BRB No. 99-1271

CHARLOTTE WINANS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DEPARTMENT OF THE ARMY/ARMY CENTRAL INSURANCE FUND	)	DATE ISSUED:
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Phil Watkins (Law Offices of Phil Watkins, P.C.), Corpus Christi, Texas, for claimant.

Andrew Z. Schreck (Galloway, Johnson, Tompkins, Burr & Smith), Houston, Texas, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (1998-LHC-2911) of Administrative Law Judge Richard D. Mills 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.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *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. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant sustained a back injury during the course of her employment with employer on June 18, 1982. In November 1984, the parties entered into a Section 8(i), 33 U.S.C. §908(i), settlement agreement whereby employer agreed pay claimant a fixed sum and to provide future medical care and treatment for the direct and proximate results of her June 18, 1982 injury. *See* CX 1. Between September 14, 1984, and 1995, claimant visited her

treating physician, Dr. Edwards, for treatment on one occasion in 1988. Claimant thereafter presented herself to Dr. Edwards complaining of back problems and pain in 1995. On July 23, 1996, employer filed a Notice of Controversion indicating that it would deny payment of further medicals in this case since claimant's present condition is due to the aging process and her weight. Claimant subsequently filed a claim under the Act seeking to hold employer liable for her ongoing medical expenses related to her current back condition.

In his Decision and Order, the administrative law judge initially found that claimant was entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption linking her current back complaints to her June 18, 1982 work injury, then found that employer produced substantial evidence to rebut the presumption. Next, after considering the totality of the evidence, the administrative law judge concluded that claimant's present back condition is not causally related to her June 18, 1982, work injury. Accordingly, the administrative law judge determined that employer was not liable for claimant's present back-related medical expenses.

On appeal, claimant challenges the denial of benefits. Employer responds, urging affirmance.

Section 7(a) of the Act, 33 U.S.C. §907(a), states that "[t]he employer shall furnish such medical, surgical, and other attendance or treatment . . . for such period as the nature of the injury or the process of recovery may require." *Brooks v. Newport News Shipbuilding & Dry Dock Co.*, 26 BRBS 1 (1992), *aff'd sub nom. Brooks v. Director, OWCP*, 2 F.3d 64, 27 BRBS 100 (CRT)(4th Cir. 1993). Section 7 does not require that an injury be economically disabling in order for a claimant to be entitled to medical expenses, but only that the injury be work-related. *See Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988). Thus, entitlement to medical benefits is contingent upon a finding of a causal relationship between the injury and employment. *See generally Wendler v. American National Red Cross*, 23 BRBS 408 (1990)(McGranery, J., concurring and dissenting).

In the instant case, the parties disputed the existence of a causal relationship between claimant's present back complaints and her June 18, 1982 work accident. In addressing this issue, the administrative law judge, contrary to claimant's initial allegation of error, invoked the Section 20(a) presumption as he found that claimant suffered a harm and that an accident occurred which could have caused that harm. *See generally Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991). Upon invocation of the presumption, the burden shifts to employer to present substantial evidence that claimant's injury was not caused or aggravated by her employment. *Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 33 BRBS 187 (CRT)(5th Cir. 1999); *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 rebuts the Section 20(a) presumption, the administrative law judge must weigh all of the evidence contained in the

record and render a decision supported by substantial evidence. *See Del Vecchio v. Bowers*, 296 U.S. 280 (1935); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT)(1994).

Claimant next asserts that the administrative law judge erred in determining that employer presented sufficient evidence to rebut the presumption. In finding that employer rebutted the presumption, the administrative law judge relied upon the opinions of Drs. Sazy, Denno and Lee, who respectively opined that claimant's initial back injury has resolved and that claimant's present back condition is related to the degenerative effects of aging. *See* EX 2 at 7-8; EX 3 at 3; EX 1 at 3-4; EX 5 at 28-29, 38-39, 86. As these medical opinions sever the causal link between claimant's June 18, 1982 work accident and her present back condition, 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 based 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. Edwards, her treating physician. The administrative law judge initially found claimant's credibility to be questionable, based upon her failure to acknowledge her alleged back condition on subsequent employment applications or to other physicians and her failure to inform her post-1995 physicians of a 1991 fall which resulted in a fractured elbow and a ruptured eardrum. Next, after considering at length the totality of the medical evidence of record, the administrative law judge found the testimony of Drs. Lee, Sazy and Denno to be more credible on the issue of whether claimant's present back complaints are related to her work-injury. Dr. Lee, based upon claimant's seven year lapse in treatment between 1988 and 1995, a lack of objective findings upon examination, and claimant's denial of back problems revealed in two post-1982 employment applications, opined that claimant's current back complaints were not related to her 1982 work injury. *See* EX 1 at 3-4; EX 5 at 28-29, 38-39, 86. Dr. Sazy similarly opined that claimant's complaints relating to her 1982 work-incident had resolved before 1995, that claimant's 1982 injury was not involved in those complaints which commenced in 1995, and that claimant's present complaints are most likely related to claimant's natural degenerative process and lack of conditioning. *See* EX 2 at 7-8. Dr. Denno initially concluded that claimant's pre-1995 back condition was stable, as evidenced by claimant's failure to seek any type of medical treatment for over seven years. Next, Dr. Denno stated that claimant's neurological exam resulted in normal findings, and that there is a lack of objective data to relate claimant's current back condition to her June, 18, 1982 work injury; Dr. Denno thus concluded that claimant's condition is a normal physiological aging response. *See* EX 3 at 3. In declining to rely upon the contrary opinions of Drs. Edwards and Toohey, the administrative law judge noted that they based their respective opinions in significant part on claimant's questionable history. Accordingly, the administrative law

judge found, after considering all of the evidence of record, that claimant's present back condition is not related to her employment injury.

It is well-established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences therefrom and is not bound to accept the opinion or theory of any particular medical examiner. *See 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). In this case, the administrative law judge fully evaluated the relevant evidence, and his findings regarding the medical opinions are supported by the record. As the administrative law judge thus rationally gave less weight to the opinion of claimant's treating physician that claimant's present medical condition is related to her June 18, 1982, work injury, claimant did not meet her burden of persuasion in this case.[1] *See Greenwich Collieries*, 512 U.S. at 267, 28 BRBS at 43. We therefore affirm the administrative law judge's determination, based on the record as a whole, that claimant's present medical condition is not causally related to her June 18 1982, work accident. *See, e.g., Rochester v. George Washington University*, 30 BRBS 233 (1997).

[1]Claimant's reliance on the decision of the United States Courts of Appeals for the Ninth Circuit in *Amos v. Director, OWCP*, 153 F.3d 1051, 32 BRBS 144 (9th Cir. 1990), for the proposition that a treating physician's opinion is entitled to special weight is misplaced. The issue addressed in *Amos* involved the necessity of treatment for a work-related condition rather than the work-relatedness of the underlying condition. It is well-settled that in evaluating the evidence on causation, the administrative law judge as fact- finder is entitled to determine the credibility of witnesses and the weight to be awarded to the evidence. *See generally Conoco*, 194 F.3d at 684, 33 BRBS at 187 (CRT); *Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 29 BRBS 79 (CRT)(5th Cir. 1995) *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78 (CRT)(5th Cir. 1991); *Avoidable Shipyards, Inc. v. Kennel*, 914 F.2d 88, 24 BRBS 46 (CRT)(5th Cir. 1990).

In light of the affirmance of the administrative law judge's finding that no causal relationship exists between claimant's employment and her present back condition, we additionally affirm the administrative law judge's finding that employer is not liable for medical benefits related to the treatment of that condition, since a claimant's entitlement to medical benefits is contingent upon a finding of a causal relationship between the injury and her employment. *See generally Wendler,* 23 BRBS at 408.

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