U.S. Department of Labor

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

BRB No. 17-0112

MARK T. GAITO	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: Sept. 6, 2017
ELECTRIC BOAT CORPORATION	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

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

Mark McKenney (McKenney, Quigley & Clarkin, LLP), Providence, Rhode Island, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2016-LHC-00694) of Administrative Law Judge Jonathan C. Calianos 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 began working for employer in 1976, primarily as a pipe welder. In June 2010, claimant sought medical care for shortness of breath and dizziness, *see* EX 4 at 9, and later for these symptoms as well as pressure in his eyes. *Id*. at 11, 13, 15, 17. On December 11, 2014, while undergoing his annual physical examination at employer's clinic, claimant answered in the affirmative when asked whether he ever felt "dizzy

walking at a brisk pace on level ground and on an elevated surface." Tr. at 28-29; EX 3 at 30. In light of this response, employer, on December 12, 2014, recalled claimant to its dispensary for a second physical examination. Tr. at 29; EX 3 at 30. While walking to employer's dispensary, claimant experienced a loss of vision and shortness of breath. EX 3 at 30-31, 49. Employer's dispensary personnel diagnosed claimant with a heart murmur and advised claimant to seek medical care for that condition. CX 8.

Claimant was subsequently diagnosed with hypertrophic cardiomyopathy and, on September 17, 2015, he underwent open heart surgery for that condition.[1] EXs 3 at 28, 53; 6 at 4-5; 8 at 18-19. Claimant, who has not returned to gainful employment since December 12, 2014, filed a claim for benefits under the Act, averring that his employment activities on December 12, 2014, aggravated or exacerbated his pre-existing non-industrial heart condition. *See* CX 1 at 3.

In his Decision and Order, the administrative law judge found claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), that his symptoms were related to his employment, and found that employer rebutted the presumption. On the record as a whole, the administrative law judge determined that claimant's symptoms and heart condition are not related to his employment. Accordingly, the administrative law judge denied the 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.

The administrative law judge invoked the Section 20(a) presumption based on findings that claimant suffered a harm, specifically shortness of breath, loss of vision and dizziness, and the existence of working conditions, including walking on employer's premises on December 12, 2014, which could have caused his symptoms.[2] *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Marinelli v. American Stevedoring, Ltd.*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001); *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996). The burden then shifted

[1] Hypertrophic cardiomyopathy is a genetic condition in which heart muscle cells grow abnormally, form scar tissue which thickens the heart muscle, and obstruct the flow of blood. *See* EX 10 at 8, 12.

[2] There is no dispute that claimant's underlying heart condition, diagnosed as hypertrophic cardiomyopathy, was a pre-existing genetic condition unrelated to his employment with employer. *See* CX 1 at 2.

to employer to rebut the presumed causal connection with substantial evidence that claimant's injury was not caused or aggravated by his employment. *See Rainey v. Director, OWCP*, 517 F.3d 632, 42 BRBS 11(CRT) (2d Cir. 2008). If 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 claimant bearing the burden of persuasion. *See Marinelli*, 248 F.3d 54, 35 BRBS 41(CRT); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

Claimant contends the administrative law judge erred in finding that employer produced substantial evidence to rebut the Section 20(a) presumption. The administrative law judge found that the opinion of Dr. Bradbury rebuts the Section 20(a) presumption. Dr. Bradbury opined to a reasonable degree of medical certainty that claimant's employment did not cause, contribute or worsen his medical conditions. Rather, Dr. Bradbury opined that claimant's symptoms were caused by his underlying, non-work-related genetic heart disorder. *See* EXs 1 at 2; 10 at 26, 32. As the administrative law judge properly considered this opinion in light of employer's burden of production, and as this opinion constitutes substantial evidence that claimant's work activities did not cause or contribute to the onset of his symptoms, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebutted. *See Rainey*, 517 F.3d 632, 42 BRBS 11(CRT); *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171 (2001); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000).

The administrative law judge then weighed the relevant evidence and concluded that the manifestation of claimant's symptoms was not caused, aggravated or exacerbated by his employment. Decision and Order at 19-25. He specifically found that claimant did not provide medical evidence expressing a causal connection between his employment and the onset of his symptoms, and he rejected claimant's argument that the manifestation of his symptoms at work, alone, is enough to establish a causal relationship. *Id.* at 21. In contrast, the administrative law judge found that Dr. Bradbury opined that claimant's symptoms were caused by his pre-existing non-work-related genetic hypertrophic cardiomyopathy, and that this condition was capable of producing the symptoms claimant experienced, specifically shortness of breath, dizziness and loss of vision, with both physical exertion and while claimant was at rest.[3] *See* EXs 1 at 2; 10 at 10-12, 15-17, 21-22, 26, 43-44.

[3] In this regard, Dr. Bradbury noted that claimant had previously experienced onsets of his symptomatology while riding a motorcycle and while getting up from a recliner. EX 10 at 22-24; *see* Tr. at 27.

The administrative law judge further found that Dr. Bradbury concluded that, to a reasonable degree of medical certainty, claimant's work-related activities did not cause, contribute or worsen his medical condition. Dr. Bradbury opined that claimant's symptoms were caused by his underlying, non-work-related genetic heart disorder. *See* EXs 1 at 2; 10 at 26, 32. Citing *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert. denied*, 540 U.S. 1056 (2003), the administrative law judge determined that the record supports a finding that, as a consequence of claimant's pre-existing non-work-related genetic heart condition, claimant's symptoms would have manifested themselves regardless of his location or level of activity.[4] Decision and Order at 24. Therefore, the administrative law judge concluded that claimant's heart condition is not compensable.

We reject claimant's contention that the administrative law judge erred in evaluating the evidence and in concluding that claimant did not establish that his disability is causally related to his employment. In his decision, the administrative law judge fully and thoroughly considered all of the relevant evidence in addressing claimant's contention that his employment caused the onset of his symptoms and aggravated his underlying pre-existing non-work-related heart condition. It is well-established that the administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence. *See John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *see also 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). Moreover, it is impermissible for the Board to reweigh the evidence or to substitute its own views for those of the administrative law judge. *Volpe v. Northeast Marine Terminals*, 671 F.2d 697, 14 BRBS 538 (2d Cir. 1982). The administrative law judge's conclusion that claimant failed to meet his burden of persuasion on causation is supported by substantial evidence in the record, specifically the opinion of Dr. Bradbury, that the onset of claimant's symptoms was due to his pre-existing heart condition and could occur at any time either with exertion or while at rest. *See Rainey*, 517 F.3d 632, 634, 42 BRBS 11, 12(CRT) ("Pursuant to the 'substantial evidence' standard, if the decision of the

[4] In *Charpentier*, the employee died from a heart attack shortly after reporting to work; the employee's symptoms of the heart attack had manifested the night before while he was at home. In declining to mandate application of the aggravation rule to the claim for death benefits, as the Board had done, the court deferred to the administrative law judge's findings of fact, stating that "if an employee's pre-existing injury would *necessarily* be exacerbated by *any* activity regardless of where or when this activity takes place, and an employee happens to go to work, it is an impermissible leap of logic to say that there must be a causal connection between the worsening of the employee's injury and his work." *See id.*, 332 F.3d at 292, 37 BRBS at 40(CRT) (emphasis in original).

administrative law judge is supported by substantial evidence, is not irrational, and is in accordance with the law, the decision must be affirmed.") (internal quotes omitted). We therefore affirm the administrative law judge's determination based on the evidence as a whole that claimant did not establish a causal relationship between his cardiac symptoms and his employment. *See Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000).

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

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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GREG J. BUZZARD
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge