BRB No. 01-0104

RONNIE WOMACK	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY	)	DATE ISSUED: Sept. 28, 2001
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

Robert E. Walsh (Rutter, Walsh, Mills & Rutter, L.L.P), Norfolk, Virginia, for claimant.

Jonathan H. Walker (Mason, Cowardin & Mason), Newport News, Virginia, for employer.

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

PER CURIAM

Claimant appeals the Decision and Order (99-LHC-1197) of Administrative Law Judge Fletcher E. Campbell, Jr., denying benefits 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 worked as a shipfitter for employer. Claimant was injured on June 16, 1996, when he stepped over a fan onto the third rung of a ladder and felt his hip snap. He had previously undergone surgery for a hip injury sustained in the 1970's while playing basketball. He had no further hip injuries from that time until he was injured in June 1996.

Claimant was sent to the shipyard clinic following the injury in June 1996, and subsequently sought treatment from Dr. Trieshmann. He was released for regular duty on September 16, 1996, but sought treatment again in April 1997, when Dr. Trieshmann recommended hip replacement surgery. Claimant underwent the surgery and has not returned to work. He sought temporary total disability benefits for the period May 13, 1998 through August 17, 1998, and permanent total disability benefits from August 18, 1998 and continuing.

In his Decision and Order, the administrative law judge found that Dr. Stiles opined that the injury in June 1996 probably occluded some of the blood supply to the femoral head of claimant's hip, causing the femoral head to collapse, resulting in the necessity of the hip replacement. Thus, the administrative law judge found the evidence sufficient to establish invocation of the Section 20(a), 33 U.S.C. §920(a), presumption that claimant's disability is work-related. The administrative law judge also found that Dr. Reid's opinion that the sprain on June 16, 1996 was temporary and had completely resolved, and thus did not materially effect or hasten the natural progression of claimant's arthritis, was sufficient to establish rebuttal of the presumption. After weighing the evidence as a whole, the administrative law judge concluded that the claimant did not prove that his disability resulting from the hip replacement surgery is work-related, and thus denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that his ongoing disability is not work-related, as he erred in crediting the opinions of Drs. Reid, Trieshmann and Phillips over the more qualified opinion of Dr. Stiles. Employer responds, urging affirmance of the administrative law judge's decision.

Section 20(a), 33 U.S.C. §920(a), provides claimant with a presumption that his injury is causally related to his employment, if claimant establishes that he has a physical harm, and that an accident or working conditions occurred that could have caused the harm. *See Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). Where, as here, claimant establishes invocation of the presumption, employer may rebut the Section 20(a) presumption by producing substantial evidence that claimant's employment did not cause, accelerate, aggravate or contribute to the disabling condition. *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); *American Grain Trimmers v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999), *cert. denied*, 120 S.Ct. 1239 (2000); *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). We affirm the administrative law judge's finding that Dr. Reid's opinion is sufficient to establish rebuttal of the presumption in the instant case. Dr. Reid stated that the work injury of June 1996 was a sprain that healed completely and did not materially effect or hasten the natural progression of claimant's degenerative arthritis. Emp. Ex. 19; *see Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1998), *aff'd*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999).

When employer produces such substantial evidence, the presumption drops out of the case, and the administrative law judge must weigh all of the evidence relevant to the causation issue, with claimant bearing the burden of proving that his disability is work-related. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). In the instant case, the administrative law judge found that the opinions of Drs. Reid, Trieshmann and Phillips outweighed the contrary opinion of Dr. Stiles, and support the conclusion that claimant's disability resulting from the hip replacement surgery is not related to his work injury.[1] The administrative law judge credited these opinions as these physicians treated claimant contemporaneously with the injury, and Dr. Stiles did not treat claimant until August 1998. Dr. Reid opined that claimant suffered a sprain of the left hip which appeared to be a temporary aggravation of his pre-existing injury, and which had resolved by September 16, 1996. He also noted that the "sprain which occurred on June 16, 1996, which was a muscular and ligamentous injury, healed completely and did not materially effect or hasten the natural progression of claimant's degenerative arthritis." Emp. Ex. 19. Dr. Phillips, one of claimant's treating physicians at the time of the injury, opined on June 20, 1996 that claimant had suffered a sprain aggravating his degenerative arthritis and that he would recover to his pre-injury status without permanent disability. Emp. Ex. 16. Contrary to claimant's contention, Dr. Trieshmann, a Board-certified orthopedic surgeon who performed the hip replacement surgery on claimant, opined that the hip strain on June 16, 1996, did not materially effect or hasten the natural progression of claimant's underlying arthritis thereby requiring hip replacement surgery. Cl. Ex. 8a. He stated he was unaware of any diagnosis that would tie claimant's current symptomotology to the work injury, although it remained a possibility. *Id.* On deposition, Dr. Trieshmann also testified that he was not capable of forming an opinion as to what degree the work injury may have accelerated claimant's need for the hip replacement, but that it was not likely as the injury was not "dramatic."[2] Emp. Ex. 24 at 13-14. Dr. Trieshmann also stated that claimant would have needed the surgery absent the injury. *Id.* at 19. Based on these opinions, the administrative law judge found that claimant did not establish that his ongoing disability is work-related.

The administrative law judge considered the conflicting evidence of record and found

[1]Dr. Stiles opined that claimant's injury of June 1996 caused an aggravation of claimant's pre-existing arthritis which resulted in the necessity of a total hip replacement. H. Tr. at 25.

[2]Claimant attempts to rely on a letter written by claimant's counsel to Dr. Trieshmann in which counsel asks the doctor whether he agrees with the statement that the work injury aggravated claimant's arthritic condition and that the injury did not resolve, resulting in the hip replacement, and Dr. Trieshmann signed the letter in agreement. Cl. Ex. 8c. However, we disagree with claimant's contention that this document, which is not an independently produced medical report, is sufficient to contradict Dr. Trieshmann's deposition testimony that he did not feel that claimant's surgery was related to his work injury.

that the opinion of Dr. Stiles is outweighed by the contrary opinions of Drs. Reid, Trieshmann, and Phillips. The administrative law judge is entitled to determine the relative weight to be accorded to the physicians' opinions, and the Board is not empowered to weigh the evidence. Thus, we affirm the administrative law judge's determination that, based on the record as a whole, claimant's disability resulting from the hip replacement surgery is not causally related to his work injury, as it is rational and supported by substantial evidence. *See Duhagon*, 31 BRBS at 101; *see also Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge