BRB No. 96-1270

REBECCA DUALE (Widow of PAUL DUALE) Claimant-Petitioner v. DEPARTMENT OF THE ARMY RESERVE PERSONNEL CENTER and ALEXIS, INCORPORATED Employer/Carrier- Respondents	)	DATE ISSUED: DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits and Order Denying Motion for Reconsideration of Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

Joel M. Nomberg, Dothan, Alabama, for claimant.

Elisa A. Roberts (Hamilton, Westby, Marshall & Antonowich, L.L.C.), Atlanta, Georgia, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits and Order Denying Motion for Reconsideration (95-LHC-689) of Administrative Law Judge Daniel A. Sarno, Jr., 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.,* as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant's husband (the decedent), the manager of the Community Club at the

Army Reserve Personnel Center in St. Louis, Missouri, died while at work on June 23, 1993. Decedent's death certificate lists the immediate cause of death as coronary atherosclerosis. Emp. Ex. 3. Claimant thereafter sought death benefits pursuant to Section 9 of the Act, 33 U.S.C. §909(1988), contending that decedent's work-related chronic stress caused his death.

In his Decision and Order, the administrative law judge initially found claimant entitled to invocation of the presumption at Section 20(a), 33 U.S.C. §920(a), linking the decedent's death to his employment. Next, the administrative law judge found the presumption rebutted by the deposition testimony of Dr. Wickliffe. The administrative law judge, in addressing the totality of the medical evidence, credited Dr. Wickliffe's testimony, which he found to be consistent with the autopsy report, over the reports and deposition testimony of Dr. Entman, who opined that decedent's job-related chronic stress contributed to his death, in concluding that claimant failed to establish a causal link between the decedent's employment and his death. The administrative law judge thus denied the claim for death benefits. Subsequently, the administrative law judge denied claimant's motion for reconsideration.

On appeal, claimant contends that the administrative law judge erred in admitting into evidence the deposition of Dr. Wickliffe. Claimant further assigns error to the administrative law judge's determination that decedent's death was not causally related to his employment. Employer responds, urging affirmance.

We consider, first, claimant's contention that the administrative law judge's admission into evidence of Dr. Wickliffe's deposition constitutes reversible error. The record reflects that Dr. Wickliffe's deposition was taken on December 4, 1995, that claimant's attorney was present at the deposition, and that counsel conducted cross-examination and recross-examination of Dr. Wickliffe. On the date of the hearing, claimant filed a motion to strike Dr. Wickliffe's deposition, contending that employer's failure to properly answer claimant's interrogatories in a responsive manner hindered claimant's counsel's ability to prepare for and depose Dr. Wickliffe. The administrative law judge denied the motion to strike, but granted claimant the opportunity to depose Dr. Wickliffe again. Claimant's counsel responded affirmatively when asked whether this opportunity would resolve any problems created by admission of the deposition. *See* Tr. at 4-6, 17-18. On appeal, claimant states that she was unable to schedule a second deposition, but offers no reason why a deposition could not be scheduled.

It is well established that an administrative law judge has broad discretion in determinations pertaining to the admissibility of evidence. *See, e.g., Olsen v. Triple A Machine Shops, Inc.*, 25 BRBS 40, 44 (1991), *aff'd mem. sub nom. Olsen v. Director, OWCP*, 996 F.2d 1226 (9th Cir. 1993). As the record reflects claimant's agreement that the opportunity to depose Dr. Wickliffe again would resolve her objection to the admission of his deposition, and her subsequent failure to take Dr. Wickliffe's deposition or to provide an explanation of her failure to avail herself of such opportunity, we hold that the administrative law judge did not abuse his discretion in admitting into evidence Dr. Wickliffe's deposition.

Claimant next challenges the administrative law judge's finding that she did not establish that decedent's death was caused by work-related stress. Section 9 of the Act provides for death benefits to certain survivors "if the injury causes death." 33 U.S.C. §909(1988). Upon invocation of the Section 20(a) presumption linking the decedent's death to his employment, the burden shifts to employer to present specific and comprehensive evidence sufficient to sever the causal connection between the death and the employment, and, therefore, to rebut the presumption with substantial evidence that the death was not caused or aggravated by his employment. *See Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). The unequivocal testimony of a physician that no relationship exists between the decedent's death and his employment is sufficient to rebut the presumption. *See Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984). If the administrative law judge finds that the Section 20(a) presumption is rebutted, the administrative law judge must weigh all of the evidence contained in the record and resolve the causation issue based on the record as a whole. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990).

In the instant case, the administrative law judge, after determining that claimant was entitled to invocation of the Section 20(a) presumption, found that employer had rebutted that presumption. In finding rebuttal, the administrative law judge credited the medical opinion of Dr. Wickliffe, who unequivocally opined that decedent's work-related stress played no part in his death. As this opinion constitutes substantial evidence sufficient to rebut the presumption, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebutted. *See generally Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

Next, after considering all of the medical evidence of record, the administrative law judge credited the unequivocal testimony of Dr. Wickliffe that decedent's chronic work-related stress played no part in his death over the contrary opinion of Dr. Entman, who opined that decedent's job-related stress was a major contributing factor in his death. Specifically, the administrative law judge credited Dr. Wickliffe's explanation of the sequence of events leading to decedent's death, which he found to be consistent with the autopsy finding of a 100 percent narrowing of the right coronary artery.[1] In this regard, Dr. Wickliffe testified that decedent's longstanding coronary artery disease caused a progressive narrowing of his right coronary artery, which, on the night of his death, became completely obstructed, producing ischemia which triggered ventricular fibrillation causing sudden cardiac death. The administrative law judge found Dr. Wickliffe's explanation of decedent's death to be more persuasive than Dr. Entman's opinion that it was the

[1]We note that, at the conclusion of the autopsy report, the following findings are listed: coronary atherosclerosclerosis, severe: 80 percent narrowing anterior descending branch and 60 percent narrowing circumflex branch, left coronary artery; 100 percent narrowing right coronary artery; possible very early infarct posterior interventricular septum and left ventricular free wall. EX 4.

superimposition of work-related stress that rendered decedent vulnerable to sudden cardiac death, an opinion that, in part, was based on Dr. Entman's interpretation of the autopsy report as indicating that decedent's right coronary artery was not completely occluded.

It is well-established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences therefrom, and he is not bound to accept the opinion or theory of any particular medical examiner. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). In the instant case, the administrative law judge's credibility determinations regarding the medical opinions are neither inherently incredible nor patently unreasonable. *See generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). We therefore affirm the administrative law judge's determination, based on consideration of the record as a whole, that decedent's death was not work-related.

Accordingly, the administrative law judge's Decision and Order - Denying Benefits and Order Denying Motion for Reconsideration are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge