BRB No. 96-1491

PETER DEMANTI	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MAHER TERMINALS, INCORPORATED	)	DATE ISSUED:
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Philip J. Rooney (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

William M. Broderick, New York, New York, for the self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (94-LHC-340) of Administrative Law Judge Ralph A. Romano 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).

Claimant was working for employer as a checker on February 2, 1993, when he slipped on grease on a scale and fell. At the hearing, claimant testified that he could not remember which parts of his body he injured, but claimed that his whole body was hurting and that he did not have these physical problems prior to the accident. He admitted later, however, that he saw Dr. Sullivan in 1988 for similar physical complaints. Tr. at 76. Employer voluntarily paid claimant temporary total disability compensation benefits until March 16, 1993. Claimant sought permanent total disability compensation for fibromyalgia which he claimed was caused or aggravated by the February 2, 1993, work accident.

In his Decision and Order, the administrative law judge denied the claim, finding that

claimant failed to establish that the alleged disabling condition was causally related to his February 2, 1993, work injury. On appeal, claimant challenges the denial of benefits, specifically contending that the administrative law judge's decision violates the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), and that he erred in weighing the conflicting medical evidence and in negatively assessing claimant's credibility. Employer responds, urging affirmance.

Section 20(a) of the Act, 33 U.S.C. §920(a), provides claimant with a presumption that his disabling condition is causally related to his employment if he shows that he suffered a harm and that employment conditions existed or a work accident occurred which could have caused, aggravated, or accelerated the condition. *See Kubin v. Pro-Football, Inc.*, 29 BRBS 117, 118-119. Under the "aggravation rule," where an employment-related injury aggravates, accelerates or combines with a non work-related preexisting disease or underlying condition, the entire resultant disability is compensable. *See Uglesich v. Stevedoring Services of America*, 24 BRBS 180 (1991). Once claimant has invoked the presumption, the burden of proof shifts to employer to rebut it with substantial countervailing evidence. *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140, 144 (1991). If the presumption is rebutted, the administrative law judge must weigh all the evidence and render a decision supported by substantial evidence. *See Del Vecchio v. Bowers*, 196 U.S. 280 (1935).

After review of the administrative law judge's Decision and Order in light of the evidence of record and claimant's arguments on appeal, we affirm his denial of benefits because his determination that the claimant's condition is not work-related is rational, supported by substantial evidence, and in accordance with applicable law. *See O'Keeffe*, 380 U.S. at 359. In the present case, the administrative law judge initially found that claimant was entitled to the Section 20(a) presumption based on the opinion of Dr. Bahrt that claimant's trauma of February 2, 1993, caused his fibromyalgia. Cl. Ex. 10 at 36, 41. The administrative law judge, however, then properly determined that the opinion of Dr. Greifinger, that trauma cannot cause fibromyalgia and that claimant's accident had nothing to do with his current condition, provided substantial evidence sufficient to rebut the Section 20(a) presumption. *See generally Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

Having found rebuttal established, the administrative law judge proceeded to consider the causation issue based on the evidence as a whole. Upon weighing the evidence, the administrative law judge found that Dr. Greifinger's opinion was entitled to greater weight than Dr. Bahrt's contrary opinion because it was better reasoned and

supported by authoritative sources within the medical community.[1] The administrative law judge also found that the fact that claimant denied at trial that he had experienced physical symptoms similar to those of which he now complains for about five years prior to the current accident cast significant doubt upon his credibility and suggested an effort to disguise a preexisting physical condition as one which arose as a result of the current accident.

Inasmuch as the administrative law judge set forth in detail the medical opinions of Drs. Greifinger and Bahrt in his summary of the evidence, cited to the specific portions of their testimony that he ultimately relied upon, and provided a rational explanation as to why he found Dr. Greifinger's opinion entitled to greater weight, claimant's assertion that the administrative law judge's analysis of causation does not comply with the requirements of the APA is rejected. *See generally Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380 (1990); *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988) . Claimant's argument that the administrative law judge erred in failing to accord determinative weight to Dr. Bahrt's opinion is similarly without merit; the administrative law judge is not bound to accept the opinion or theory of any particular medical examiner but is free to accept or reject all or any part of any testimony as he sees fit. *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *Thompson v. Northwest Enviro Services*, 26 BRBS 53 (1992).

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[1]Dr. Greifinger testified that his opinion that fibromyalgia cannot be caused by trauma is supported by or derives from the opinion of Dr. Nortin Hadler, a professor of internal medicine and rheumatology at North Carolina, who is an expert in fibromyalgia. When asked about Dr. Nortin Hadler from North Carolina, Dr. Bahrt deposed that he did not respect Dr. Hadler's opinion, because Dr. Hadler was a general internist who has "basically stumbled" upon the field of chronic fatigue syndrome as his field of expertise and has no training in rheumatology and does not treat fibromyalgia. Cl. Ex. 10 at 63. In a subsequent letter, however, Dr. Bahrt admitted that he misspoke and was thinking of Dr. Paul Hadler, a family practitioner in Charlotte, North Carolina. Dr. Bahrt conceded that Dr. Nortin Hadler is indeed a very esteemed rheumatologist, who has written on fibromyalgia as it pertains to disability, but Dr. Bahrt maintained that upon reviewing Dr. Hadler's writings, he did not believe that they necessarily reflected the current reasoning on fibromyalgia.

We also reject claimant's argument that the administrative law judge erred in making a negative assessment of claimant's credibility based on the fact that he denied having experienced similar symptoms to those forming the basis for his claim several years earlier at the hearing. Claimant avers that in making this determination the administrative law judge failed to take into account that claimant had informed all of his physicians about a prior back injury. Inasmuch, however, as this information does not in any way negate the fact that at the hearing claimant testified untruthfully, any error which the administrative law judge may have made in this regard is harmless.

Claimant also avers that in discrediting claimant's testimony the administrative law judge erred in failing to account for the fact that Dr. Bahrt referred claimant to a neuropsychologist who reported that claimant had memory loss attributable to fibromyalgia. In making this argument, claimant mischaracterizes the results of the psychoneurological evaluation, which relates claimant's memory loss to brain trauma rather than fibromyalgia. Moreover, because the administrative law judge based his causation finding on Dr. Greifinger's opinion as well as his negative assessment of claimant's credibility, any error the administrative law judge may have made with regard to claimant's credibility, would not be determinative in any event.

The medical opinion of Dr. Greifinger, in conjunction with the administrative law judge's negative assessment of claimant's credibility, provides substantial evidence to support his finding that claimant's claimed disability due to fibromyalgia is not work- related. As claimant has failed to raise any reversible error made by the administrative law judge in evaluating the conflicting evidence and making credibility determinations, his denial of benefits is affirmed. *See Cordero v. Triple A Machine Shop,* 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge