BRB No. 13-0110

JOHN D. CROCKER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ELECTRIC BOAT CORPORATION	)	DATE ISSUED: 09/17/2013
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Compensation of Timothy J. McGrath, Administrative Law Judge, United States Department of Labor.

Scott N. Roberts (Law Offices of Scott N. Roberts, LLC), Groton, Connecticut, for claimant.

Edward W. Murphy (Morrison Mahoney LLP), Boston, Massachusetts, for self-insured employer.

Before: McGRANERY, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Compensation (2012-LHC-00197) of Administrative Law Judge Timothy J. McGrath 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 works for employer as a quality assurance inspector. In his role as an inspector of submarines, claimant testified he often had to work in awkward and/or uncomfortable positions. Tr. at 42-45. Claimant was diagnosed by x-ray with bilateral hip arthritis after complaining of a groin hernia to his primary care physician, Dr. Gates, in February 2011. CX 4 at 1; Tr. at 41. Dr. Giacchetto, claimant's treating specialist, diagnosed claimant with "concomitant degenerative arthritis of the hips," a primary

degenerative disorder, and with hip symptoms sufficiently significant to consider hip replacement surgery. CX 3 at 3. Claimant then had an orthopedic consultation with Dr. McAllister on October 26, 2011, who noted that claimant's pain had substantially worsened over the years. Dr. McAllister performed both total right and total left hip arthroplasties in December 2011. CX 2. After recuperating, claimant returned to his usual employment with employer, and he filed a claim for temporary total disability and medical benefits for the period between December 5, 2011, and February 27, 2012. JX 1; Tr. at 35.

The administrative law judge found, *inter alia*, that claimant established a prima facie case that his hip symptoms leading to his hip surgeries were work-related.[1] Specifically, the administrative law judge found that claimant's pain could have been caused by his work activities which included bending, crouching, straddling pipes, and climbing ladders. Tr. at 36-58. Therefore, the administrative law judge invoked the Section 20(a), 33 U.S.C. §920(a), presumption relating claimant's hip condition to his employment. The administrative law judge then found that employer rebutted the presumption with the opinions of Drs. Mariorenzi and Gaccione that claimant's pain and symptoms are due to the natural progression of the underlying degenerative condition and have no relationship to his work activities. Based on the record as a whole, the administrative law judge credited the opinions of Drs. Mariorenzi and Gaccione and found that claimant failed to establish by a preponderance of the evidence that his work activities aggravated his underlying disease or his symptom complex or contributed to his need for bilateral hip surgery. Decision and Order at 11-15. Therefore, the administrative law judge denied the claim. Claimant appeals the denial of benefits, and employer responds, urging affirmance.

In determining whether an injury is work-related, a claimant is aided by the Section 20(a) presumption, which is invoked after he establishes a prima facie case. *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 44 BRBS 13(CRT) (1st Cir. 2010); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). Under the aggravation rule, if a work-related injury contributes to, combines with, or aggravates a pre-existing condition, the entire resultant disability is compensable. *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004); *Gardner v. Director,*

[1]Claimant does not allege that his degenerative hip osteoarthritis was caused by his employment with employer. Rather, claimant alleges his "symptom complex" was aggravated by his work activities. The administrative law judge found that claimant did not define the "system complex" of his hip osteoarthritis with any specificity, and the judge concluded that claimant focused on general pain in his knees, hips, and groin as his "injury." Decision and Order at 12 n.3.

OWCP, 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981). Once the presumption is invoked, as here, the employer may rebut it by producing substantial evidence that working conditions neither directly caused the injury nor aggravated the pre-existing condition to result in injury. *Preston*, 380 F.3d 597, 38 BRBS 60(CRT). If the employer rebuts the presumption, it no longer controls, and the issue of whether there is a relationship between the injury and the employment must be resolved on the record as a whole, with the claimant bearing the burden of persuasion. *Id; see Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). If the claimant's disability is due solely to the natural progression of a prior injury or condition, the employer is not liable for the disabling condition. *Obert v. John T. Clark & Sons of Maryland*, 23 BRBS 157 (1990).

Claimant does not challenge the administrative law judge's finding that the opinions of Drs. Mariorenzi and Gaccione rebut the Section 20(a) presumption, and we affirm that finding. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007). Accordingly, we need address only claimant's argument that the administrative law judge erred in weighing the evidence as a whole. *Bath Iron Works Corp. v. Director, OWCP [Harford]*, 137 F.3d 673, 32 BRBS 45(CRT) (1st Cir. 1998). It is well-established that an administrative law judge is entitled to determine the weight to be accorded to the evidence of record. *See, e.g., Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 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).

In this case, the administrative law judge was persuaded by the opinions of Drs. Mariorenzi and Gaccione that claimant's work activities did not aggravate his underlying disease and necessitate surgery. Specifically, he found that Dr. Mariorenzi is a board-certified orthopedic surgeon, a clinical professor, and a credible expert in the field of orthopedics, and gave his testimony "full weight and credit." Decision and Order at 14. Dr. Mariorenzi stated it was his medical opinion that claimant's hip replacement was totally unrelated to and not necessitated by claimant's employment activities, as he opined that claimant's pain was the result of the normal degenerative process of the hip osteoarthritis. EX 3 at 1-2; EX 5 at 13, 16. He testified that the very nature of degenerative hip osteoarthritis is such that it will eventually produce significant symptomatology warranting hip replacement. EX 5 at 13, 15. Moreover, the administrative law judge gave great weight to Dr. Mariorenzi's statement that claimant's life and work activities did not cause his symptoms to worsen. EX 5 at 16.

The administrative law judge also determined Dr. Gaccione's credentials warranted giving his opinion "full weight and credit." Decision and Order at 15. He found that Dr. Gaccione is a board-certified orthopedic surgeon, who previously had

opined that claimant's right shoulder condition and bilateral knee arthritis were work-related, but who agreed with Dr. Mariorenzi that there is no relationship between claimant's work and the need for bilateral hip replacements. Dr. Gaccione testified that the progression of hip osteoarthritis generally results in patients with pain at rest, leading to the need for hip replacements. EX 4 at 14, 17; EX 6 at 8. It was claimant's pain during rest, and not discomfort during work activities, which the administrative law judge found had motivated claimant to undergo bilateral total hip replacements. Finally, the administrative law judge gave no weight to claimant's treating physician's opinion that claimant's hip condition is related to his work because he was persuaded by Dr. Gaccione's analysis that the opinion is contradictory. Decision and Order at 13 n.4, 15; CX 3, 7 at 40-41; EX 4 at 14, 5 at 13-16.

As substantial evidence supports the administrative law judge's rational determination that claimant's hip pain and surgeries were due to the natural progression of his hip osteoarthritis and were not related to his employment, we affirm the finding that claimant failed to establish a relationship between his hip condition and his employment.[2] Thus, we affirm the denial of benefits.[3] *Harford*, 137 F.3d 673, 32 BRBS 45(CRT); *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171 (2001); *Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996).

[2]We reject claimant's assertion that the administrative law judge mischaracterized the evidence. Moreover, the Board is not permitted to re-weigh the evidence if substantial evidence supports the administrative law judge's findings. *See generally Bath Iron Works Corp. v. Director, OWCP [Jones]*, 193 F.3d 27, 34 BRBS 1(CRT) (1st Cir. 1999); *Director, OWCP v. Jaffe New York Decorating*, 25 F.3d 1080, 28 BRBS 30(CRT) (D.C. Cir. 1994); *Miffleton v. Briggs Ice Cream Co.*, 12 BRBS 445 (1980), *aff'd*, 659 F.2d 252 (D.C. Cir. 1981).

[3]The administrative law judge rationally concluded that claimant's occasional experiencing pain at work does not render employer liable for the natural progression of his non-work-related degenerative bilateral osteoarthritis. *See generally Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999).

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

SO ORDERED.

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge