U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 16-0202

TERRENCE M. MURPHY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: Sept. 28, 2016
	)	
HUNTINGTON INGALLS, INCORPORATED	)	
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Dana Rosen, Administrative Law Judge, United States Department of Labor.

John H. Klein (Montagna Klein Camden L.L.P.), Norfolk, Virginia, for claimant.

Benjamin M. Mason (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2015-LHC-00504) of Administrative Law Judge Dana Rosen 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 rational, supported by substantial evidence, and 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 suffered an injury to his right hand on July 2, 1996, and a carpal tunnel

injury to his left wrist on April 23, 1998, while working for employer.[1] Claimant filed a claim for benefits, and, in a Decision and Order dated September 4, 2003, was awarded benefits for these injuries.[2] Claimant last worked for employer in 1998, and he, thereafter, obtained driving work in non-covered employment.[3] Claimant testified that he left this work because of his hand pain. Claimant subsequently sought additional total disability under the Act, alleging that he suffers constant, disabling pain in both hands due to his prior work-related carpal tunnel injuries in 1996 and 1998.

The administrative law judge found claimant established a prima facie case that his current hand pain is the natural consequence of his prior work-related hand injuries on April 23, 1998 and July 2, 1996, in light of the following: 1) the parties' stipulation that claimant suffered a work-related injury to both hands on April 23, 1998;[4] 2) the September 4, 2003 Decision and Order awarding benefits for a July 2, 1996, right hand injury and for an April 23, 1998 left hand injury; 3) claimant's current credible complaints of pain; and, 4) claimant's allegations of continuous hand problems since his

[1] Dr. Stiles performed carpal tunnel decompression surgery on claimant's right wrist on July 12, 2001, and on claimant's left wrist on November 7, 2002. CXs 3, 5A.

[2] The 2003 Decision and Order was based on the parties' stipulations. Judge Teitler awarded claimant temporary total disability benefits for his right hand injury from August 29 through November 14, 1996; August 24, 2001 through June 16, 2002; and from July 18 through November 6, 2002. 33 U.S.C. §908(b). Claimant also was awarded permanent partial disability benefits for a five percent impairment to his right hand (12.20 weeks of compensation). 33 U.S.C. §908(c)(3). Judge Teitler awarded claimant temporary total disability benefits for his left wrist injury from April 27 through May 7, 1998; from May 11 through May 14, 1998; from May 20, 1998 through February 6, 2000, and from November 7, 2002 through February 10, 2003. 33 U.S.C. §908(b). Claimant also was awarded permanent partial disability benefits for a ten percent impairment to his left arm (31.20 weeks). 33 U.S.C. §908(c)(1). The last payment of benefits was made on April 4, 2005. CX 9; EX 5.

[3] When claimant's entitlement to workers' compensation benefits ended, he obtained work driving a senior citizens' van. He subsequently took jobs driving a school bus and a dump truck for increased pay. Tr. at 23-25, 37-38. Claimant last worked as a dump truck driver for the city of Franklin, Virginia. *Id*. at 24-25. The exact date of claimant's last employment is unclear. CX 10D, E; Tr. at 32.

[4] This stipulation is inconsistent with the stipulations entered into in the prior proceedings wherein the parties stipulated that claimant injured his right hand on July 2, 1996 and his left wrist on April 23, 1998.

initial 1996 and 1998 carpal tunnel injuries. Decision and Order at 19. Thus, the administrative law judge found claimant entitled to the Section 20(a), 33 U.S.C. §920(a), presumption that his current hand conditions are related to work injuries. However, the administrative law judge found that employer rebutted the presumption with the following evidence: 1) Dr. Zwicklbauer's October 14, 2004 opinion that claimant's 1996 and 1998 wrist conditions successfully resolved and reached maximum medical improvement; 2) Dr. Gwathmey's June 20, 2005 opinion that claimant's symptoms "have abated since surgery" and his conditions had reached maximum medical improvement; and 3) Dr. Isaacs's March 23, 2015 opinion that claimant's complaints of hand pain are not related to the 1996 and 1998 work injuries.

Weighing the record as a whole, the administrative law judge found claimant's complaints of constant, disabling pain since his 1996 and 1998 work-related carpal tunnel injuries are unsupported by medical treatment records, inconsistent with the reported histories claimant gave to his examining and treating doctors, and inconsistent with the absence of active medical treatment between 2005 and 2009. Decision and Order at 25. Although Dr. Stiles, claimant's treating orthopedist, opined on September 21, 2009, that claimant's current hand conditions are a recurrence of his work-related carpal tunnel syndrome, the administrative law judge found this opinion inconsistent with the medical records and with Dr. Stiles's March 16, 2010 opinion that claimant's EMG of the same date demonstrated peripheral neuritis. She also noted that his opinion as to causation was inconsistent with the opinions of Drs. Gwathmey, Zwicklbauer, and Isaacs. Further the administrative law judge found the opinion of Dr. Isaacs, a hand surgeon, that claimant's hand pain is unrelated to his prior work injuries, and the opinion of Dr. Ben-Othmane, a neurologist, that claimant's hand pain is of unknown cause or origin, and could be due to diabetic peripheral neuropathy, to be supported by the record as a whole and entitled to significant weight. The administrative law judge found claimant did not establish that his current hand pain is related to his work injuries. Accordingly, the administrative law judge denied benefits. On appeal, claimant asserts the administrative law judge erred in finding employer rebutted the Section 20(a) presumption and in weighing the evidence on the record as a whole in favor of employer. Employer responds in support of the administrative law judge's denial of benefits.

In order to be entitled to the benefit of the Section 20(a) presumption, 33 U.S.C. §20(a), a claimant must establish a prima facie case by showing that he sustained a harm and that an accident occurred or working conditions existed which could have caused or aggravated the harm. *See Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009); *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). Where, as here, the claimant has established his prima facie case, the burden shifts to the employer to present substantial evidence that the claimant's injury was not caused or aggravated by the work injury. *See Holiday*, 591 F.3d 219, 43 BRBS 67(CRT). If the administrative law judge finds that the

Section 20(a) presumption is rebutted, it no longer controls, and the issue of causation must be resolved on the evidence of record as a whole, with the claimant bearing the burden of persuasion. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994); *Moore*, 126 F.3d 256, 31 BRBS 119(CRT).

We reject claimant's contention that the administrative law judge erred in finding employer rebutted the Section 20(a) presumption. The opinion of Dr. Isaacs, that claimant's current hand complaints are unrelated to the 1996 and 1998 work injuries, constitutes substantial evidence rebutting the Section 20(a) presumption.[5] *Holiday*, 591 F.3d 219, 43 BRBS 67(CRT); *Moore*, 126 F.3d 256, 31 BRBS 119(CRT). We, therefore, affirm the administrative law judge's finding that employer rebutted the Section 20(a) presumption.

Claimant additionally contends the administrative law judge erred in failing to credit the opinion of Drs. Stiles in weighing the evidence as a whole. We disagree. Although an administrative law judge may give special weight to a treating physician's opinion, *see Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir. 1998), *amended*, 164 F.3d 480, 32 BRBS 144(CRT) (9th Cir. 1999), *cert. denied*, 528 U.S. 809 (1999), she is not required to

[5] Dr. Isaacs reviewed 100 pages of treatment records including those from Drs. Stiles and Ben-Othmane. Dr. Isaacs examined claimant on March 23, 2015, and issued a report on the same date, concluding the following:

> I believe that the patient has legitimate complaints of pain. It is impossible for me to relate it back to an incident almost 20 years ago that the patient cannot recollect at all. However, if his initial diagnosis was carpal tunnel, and this was subsequently treated (by surgical release) with documented improvement on his nerve study, then I would opine that recurrent carpal tunnel is a physiologic result of aging and not due to recurrence of a previous injury.

EX 3 at 4. As the administrative law judge accurately noted that claimant suffered carpal tunnel injuries in 1996 and 1998, Dr. Stiles performed carpal tunnel decompression surgery to claimant's right wrist on July 12, 2001, and to claimant's left wrist on November 7, 2002, CXs 3, 5A, and that claimant's June 1, 2005 nerve study documented improvement in both wrists over a September 2000 nerve study, EX 1, the administrative law judge accurately summarized Dr. Isaacs's opinion as stating that claimant's current hand condition did not arise from his 1996 and 1998 wrist conditions. Decision and Order at 6-7, 22; *see Pittman Mech. Contractors, Inc. v. Director, OWCP [Simonds]*, 35 F.3d 122, 28 BRBS 89(CRT) (4th Cir. 1994).

credit such an opinion where there is contrary probative evidence in the record.[6] *See Monta v. Navy Exchange Service Command*, 39 BRBS 104 (2005). The administrative law judge is tasked with weighing the evidence and drawing inferences and conclusions based on that evidence. *Pittman Mech. Contractors, Inc. v. Director, OWCP [Simonds]*, 35 F.3d 122, 28 BRBS 89(CRT) (4th Cir. 1994). The Board may not reweigh the evidence, *Miffleton v. Briggs Ice Cream Co.*, 12 BRBS 445 (1980), *aff'd*, 659 F.2d 252 (D.C. Cir. 1981), or disregard an administrative law judge's finding merely because other inferences could have been drawn from the evidence. *Simonds*, 35 F.3d 122, 28 BRBS 89(CRT); *see also Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994).

In this case, the administrative law judge addressed the record in its entirety, assessed claimant's credibility and weighed the conflicting medical opinions as to the cause of claimant's current hand pain. She rationally determined that claimant's testimony that he has had complaints of disabling, continuous hand pain since the 1996 and 1998 work accidents is not credible in light of his subsequent employment as a driver; his 2003, 2004, and 2005 reports to Drs. Stiles, Zwicklbauer, and Gwathmey of improved symptoms and ability to do his driving work without serious problems; the lack of medical treatment between July 2005 and August 2009; and, claimant's 2009 and 2010 reports to Drs. Stiles and Ben-Othmane that his pain and numbness started a few months prior to September 2009. Decision and Order at 23-24; *see Simonds*, 35 F.3d 122, 28 BRBS 89(CRT); *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Determining that the record as a whole establishes that claimant's wrist conditions improved after his surgeries, the administrative law judge found the opinion of Drs. Isaacs, that claimant's current hand conditions are not due to his prior work-related injuries, and the opinion of Dr. Ben-Othmane, that claimant's current condition is of unknown cause or origin, to be well-reasoned and consistent with the record as a whole, and she rationally gave them more weight than Dr. Stiles's opinion.[7] As claimant's complaints of continuous pain and Dr. Stiles's opinion are the only evidence of record linking claimant's current hand conditions to his prior work injuries, and as the administrative law judge has reasonably found this evidence to be unpersuasive, we affirm her finding that claimant failed to carry

[6] Unlike the situation in *Amos*, the issue here does not concern the choice between two reasonable courses of treatment such that a treating physician may have more insight. *Amos*, 153 F.3d at 1054, 32 BRBS at 147(CRT).

[7] The administrative law judge also rationally found Dr. Stiles's September 21, 2009 opinion attributing claimant's current problems to his prior work injuries undermined by his March 16, 2010 opinion that an EMG on same date "shows bilateral peripheral neuritis with question of carpal tunnel syndrome." Decision and Order at 25; *see Rainey v. Director, OWCP*, 517 F.3d 632, 42 BRBS 11(CRT) (2d Cir. 2008).

his burden of establishing, based on the record as a whole, that his current bilateral hand condition is related to the work injuries. *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Hice v. Director, OWCP*, 48 F.Supp. 2d 501 (D. Md. 1999). Therefore, we affirm the denial of additional disability compensation and medical benefits.

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

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge

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RYAN GILLIGAN
Administrative Appeals Judge