BRB No. 02-0829

MILTON GUILLIAM	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
TUBULAR TECHNOLOGY INCORPORATED	)	DATE ISSUED: 09/04/2003
	)	
and	)	
	)	
DEEP SOUTH	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits and Decision and Order Granting Medical Expenses on Reconsideration of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

John Michael Morrow, Jr. (Morrow, Morrow, Ryan and Bassett), Opelousas, Louisiana, for claimant.

John H. Hughes (Allen & Gooch), Lafayette, Louisiana, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits and Decision and Order Granting Medical Expenses on Reconsideration (2001-LHC-03155) 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.*, as extended by the Outer Continental Shelf Lands Act, 43 U.S.C.

§1331 *et seq.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are 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, who had pre-existing risk factors, sustained a stroke at work on June 4, 1999.[1] Claimant was employed on an offshore oil rig, and on May 30, 1999, claimant started work at 5:30 a.m. Claimant began work wearing a rain slicker suit over long sleeve coveralls, as his initial duties of removing pipe from a well exposed his skin to calcium chloride. About an hour after claimant began working, he experienced cottonmouth and cramping. Claimant continued working throughout the day, during which the air temperature reached 88 degrees. Claimant experienced dizziness and nausea around 3:30 p.m. Later that evening, claimant began vomiting and had diarrhea. Tr. at 35-40; 73-75; CX 27 at 5. Claimant continued working for employer for the next four days notwithstanding that his vomiting and diarrhea progressively worsened. Tr. at 40-42, 73-75. During the evening of June 3, 1999, claimant's right side weakened and he experienced a loss of equilibrium. Tr. at 45, 81. On June 4, 1999, claimant informed his supervisor that he was unable to work, and he was flown by helicopter to the emergency room at Memorial Medical Center (Memorial). Claimant testified that he fell exiting the helicopter and injured his back Tr. at 46-47.

The administrative law judge found claimant entitled to the Section 20(a) presumption, 33 U.S.C §920(a), linking his stroke and back injury to his employment. Specifically, the administrative law judge credited evidence that claimant's working conditions caused dehydration which could have contributed to the onset of his stroke by aggravating his pre-existing risk factors. With regard to the back injury, the administrative law judge found that it could have been caused by a fall, due to claimant's stroke, when claimant exited the helicopter. The administrative law judge found that employer produced substantial evidence to rebut the Section 20(a) presumption that claimant's stroke is related to his employment, but that employer did not rebut the opinion of Dr. Abadco that claimant injured his back in a fall exiting the helicopter, due to dizziness from the stroke. EX 3 at 1.

In weighing the evidence as a whole on the issue of the cause of claimant's stroke, the administrative law judge found that claimant became dehydrated at work on May 31, 1999, and that his dehydration contributed to the onset of his stroke. Specifically, the administrative law judge found credible claimant's testimony that he was informed he was dehydrated by Dr. Bunnell at Memorial. The administrative law judge also found that on May 31, 1999, claimant worked on a hot day (88 degrees – EX 12 at 2), wearing a rain slicker, and he was exposed to calcium chloride, which is a desiccant. Tr. at 38, 57-59; EX 14 at 3. The administrative law judge further found that claimant's reported

[1]Claimant, a smoker, suffered from hypertension, diabetes, and high cholesterol.

symptoms were those of a heat-related injury: cottonmouth, cramping, and sweating. The administrative law judge found that the these symptoms, as well as vertigo, thirst and an abnormal body temperature of 94.9 degrees indicated that claimant had sustained a heat-related injury upon his admission to Memorial, notwithstanding the absence in the records of such a diagnosis by the physicians there. Tr. at 37-40, 45; EX 4 at 15-16, 19. The administrative law judge also credited the deposition testimony of Dr. Lugo, who opined that claimant's reported symptoms establish that he suffered from over-exertion and dehydration. CX 33 at 8-10, 19-20. Finally, the administrative law judge credited the sequence of claimant's symptoms as showing that sufficient time passed for claimant to become dehydrated before the onset of his stroke; *i.e.*, claimant had cottonmouth and cramping around 5:30 a.m., after exposure to a desiccant, dizziness and nausea around 3:30 p.m., after working for several hours, then vomiting and diarrhea later that evening. Tr. at 62-63; CX 27 at 5. The administrative law judge credited primarily the opinions of Drs. Lugo and Martin that dehydration could have contributed to the onset of the stroke to which he was predisposed. CX 27 at 1; CX 33 at 17-19. Thus, the administrative law judge found that claimant established by a preponderance of the evidence that his working conditions resulted in dehydration which in turn accelerated his stroke.

The administrative law judge found that claimant's injuries reached maximum medical improvement on March 6, 2001. The administrative law judge also determined that no physician opined that claimant could return to his former job, and that employer did not offer any evidence of suitable alternate employment. Accordingly, claimant was awarded compensation for temporary total disability, 33 U.S.C §908(b), from June 4, 1999, to March 6, 2000, and, thereafter, continuing compensation for permanent total disability, 33 U.S.C. §908(a). Finally, the administrative law judge reviewed itemized entries for out-of-pocket medical expenses incurred by claimant. The administrative law judge disallowed various medical charges, and ordered reimbursement to claimant of expenses totaling $8,684.89. On reconsideration, the administrative law judge ordered payment of additional medical expenses totaling $4,701.21.

On appeal, employer contends there is no credible factual basis or medical evidence supporting the administrative law judge's finding that claimant's stroke is work-related. Employer also argues that the administrative law judge erred in finding that claimant sustained a work-related back injury as a result of fall upon exiting the helicopter at Memorial. Employer further asserts that, consequently, the administrative law judge erred by ordering employer to pay/reimburse claimant's medical expenses for claimant's stroke and back injury. Finally, employer contends that the administrative law judge erred by finding that claimant has reached maximum medical improvement from his injuries. Claimant responds, urging affirmance of the administrative law judge's decisions.

Under the aggravation rule, where an employment-related injury aggravates, accelerates or combines with an underlying condition, employer is liable for the entire

resultant condition. *Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45(CRT) (5th Cir. 1986) (*en banc*). Where, as in this case, claimant has established his *prima facie* case, Section 20(a) of the Act provides him with a presumption that his stroke is causally related to his employment; the burden then shifts to employer to rebut the presumption by producing substantial evidence that claimant's stroke was neither caused nor accelerated by his employment. *See Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir. 2003); *Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999)*; Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir.1998). If the administrative law judge finds the Section 20(a) presumption rebutted, it drops from the case. *Universal Maritime Corp. v. Moore*, 126 F.2d. 256, 31 BRBS 119(CRT) (4th Cir. 1997). The administrative law judge then must weigh all the evidence and resolve the issue of causation on the record as a whole with claimant bearing the burden of persuasion. *Id.; see generally Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

Employer argues that the administrative law judge erred in weighing the evidence as a whole by substituting his medical judgment for the facts established by the medical evidence. Specifically, employer asserts that the administrative law judge failed to address the opinion of Dr. Barrash that the onset of claimant's symptoms on the morning of May 30, 1999, indicated the onset of claimant's stroke, before claimant, arguably, was dehydrated. EX 16 at 15, 21, 28-30. Moreover, employer contends the administrative law judge's finding that claimant became dehydrated during the day on May 30, 1999, is a medical determination which is not within his authority as fact finder, and that the finding of dehydration is not supported by substantial evidence. In adjudicating a claim, an administrative law judge is entitled to evaluate the credibility of all witnesses, and has considerable discretion in evaluating the evidence of record. *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). Moreover, the administrative law judge is entitled to draw his own inferences from the evidence, and his selection among competing inferences must be affirmed if supported by substantial evidence and in accordance with law. *See Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 29 BRBS 79(CRT) (5th Cir. 1995); *Todd Shipyards Corp.*, 300 F.2d at 742.

In this case, the administrative law judge thoroughly reviewed all the evidence, and his findings as to the sequence of events on May 30, 1999 and claimant's symptomatology that day are supported by substantial evidence. The administrative law judge acted within his discretion in crediting claimant's testimony, the progression of claimant's symptoms, the testimony of Dr. Comstock that calcium chloride is a desiccant, the medical records at Memorial showing an admission temperature of 94.9 degrees, and claimant's receiving intravenous fluids at Memorial, to find that claimant was dehydrated while working for employer on May 30, 1999. Decision and Order at 28-29; *see, e.g., Cooper/T. Smith Stevedoring Co., Inc. v. Liuzza*, 293 F.3d 741, 36 BRBS 18(CRT) (5th

Cir. 2000). Moreover, the administrative law judge credited the opinions of Drs. Lugo and Martin that dehydration and overexertion can contribute to the onset of a stroke. CX 27 at 1; CX 33 at 10, 17, 19. Thus, while the administrative law judge never formally rejected the specific testimony of Dr. Barrash that claimant's stroke commenced before he arguably was dehydrated, he clearly rejected Dr. Barrash's premise that claimant's stroke was not work-related based on his crediting of contrary evidence. *See* Decision and Order at 26-30. Furthermore, the administrative law judge clearly identified the evidence he credited in reaching his ultimate conclusion that claimant became dehydrated at work on May 30, 1999, and that this dehydration contributed to the onset or acceleration of claimant's stroke. *See, e.g., James J. Flanagan Stevedores, Inc. v. Gallagher*, 219 F.3d 426, 34 BRBS 35(CRT) (5th Cir. 2000); *Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff=d*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999). As the administrative law judge=s assessment of claimant's credibility, the weight accorded to the various medical opinions and the inferences drawn by the administrative law judge from the record evidence are rational, they are affirmed. *See Gallagher*, 219 F.3d 426, 34 BRBS 35(CRT); *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Accordingly, as substantial evidence supports the administrative law judge's finding that claimant's employment accelerated the onset of his stroke, *see Gooden*, 135 F.3d at 1069, 32 BRBS at 61(CRT); *Southern Stevedoring Co. v. Henderson*, 175 F.2d 863 (5th Cir. 1949), we affirm the administrative law judge's conclusion that claimant's stroke is related to his employment.

Employer next contends the administrative law judge erred by crediting claimant's testimony that he fell exiting the helicopter at Memorial as there is no credible evidence supporting claimant's testimony. Employer thus contends that claimant did not establish the "working conditions" element of his *prima facie* case.[2] In order to be entitled to invocation of the Section 20(a) presumption, claimant must establish his *prima facie* case by showing that he suffered a harm and that an accident occurred at work or that working conditions existed which could have caused the injury or harm. *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *see also U.S. Industries/Federal Sheet Metal, Inc., v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). Claimant's claim as to how the injury occurred must go beyond "mere fancy." *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968). An injury that occurs as a result of treatment for a work-related condition also is work-related. *See Mattera v. M/V Antoinette, Pacific King, Inc.*, 20 BRBS 43 (1987); *Weber v. Seattle Crescent Container Corp.*, 19 BRBS 146 (1986).

[2]Employer does not contend that claimant does not have a back problem. Claimant complained of back pain during his initial hospitalization in June 1999, and an tests taken in September 2001 revealed L5-S1 epidural lipomatosis and severe S1 right-sided radiculopathy.

We hold that the administrative law judge acted within his discretion as fact-finder in crediting claimant=s testimony that he injured his back exiting the helicopter at Memorial. *See generally Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991); *see also Cordero*, 580 U.S. 1331, 8 BRBS 744. This evidence is sufficient to entitle claimant to the benefit of the Section 20(a) presumption, and we affirm the administrative law judge=s finding in this regard. *Damiano v. Global Terminal & Container Service*, 32 BRBS 261 (1998); *Quinones v. H.B. Zachery, Inc.*, 32 BRBS 6 (1998), *aff'd in pert. part*, 206 F.3d 474, 34 BRBS 23(CRT) (5th Cir. 2000). Moreover, the administrative law judge also relied on medical evidence attributing claimant's back pain to the stroke itself or to a weight gain from to inactivity due to the stroke.[3] As employer does not contest the administrative law judge=s finding that it did not rebut the Section 20(a) presumption, we affirm the administrative law judge=s finding that a causal relationship exists between claimant=s back condition and his employment.[4]

Lastly, employer challenges the administrative law judge's finding that claimant's stroke and back condition reached maximum medical improvement on March 6, 2001. Specifically, employer argues that claimant continued receiving treatment for his back condition from Dr. Abadco, and for his stroke from Dr. Rubin, after March 2001. A claimant's condition may be considered permanent when it has continued for a lengthy period and appears to be of lasting and indefinite duration, as opposed to one in which recovery merely awaits a normal healing period, *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649 (5th Cir. 1968), *cert. denied*, 394 U.S. 976 (1969), or if he has any residual impairment after reaching maximum medical improvement, the date of which is determined by medical evidence. *See Seidel v. General Dynamics* C*orp.*, 22 BRBS 403 (1989).

In this case, the administrative law judge credited the October 3, 2000, report of claimant's treating neurologist, Dr. Lugo, that claimant's condition after his stroke had stabilized. EX 2 at 43. The administrative law judge also credited the January 13, 2000, opinion of Dr. Staires that claimant's back and stroke-related pain symptomatology was

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[3]Dr. Abadco stated that claimant's back pain is more likely due to the stroke than to a mechanical source, and that claimant fell from the helicopter due to dizziness from the stroke. CX 30 at 1. Dr. Barrash similarly opined that the fall was due to dizziness. EX 16 at 27. Dr. Domingue stated that claimant's back pain was due to his altered gait and 80 pound weight gain. EX 5 at 4-5. The administrative law judge rationally inferred that Dr. Domingue's opinion also supports a finding that claimant's back pain is the result of the stroke, as the residuals of the stroke contributed to the weight gain and altered gait.

[4]Thus, as claimant's stroke and back problems are work-related, we consequently affirm the administrative law judge's award of medical benefits for these injuries.

well-controlled by drug therapy, CX 32 at 31, and the March 6, 2001, opinion of Dr. Abadco that physical therapy could no longer improve claimant functionally, CX 30 at 11. Finally, the administrative law judge credited the June 29, 2000, opinion of Dr. Rubin, who also treated claimant for his stroke symptomatology, that claimant's prognosis could be determined a year after further treatment and follow-up visits. CX 29 at 4. The fact that claimant was still undergoing medical treatment does not negate the indefinite duration of the condition. *Watson*, 400 F.2d 649. As substantial evidence supports the administrative law judge's determination that claimant's stroke and back condition was permanent by March 6, 2001, the administrative law judge's finding is affirmed. *SGS Control Services v. Director, OWCP*, 86 F.3d 438, 30 BRBS 57(CRT) (5th Cir. 1996).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits and Decision and Order Granting Medical Expenses on Reconsideration are affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge