**U.S. Department of Labor**

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 19-0249

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| WALTER WILLIS | ) | |
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| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
| | ) | DATE ISSUED: 09/11/2019 |
| VIRGINIA INTERNATIONAL TERMINALS, LLC | ) | |
| | ) | |
| and | ) | |
| | ) | |
| SIGNAL MUTUAL INDEMNITY ASSOCIATION, LIMITED | ) | |
| | ) | |
| Employer/Carrier-Respondents | ) | DECISION and ORDER |

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

Gregory E. Camden (Montagna Klein Camden L.L.P.), Norfolk, Virginia, for claimant.

R. John Barrett and Megan B. Caramore (Vandeventer Black LLP), Norfolk, Virginia, for employer/carrier.

Before: BUZZARD, ROLFE and GRESH, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2017-LHC-01848) of Administrative Law Judge Dana Rosen rendered on a claim filed pursuant to 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 reported to work for employer as a crane operator on May 18, 2017. Prior to the end of his shift, he left work and went to the hospital, where he was diagnosed with having sustained an ischemic stroke. Claimant alleged that his shift work contributed to his stroke. He sought compensation for temporary total disability, 33 U.S.C. §908(b), from May 19 to September 20, 2017, and temporary partial disability, 33 U.S.C. §908(e), from September 21, 2017 to January 8, 2018.

In her decision, the administrative law judge found claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), that his ischemic stroke is related to his shift work with employer, but that employer established rebuttal thereof. Decision and Order at 17. The administrative law judge determined claimant failed to show on the record as a whole that his shift work contributed to his stroke. *Id*. at 19-23. Accordingly, she denied the claim.

Claimant challenges the administrative law judge's findings that employer rebutted the Section 20(a) presumption and that he did not show by a preponderance of the evidence that his shift work contributed to his stroke. Employer responds in support of the denial of benefits.

In challenging the administrative law judge's rebuttal finding, claimant contends the administrative law judge focused solely on his preexisting conditions and failed to adequately consider the contribution of his shift work. Claimant also contends that Dr. Tuwiner's opinion is insufficient to rebut the Section 20(a) presumption.

Where, as here, the claimant successfully invokes the Section 20(a) presumption that his injury is work-related, the burden shifts to the employer to produce substantial evidence that the injury is not work-related. *Ceres Marine Terminals v. Director, OWCP* [*Jackson*], 848 F.3d 115, 120-121, 50 BRBS 91, 93-94(CRT) (4th Cir. 2016). Where the claimant makes a prima facie case alleging aggravation of a pre-existing condition, "the employer may rebut with substantial evidence demonstrating that the claimant's symptoms are a natural outgrowth of, or complication of, an existing predicate condition," or with substantial evidence that the claimant's condition was not aggravated by the subsequent incident. *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 225, 43 BRBS 67, 69(CRT) (4th Cir. 2009). Employer must "put forward as much relevant factual matter as a reasonable mind would need to accept, as one rational conclusion, that the employee's injury did not arise out of his employment." *Id.*, 591 F.3d at 225, 43 BRBS at 69(CRT).

In her decision, the administrative law judge found the opinion of Dr. Tuwiner rebuts the Section 20(a) presumption. Decision and Order at 17-18. She noted Dr. Tuwiner's reliance on claimant's history of hypertension since 2005, his noncompliance with taking medications prescribed for this condition, the evidence that claimant has end-organ damage secondary to hypertension, and his opinion that hypertension is the number one risk factor for cerebrovascular accidents. Employer's Exhibit (EX) 1 at 6. She found his opinion, given "with a reasonable degree of medical certainty that [claimant's] stroke occurring May 18, 2017, is related to conventional microvascular risk factors and not his work," EX 1 at 5, "well documented, well-reasoned, [and] persuasive." Decision and Order at 18. Furthermore, she quoted Dr. Tuwiner's statement that, after reviewing Dr. Sheth's contribution opinion,[1] "[I] cannot credibly relate [claimant's] 5/18/17 CVA [cerebrovascular accident] to working too many hours and poor sleep patterns." *Id.*; EX 1 at 6. Dr. Tuwiner also stated in his January 9, 2018 report, "I cannot credibly relate irregular sleep hours to the subject CVA."[2] EX 1 at 6. Thus, contrary to claimant's contentions, Dr. Tuwiner adequately addressed the alleged contribution of claimant's shift work to his stroke and the administrative law judge, in relying on Dr. Tuwiner's opinion, sufficiently considered whether claimant's shift work contributed to his stroke. Dr. Tuwiner's opinion that claimant's stroke is not related to his employment constitutes substantial evidence to rebut the Section 20(a) presumption.[3] *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *Manente v. Sea-Land Serv., Inc.*, 39 BRBS 1 (2004); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000).

[1] Dr. Sheth opined that "studies have shown that there is an increased risk of ischemic stroke among the patient with shift work." Claimant's Exhibit (CX) 13 at 1.

[2] Additionally, Dr. Tuwiner wrote on March 9, 2018, "Dr. Sheth further cites the articles to support that [claimant's] work hours were contributing factors to his 5/18/17 CVA. Such an opinion is speculation and cannot be stated with a reasonable degree of medical certainty based on the facts of the medical records and the cited articles. . . . To opine the shift work had any influence on the claimant's choices and stroke risk is speculation and minimizes the clearly documented facts of [claimant's] medical records." EX 1 at 9.

[3] Contrary to claimant's contention, Dr. Tuwiner was not required to explain how claimant's working conditions did not affect his pre-existing hypertension. Dr. Tuwiner's opinion, stated to a reasonable degree of medical certainty, that claimant's stroke is related to his pre-existing microvascular risk factors and not his work is sufficient to rebut the Section 20(a) presumption. *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 41-42 (2000).

Accordingly, we affirm the administrative law judge's finding that employer rebutted the Section 20(a) presumption with regard to claimant's ischemic stroke.

As employer rebutted the Section 20(a) presumption, 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 Moore*, 126 F.3d 256, 31 BRBS 119(CRT). The administrative law judge is entitled to weigh the evidence and draw her own inferences from it; she has the discretion to determine which of the conflicting opinions is entitled to determinative weight and the Board is not empowered to reweigh the evidence. *See Newport News Shipbuilding & Dry Dock Co. v. Winn*, 326 F.3d 427, 37 BRBS 29(CRT) (4th Cir. 2003); *Pittman Mech. Contractors, Inc. v. Director, OWCP* [*Simonds*], 35 F.3d 122, 28 BRBS 89(CRT) (4th Cir. 1994).

We affirm the administrative law judge's weighing of the evidence on the record as a whole. She rationally relied on the "well documented and well-reasoned" opinion of Dr. Tuwiner that claimant's stroke was related to his untreated high blood pressure and not his work for employer. EX 1 at 6, 9; *see also* Decision and Order at 22. She permissibly found less persuasive Dr. Sheth's opinion linking claimant's stroke, in part, to his shift work as contraindicated by Dr. Sheth's having returned claimant to shift work following his stroke without restrictions and because it is unsupported by the medical studies of record. Decision and Order at 23. The administrative law judge rationally found that the record lacks "persuasive evidence" that claimant's stroke was related to his work. *Id*. As the administrative law judge's conclusion is rational and supported by substantial evidence, we affirm her finding that claimant did not establish by a preponderance of the evidence that his stroke is work-related. *See Pittman Mech. Contractors, Inc.*, 35 F.3d 122, 28 BRBS 89(CRT); *Hice v. Director, OWCP*, 48 F. Supp. 2d 501 (D.Md. 1999); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000). We, therefore, affirm the denial of benefits.

Accordingly, we affirm the administrative law judge's Decision and Order Denying Benefits.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge