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| LAVERGE P. FINCH |) | |
| (Widow of JASPER T. FINCH) |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | DATE ISSUED:_____ |
| INGALLS SHIPBUILDING, |) | |
| INCORPORATED |) | |
| |) | |
| Self-Insured |) | |
| Employer-Respondent |) | DECISION and ORDER |

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

John F. Dillon (Maples & Lomax, P.A.), Pascagoula, Mississippi, for claimant.

Before: DOLDER, Acting Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and LAWRENCE, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Decision and Order (88-LHC-3535) of Administrative Law Judge A.A. Simpson, Jr. denying benefits 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 administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with applicable law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Decedent worked for employer for over 18 years, and during the course of his employment, he was exposed to noise. On December 4, 1986, he underwent an audiological evaluation, which indicated he had a hearing loss. Emp. Ex. 6. Based on those results, decedent filed a claim for compensation on November 9, 1987. Jt. Ex. 1. On July 9, 1987 and December 29, 1987, decedent underwent two additional evaluations, the results of which revealed an 8.4 percent binaural impairment and a 15.31 percent binaural impairment, respectively. Emp. Ex. 7; Cl. Ex. 15.

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(1988).

A hearing was held, wherein claimant¹ and employer stipulated, *inter alia*, that the date of

the filing audiogram is December 4, 1986, and that the applicable average weekly wage is \$498.78. The parties disputed the cause, nature and extent of disability, and employer's liability for a Section 14(e), 33 U.S.C. §914(e), penalty, medical benefits, and an attorney's fee. Decision and Order at 1. First, the administrative law judge rejected Claimant's Exhibit 2, a printout of the results of decedent's initial audiological evaluation of November 17, 1986, because it failed to meet the requirements of the regulation at 20 C.F.R. §702.441.² He then considered the remainder of the medical evidence, found that claimant established a *prima facie* case for invocation of the Section 20(a), 33 U.S.C. §920(a), presumption, and determined that decedent suffered an 8.4 percent binaural impairment. Based on Dr. Lamppin's opinion, he found that employer rebutted the presumption, severing the connection between decedent's injury and his employment. Based on that same opinion, he concluded that decedent's hearing loss was not work-related, and he denied benefits. Claimant appeals the decision. Employer has not responded to this appeal. Decision and Order at 2.

Claimant contends the administrative law judge erred in finding that employer rebutted the Section 20(a) presumption. Alternatively, she contends that Dr. Lamppin's opinion does not deserve the weight given it in view of the record as a whole. She further argues that the administrative law judge erred in failing to discuss the aggravation rule, and that the facts of this case warrant application of the Board's holding in *Worthington v. Newport New Shipbuilding & Dry Dock Co.*, 18 BRBS 200 (1986).

Once the Section 20(a) presumption has been invoked, an employer may rebut it by producing facts to show that an employee's employment did not cause, aggravate or contribute to his injury. *Peterson v. General Dynamics Corp.*, 25 BRBS 71, 78 (1991), *aff'd sub nom. Insurance Company of North America v. U.S. Dept. of Labor*, 969 F.2d 1400, 26 BRBS 14 (CRT) (2d Cir. 1992), *cert. denied*, 113 S.Ct. 1253 (1993); *Obert v. John T. Clark and Son of Maryland*, 23 BRBS 157 (1990). If an employer submits substantial countervailing evidence to sever the connection between the injury and the employment, the Section 20(a) presumption no longer controls and the issue of causation must be resolved on the whole body of proof. *Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990). In this case, based on Dr. Lamppin's opinion, the administrative law judge found that employer rebutted the Section 20(a) presumption.

Dr. Lamppin reviewed decedent's December 1986 and July 1987 evaluations, and he noted that the two tests produced similar results. Emp. Ex. 7. Both audiograms indicated decedent had a mixed loss, which included nerve loss and a conductive component in his right ear, and a mixed hearing loss in his left ear. Additionally, both examiners stated that the test results were not consistent with long-term exposure to noise. *See* Emp. Exs. 6-7. After considering both evaluations, Dr. Lamppin definitively stated that decedent's hearing loss pattern is not characteristic of a noise-induced loss and that decedent's hearing loss was not caused by noise. Emp. Ex. 7. Contrary to claimant's contention, Dr. Lamppin's opinion constitutes sufficient evidence to rebut the Section 20(a) presumption. *See, e.g., Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

Because employer rebutted the presumption, the case must be determined on the whole body of proof. Claimant submitted the report of Dr. Stanfield to support her claim that decedent suffered a work-related, noise-induced hearing loss. Dr. Stanfield examined decedent on December 29, 1987. The results of that examination revealed a "mild to moderate, bilateral, sensorineural hearing involvement" with a mild conductive overlay, which Dr. Stanfield determined was caused by long-term exposure to industrial noise. Cl's Ex. 15. The administrative law judge, however, credited Dr. Lamppin's opinion, giving it greater weight because of the doctor's "superior credentials."³ Consequently, he concluded that decedent did not have a noise-induced hearing loss.

Questions of witness credibility are for the administrative law judge as the trier-of-fact. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). As the decision to credit one doctor's opinion over the other is within the fact-finder's discretion, and as the administrative law judge's decision is not inherently incredible or patently unreasonable, claimant has failed to show an abuse of discretion by the administrative law judge in crediting Dr. Lamppin's opinion over that of Dr. Stanfield. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Therefore, we reject claimant's contentions and affirm the administrative law judge's finding that decedent's hearing loss was not caused by his employment.⁴

Accordingly, the Decision and Order of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

LEONARD N. LAWRENCE
Administrative Law Judge