BRB No. 92-0296

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| JOHN COPPOLELLA | ) | |
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| Claimant-Petitioner | ) | |
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| v. | ) | |
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| MWR DEPARTMENT | ) | DATE ISSUED: |
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| and | ) | |
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| ALEXSIS, INCORPORATED | ) | |
| | ) | |
| Employer/Carrier-Respondents | ) | DECISION and ORDER |

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

David M. Linker (Freedman and Lorry, P.C.), Philadelphia, Pennsylvania, for claimant.

Stephen J. Harlen (Swartz, Campbell & Detweiler), Philadelphia, Pennsylvania, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (91-LHC-1221) of Administrative Law Judge Ralph A. Romano 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*., as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *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).

Claimant was employed as a building maintenance worker by employer at the Naval Station in Philadelphia for approximately eighteen months prior to his injury on July 20, 1989. His duties required him to perform all types of building maintenance, including painting offices, fixing air conditioning, putting in new ceilings or door frames, and servicing swimming pools and theaters. Tr. at 20-21. On July 20, 1989, a wet and humid day, claimant's initial assignment was to hang metal shelving with a co-worker. Claimant was then requested to meet the co-worker at 9 a.m. in

Building 678 to discuss removal of some equipment. Approximately one minute after entering the building, which had been closed for some time, claimant began to sweat profusely and to shake, and he experienced chest pain and discomfort.

At the hearing, the parties stipulated that claimant suffered a myocardial infarction on July 20, 1989 in the course and scope of his employment with employer. Claimant contends that his myocardial infarction, which occurred in one of employer's buildings, is work-related. Employer disputed that the myocardial infarction is work-related and refused to pay benefits.[1]

The administrative law judge found that claimant invoked the presumption contained in Section 20(a) of the Act, 33 U.S.C. §920(a), linking his myocardial infarction to his employment. The administrative law judge found further, however, that employer presented sufficient evidence to rebut the presumption, thereby requiring him to weigh the evidence as a whole. In weighing the evidence, the administrative law judge credited the opinion of Dr. Uricchio that neither the work activity of walking nor working conditions, *i.e.*, the alleged lack of oxygen, heat and humidity, were in any way responsible for claimant's myocardial infarction. The administrative law judge rejected the conflicting opinion of claimant's treating physician, Dr. Giampetro, that the lack of oxygen, and the heat and humidity in the building in which claimant was walking produced a spasm and hypoxemia which caused the myocardial infarction.

On appeal, claimant contends that the administrative law judge erred in crediting Dr. Uricchio's opinion to establish rebuttal and ultimately to deny claimant benefits inasmuch as the physician's deposition testimony when taken as a whole does not unequivocally establish that claimant's acute myocardial infarction was not causally related to his employment with employer. Employer responds that the administrative law judge's decision is supported by substantial evidence and should be affirmed.

Upon invocation of the Section 20(a) presumption, the burden shifts to employer to come forward with substantial countervailing evidence that the work injury did not cause, contribute to or accelerate the underlying condition. *See generally Rajotte v. General Dynamics Corp.*, 18 BRBS 85, 86 (1986). If employer succeeds, the presumption no longer controls and the issue of causation must be resolved based on the evidence as a whole. *Kier v. Bethlehem Steel Co.*, 16 BRBS 128, 129 (1984). In the instant case, Dr. Uricchio testified that claimant's pre-existing atherosclerosis[2] caused the circumflex artery to reach a critical narrowing that led to an inadequate amount of blood supply to claimant's heart muscle which in turn led to the development of a small heart attack. Dr. Uricchio also testified that the blockage of the coronary artery was not caused by or related to claimant's work activities. Emp. Ex. 1 at 13. He concluded that claimant's work was in no way directly or indirectly responsible for his heart attack. *Id.* at 12. Dr. Uricchio's unequivocal opinion that the myocardial infarction is not work-related is comprehensive and specific, and therefore sufficient to sever the

[1]Claimant, who has not attempted to work since July 20, 1989, retired in June 1990 and currently receives Social Security retirement benefits. Tr. at 35-36.

[2]Dr. Uricchio noted the progressive nature of atherosclerosis given the risk factors which existed, *i.e.*, claimant's smoking history and high cholesterol.

presumed connection between claimant's injury and his employment.[3] *See Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976); *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988). The administrative law judge therefore weighed the conflicting opinions of Drs. Uricchio and Giampetro and, within his discretion, accorded determinative weight to the former opinion based on Dr. Uricchio's superior qualifications[4] and the lack of specific support for Dr. Giampetro's conflicting opinion.[5] *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *Perini Corp. v. Heyde*, 306 F. Supp. 1321 (D.R.I. 1969); *see generally Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); Emp. Ex. 1 at 24-25. Consequently, we affirm the administrative law judge's finding that claimant's myocardial infarction is not work-related as it is supported by substantial evidence and in accordance with law.

[3]Contrary to claimant's contention, Dr. Uricchio's opinion was not based on an incorrect assumption that claimant told him he was asymptomatic upon walking into the building. Dr. Uricchio testified that his opinion would remain unchanged even if claimant first experienced chest pain while in Building 678. Emp. Ex. 1 at 21-22.

[4]Dr. Uricchio is Board-certified in the subspeciality of cardiovascular disease, and limits his practice to cardiovascular treatment and testing. Emp. Ex. 1, at 3, 4; Decision and Order at 4. Dr. Giampetro who is Board-certified in internal medicine, treats patients for cardiac, pulmonary and internal problems. Cl. Ex. 8 at 4-6.

[5]The administrative law judge also noted that Dr. Giampetro's partner was claimant's primary treating physician and that Dr. Giampetro had not seen claimant for at least six to eight months prior to the physician's July 1991 deposition. Cl. Ex. 8 at 20.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge