

ROBERT VON NAGEL)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
MARINE TERMINALS CORPORATION)	DATE ISSUED:
)	
and)	
)	
STATE COMPENSATION)	
INSURANCE FUND)	
)	
Employer/Carrier-)	
Respondents)	
)	
STEVEDORING SERVICES OF)	
AMERICA)	
)	
and)	
)	
HOMEPORT INSURANCE COMPANY)	
)	
Employer/Carrier-)	
Respondents)	
)	
KAISER PERMANENTE HOSPITAL)	
)	
Intervenor)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits and Decision and Order Denying Reconsideration of Edward C. Burch, Administrative Law Judge, United States Department of Labor.

David Utley (Devirian, Utley and Detrick), Wilmington, California, for claimant.

Gary M. Spero, State Compensation Insurance Fund, Cerritos, California, for Marine Terminals Corporation.

Before: SMITH, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits and Decision and Order Denying Reconsideration (95-LHC-2237, 2238) of Administrative Law Judge Edward C. Burch 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 findings of fact and conclusions of law of the administrative law judge which 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).

On February 11, 1992, claimant sustained a cardiac event during the course of his employment with Marine Terminals Corporation (hereafter employer). He sustained a second cardiac event on May 13, 1993, during the course of his employment for Stevedoring Services of America (hereafter SSA). On August 3, 1994, claimant underwent quintuple heart bypass surgery and thereafter filed claims under the Act against employer and SSA seeking medical benefits and compensation for temporary total disability from August 2, 1994, to October 3, 1994. Kaiser Permanente Hospital intervened, seeking reimbursement for medical bills associated with treating claimant's heart condition. The claims were consolidated for hearing.

In his Decision and Order, the administrative law judge initially addressed the February 1992 cardiac event, finding that claimant sustained a heart attack at that time. Prior to the heart attack, claimant walked fifty to sixty feet and then lifted himself into the driver's seat of a fork lift. The administrative law judge found that claimant established a *prima facie* case entitling him to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption. He next found that employer presented substantial evidence to rebut that presumption and, based on the evidence as a whole, that claimant failed to establish a causal relationship between his heart attack and his employment. Regarding the May 1993 cardiac event, claimant and SSA stipulated that claimant sustained a work-related injury. The administrative law judge found, however, that claimant failed to establish a relationship between the May 1993 injury and claimant's August 1994 heart bypass surgery. Accordingly, the claims for medical benefits and compensation were denied. Claimant's motion for reconsideration was subsequently denied by the administrative law judge.

On appeal, claimant challenges the administrative law judge's finding that employer proffered substantial evidence sufficient to rebut the Section 20(a) presumption that his February 1992 heart attack was related to his employment. Employer responds, urging affirmance.

Upon invocation of the Section 20(a) presumption, the burden shifts to employer to present specific and comprehensive evidence sufficient to sever the causal connection between the injury and the employment and therefore, to rebut the presumption with substantial evidence that claimant's condition 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 an injury and a claimant's 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 and resolve the causation issue on the record as a whole. See *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990).

Claimant contends that employer did not rebut the Section 20(a) presumption; specifically, claimant avers that the credited opinions of Drs. Appel and Hyman are insufficient to established rebuttal. In finding rebuttal, the administrative law judge relied upon the opinions of Drs. Appel and Hyman. Dr. Appel, a board-certified cardiologist who reviewed claimant's medical history and course of treatment and physically examined claimant, unequivocally opined that claimant sustained a heart attack on February 11, 1992, that claimant had multiple pre-existing risk factors for a heart attack, including obesity, a history of smoking, diabetes mellitus and a family history of heart disease, and that the heart attack was not related to his employment with employer. See MX 2.

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.¹ See *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94, 95-96 (1988). As claimant has not challenged the administrative law judge's determination that claimant failed to established causation based upon the record as a whole, see *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT) (1994), that finding is additionally affirmed.

¹Any error committed by the administrative law judge in relying upon the testimony of Dr. Hyman is harmless, as the unequivocal medical opinion of Dr. Appel, standing alone, is sufficient to rebut the presumption.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge