr. at 478, 489. As these opinions unequivocally state that decedent's disability and death are unrelated to his mercury exposure, the administrative law judge's conclusion that Section 20(a) was rebutted is affirmed.

Having found rebuttal established, the administrative law judge proceeded to consider the causation issue based on the evidence as a whole. Initially, he recognized that Dr. Owens was the only physician of record to relate decedent's psychological problems and death to his mercury exposure, whereas Drs. Miller, Harbison, Augenstein, Muhammad, Prince, and McKeown provided contrary testimony. Noting that he was impressed with the testimony of Drs. Miller, Harbison, and Augenstein, the administrative law judge concluded that as the evidence was, at best, in equipoise, claimant had not met her burden of establishing causation by a preponderance of the evidence. He thus denied benefits.

The medical opinions of Drs. Miller, Harbison, and Augenstein provide substantial evidence to support the administrative law judge's finding. *See, e.g., Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988). Moreover, inasmuch as the administrative law judge rationally found that the evidence was at best in equipoise, his conclusion that claimant did not meet her burden of persuasion is in accordance with applicable law. *See Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT) (1994), *aff'g Maher Terminals, Inc. v. Director, OWCP*, 992 F.2d 1277, 27 BRBS 1 (CRT) (3d Cir. 1993); *Holmes v. Universal Maritime Service Corp.*, 29 BRBS 18 (1995) (Decision on Recon.). Contrary to claimant's assertions, the administrative law judge did not err

[3]Dr. Miller related decedent's problems to bipolar disorder which he stated was genetically linked, noting that decedent's father had been diagnosed and hospitalized for this condition while he was in his thirties. Moreover, Dr. Miller testified that patients with bipolar disorder, especially where associated with the use of alcohol, present the highest suicide risk. It was Dr. Miller's opinion that decedent's suicide occurred when he decompensated after Dr. Owen took him off of his bipolar medications. Tr. at 352-354. Dr. Augenstein attributed decedent's problems to bipolar disorder and paranoid schizophrenia. CX-45 at 16.

in failing to accord determinative weight to the medical opinion of Dr. Owens, claimant's treating psychiatrist; it is well-established that an administrative law judge is not bound to accept the opinion or theory of any particular medical examiner but may instead draw his own inferences and conclusions from the evidence as he sees fit. *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). As claimant has failed to demonstrate any reversible error made by the administrative law judge in his evaluation of the conflicting medical evidence, his denial of benefits premised on claimant's failure to establish causation is affirmed. *See Rochester v. George Washington University*, 30 BRBS 233, 236-237 (1997); *see also generally Johnson v. Director, OWCP*, 911 F.2d 247, 24 BRBS 3 (CRT)(9th Cir. 1990), *cert. denied*, 111 S.Ct. 1589 (1991). Because our affirmance of the administrative law judge's finding that decedent's death and disability are not work-related is dispositive of claimant's entitlement, we need not address employer's arguments on cross-appeal regarding the timeliness of the death and disability claims.

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

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge