BRB No. 96-1210

ALFRED R. FAGAN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
	)	
JONES WASHINGTON STEVEDORING COMPANY	)	DATE ISSUED:
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits and the Order Denying Claimant's Motion For Reconsideration of Christine M. Moore, Administrative Law Judge, United States Department of Labor.

Alfred R. Fagan, Aberdeen, Washington, *pro se*.

Carol J. Molchior (Madden & Crockett), Seattle, Washington, for self-insured employer.

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

PER CURIAM:

Claimant, appearing without legal representation, appeals the Decision and Order Denying Benefits and Order Denying Claimant's Motion For Reconsideration (94-LHC-958) of Administrative Law Judge Christine M. Moore 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). In reviewing an appeal where claimant is not represented by counsel, the Board will review the administrative law judge's Decision and Order to determine whether her findings of fact and conclusions of law 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). If so, they must be affirmed.

Claimant was injured on April 11, 1990 when he fell while unloading logs for employer. Employer voluntarily paid temporary total disability benefits for claimant's chest injuries resulting from this accident from April 12, 1990, through June 10, 1990, at which time his treating physician, Dr. Teveliet, released him to return to work without restrictions. Claimant returned to his regular job on June 11, 1990, and continued to work until December 26, 1990, when he quit working allegedly because of pain from an injury to his back he sustained in the April 11, 1990, work accident. On July 23, 1992, claimant filed a claim for total disability benefits and medical benefits, alleging that he had injured his back as well as his chest in this accident.

The administrative law judge denied the claim, finding that claimant failed to establish that he sustained any injury to his back causally related to the April 11, 1990, work accident. The administrative law judge also denied claimant's Motion for Reconsideration in which claimant alleged several procedural errors. Claimant, representing himself, appeals the administrative law judge's decisions. Employer responds, urging affirmance.

Initially, we conclude that the administrative law judge properly rejected the procedural arguments raised by claimant in her Order Denying Claimant's Motion for Reconsideration. Contrary to claimant's assertions, the administrative law judge acted within her discretion in refusing to grant claimant a continuance to obtain another attorney, as claimant had four prior attorneys, he had been granted three prior continuances, and seven months had elapsed since his last attorney withdrew, giving him sufficient time to obtain a new attorney. *See generally Pimpenella v. Universal Maritime Service, Inc.*, 27 BRBS 154 (1993). Moreover, she did not abuse her discretion when she refused to allow claimant to admit his exhibits which were untimely under the terms of her March 29, 1995, pre-trial order. *See generally Twigg v. Maryland Shipbuilding and Dry Dock Co.*, 23 BRBS 118 (1989). It is within the administrative law judge's discretion to exclude evidence for failure to comply with terms of a pre-hearing order. *Durham v. Embassy Dairy*, 19 BRBS 105 (1986).

The administrative law judge also properly found she was not bound by the previous disability determinations made by the Social Security Administration and claimant's union because they are based on different standards than those applicable under the Act. *See Jones v. Midwest Machinery Movers*, 15 BRBS 70, 73 (1982)(Ramsey, J., dissenting on other grounds). Moreover, after reviewing the medical reports of Dr. Roser, who evaluated claimant for the union, and of Dr. Stanley, who evaluated claimant for Social Security, the administrative law judge also acted within her discretion in discrediting both opinions because they were based on an inaccurate history provided to them by claimant regarding his prior history of back pain. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Finally, while claimant alleged that employer, insurance carrier, various doctors, claimant's attorneys, and the administrative law judge were involved in a conspiracy to deny him his right to benefits, an argument he reiterates on appeal, as there is no record support for claimant's allegations of fraud, improper tampering with the evidence, or judicial prejudice, these arguments

must fail.[1]

We next direct our attention to the administrative law judge's finding that claimant failed to establish a work-related back injury. Section 20(a) provides claimant with a presumption that the injury he sustained is causally related to his employment if he establishes a *prima facie* case by showing that he suffered a harm and that employment conditions existed or a work accident occurred which could have caused, aggravated, or accelerated the ultimate disability. *Manship v. Norfolk & Western Railway Company*, 30 BRBS 175 (1996); *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991). Once claimant has invoked the presumption, the burden shifts to employer to rebut it with substantial countervailing evidence. *Peterson v. General Dynamics Corp.*, 25 BRBS 71, 78 (1991), *aff'd sub nom. Insurance Company of North America v. U.S. Department of Labor,* 969 F.2d 1400, 26 BRBS 14 (CRT) (2d Cir. 1992), *cert. denied*, 507 U.S. 909 (1993). If the administrative law judge finds that the Section 20(a) presumption is rebutted, then all relevant evidence must be weighed to determine if causation has been established. *See Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153 (1985).

[1]We note that adverse rulings alone are insufficient to establish bias. *Raimer v. Willamette Iron and Steel Co.*, 21 BRBS 98 (1988).

After review of the administrative law judge's Decision and Order in light of the relevant evidence, we affirm the denial of benefits as the finding that claimant's back condition is not causally related to the April 1990 work injury is rational and supported by substantial evidence in the record. *See O'Keeffe*, 380 U.S at 359. The administrative law judge properly found that claimant was entitled to the Section 20(a) presumption because it is undisputed that he currently suffers from back pain and that the April 11, 1990, work accident occurred. In addition, she noted that the July 27, 1992, report of Dr. Teveliet and the May 20, 1992, report of Dr. Roser provided evidentiary support for claimant's theory. She then found, however, that employer had submitted evidence sufficient to rebut the Section 20(a) presumption. In so concluding, the administrative law judge relied primarily on the affirmative statement made by Dr. Failor that claimant's back injury was not due to any accident and did not occur in the course of claimant's employment; this statement was contained in claimant's December 30, 1990, application for International Longshore Worker's Union Benefits, EX-27. In addition, the administrative law judge relied on negative evidence, most notably claimant's failure to mention any injury to his back either in the accident report filed the date of the accident or to his treating physicians until two years following the accident. [2] Although claimant attempted to explain this omission by indicating that he had been preoccupied with his chest pain, the administrative law judge found claimant's explanation untenable in light of Dr. Teveliet's testimony that claimant was not in significant pain when he terminated treatment and released claimant to return to his regular work in June 1990. Moreover, in finding rebuttal established the administrative law judge credited Dr. Teveliet's testimony that the MRI performed on April 17, 1992 did not reveal any evidence of trauma, and noted that Dr. Teveliet had backtracked considerably from his earlier July 27, 1992, opinion relating claimant's back problems to the April 1990 work injury in his deposition testimony. In addition, the administrative law judge rationally accorded little credibility to Dr. Roser's May 20, 1992, report, which indicated that claimant's current condition was caused or aggravated by his April 1990 accident, because it was based on an inaccurate description of the accident provided by claimant, *i.e.*, that claimant was lying on his back, arched over another log following the accident, and because claimant had not informed Dr. Roser about his prior chiropractic treatment. Upon evaluation of the evidence as a whole, the administrative law judge determined that claimant failed to carry his burden of persuasion as Dr. Teveliet had all but renounced his

[2]In her Decision and Order Denying Benefits at n.7, the administrative law judge recognized that claimant did seek treatment for a lower back condition on July 31, 1990, from Dr.Hensley, a chiropractor who had been treating him since 1989, but determined that there was nothing in the record which indicated that claimant's April 1990 industrial accident aggravated his pre-existing condition or gave rise to a new condition. The administrative law judge further noted that in a July 31, 1991, report, Dr. Henley stated that claimant told him at the time of his July 31, 1990 appointment that he hurt his back in April when he fell on a boat upon which he was working. The administrative law judge, however, was unwilling to give credence to this statement, noting that claimant failed to explain its meaning, and that when Dr. Henley referred claimant to Dr. Failor on December 21, 1990, claimant denied that his back injury occurred in the course of his employment.

July 1992 opinion supporting causation and Dr. Roser's May 20, 1992, letter was based on the seriously flawed history provided to him by the claimant. Inasmuch as the credibility determinations made by the administrative law judge are not inherently incredible and the Board has previously recognized that negative evidence, in conjunction with affirmative medical evidence and a credibility determination, is sufficient to rebut the Section 20(a) presumption and establish the absence of a causal nexus, the administrative law judge's denial of benefits based on claimant's failure to establish a work-related back injury is affirmed. *Holmes v. Universal Maritime Services Corp.*, 29 BRBS 18 (1995).

Accordingly, the Decision and Order Denying Benefits and the Order Denying Claimant's Motion For Reconsideration are affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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NANCY S. DOLDER
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge