

GRADY A. MEARS)	
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Claimant-Petitioner)	
)	
v.)	
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ATLANTIC SOUNDING COMPANY, INCORPORATED)	DATE ISSUED: 09/30/2011
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Alan Andrews (R. Alan Andrews, P.A.), Crawfordville, Florida, for claimant.

Christopher J. Field (Field Womack & Kawczynski LLC), South Amboy, New Jersey, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (2010-LHC-0452) of Administrative Law Judge C. Richard Avery 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 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, a field plant supervisor, slipped and fell on November 28, 2006, while stepping on a pipe. Employer's first report of injury states that claimant related that he had strained/sprained his right hip. EX 1. Claimant continued to work, but, in January 2007, sought medical attention for hip pain at an emergency room and was given pain medication. On February 22, 2007, claimant testified that his hip pain caused him to

leave work. Claimant underwent an MRI in March 2007 which revealed avascular necrosis and, in January 2010, he underwent right hip replacement surgery. Claimant, who has not returned to work since February 22, 2007, sought disability compensation and medical benefits under the Act.

In his Decision and Order, the administrative law judge found claimant entitled to the benefit of the presumption at Section 20(a) of the Act, 33 U.S.C. §920(a), linking his avascular necrosis to the November 2006 fall. The administrative law judge further found, however, that employer produced substantial evidence sufficient to rebut the presumption. The administrative law judge concluded that claimant did not establish, based upon the evidence of record as a whole, that his avascular necrosis is related to the fall at work, and he consequently denied claimant's claim.

On appeal, claimant challenges the administrative law judge's denial of his claim for benefits under the Act. Employer responds, urging affirmance of the administrative law judge's decision.

Once, as in this case, claimant has established his entitlement to invocation of the Section 20(a) presumption, the burden shifts to employer to rebut it with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Orco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir. 2003), *cert. denied*, 540 U.S. 1056 (2003); *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). If the administrative law judge finds that the Section 20(a) presumption is rebutted, he must weigh all of the relevant evidence in the record and resolve the causation issue based on the record as a whole with claimant bearing the burden of persuasion. *See Orco Contractors*, 332 F.3d 283, 37 BRBS 35(CRT); *Port Cooper*, 227 F.3d 285, 34 BRBS 96(CRT); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 257, 28 BRBS 43(CRT) (1984).

In finding that employer rebutted the Section 20(a) presumption with regard to claimant's avascular necrosis, the administrative law judge relied on the opinion of Dr. Bercik. Dr. Bercik opined that claimant's avascular necrosis was neither caused nor aggravated by his November 28, 2006, fall, because the x-rays and MRI show a condition of long-standing duration and because there was no acute fracture of the femoral head. Decision and Order at 7; EX 7; EX 9 at 16-17. As this opinion constitutes substantial evidence of the absence of a causal link between claimant's avascular necrosis and the fall at work, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebutted. *Orco Contractors*, 332 F.3d 283, 37 BRBS 35(CRT).

The administrative law judge then weighed all of the relevant evidence and found that claimant did not meet his burden of establishing that his avascular necrosis is related to his fall at work. In this regard, the administrative law judge found that Drs. Wong, Lolley and Bercik agreed that excessive use of alcohol could cause avascular necrosis. *See* EX 9 at 12; CX 1 at 14; CX 2 at 10. While Drs. Wong and Lolley opined that claimant's condition was causally related to his work fall, the administrative law judge found that they were unaware of claimant's prior alcohol use and that each stated that his opinion might change if he had been aware of such use. CX 1 at 20-21; CX 2 at 22. Claimant's history of alcohol abuse is documented in the record. EX 6 at 37-39, 107, 114. The administrative law judge thus concluded that the opinions of Drs. Wong and Lolley regarding the cause of claimant's avascular necrosis were "flawed and unreliable." Decision and Order at 8. In contrast, the administrative law judge found that Dr. Bercik was aware of claimant's prior alcohol use and opined that it was the cause of claimant's avascular necrosis, which thus was neither caused nor aggravated by claimant's fall at work. EX 7; EX 9 at 19. Based upon this evaluation of the evidence, the administrative law judge concluded that claimant failed to carry his burden of establishing a causal relationship between his avascular necrosis and his employment with employer.

It is well-established that an administrative law judge is entitled to weigh the medical evidence and to draw his own inferences and conclusions therefrom. *See 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); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). In his decision, the administrative law judge fully discussed the relevant medical evidence of record, and his findings are supported by substantial evidence. The administrative law judge rationally credited the opinion of Dr. Bercik as he had a more complete picture of claimant's medical history. We, therefore, affirm the administrative law judge's determination that claimant failed to establish that his avascular necrosis was related to his employment with employer. *See Lennon v. Waterfront Transport*, 20 BRBS 658, 28 BRBS 22(CRT) (5th Cir. 1994); *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171 (2001); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000); *Rochester v. Geo. Washington Univ.*, 30 BRBS 233 (1997). Therefore, we affirm the denial of disability and medical benefits.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge