BRB No. 92-1361

JAMES FREEMAN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING	)	
AND DRY DOCK COMPANY	)	DATE ISSUED: _____
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Compensation For A Lumbar Spine Impairment, And Denying Additional Compensation For Leg Injuries of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Lee E. Wilder (Rutter & Montagna), Norfolk, Virginia, for claimant.

James M. Mesnard (Seyfarth, Shaw, Fairweather & Geraldson), Washington, D.C., for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Compensation For A Lumbar Spine Impairment, And Denying Additional Compensation For Leg Injuries (90-LHC-3121) of Administrative Law Judge Richard K. Malamphy 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 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, a grinder in employer's ship fitting department, sustained a work-related injury to his left shin on November 19, 1983, for which employer voluntarily paid temporary total and permanent partial disability benefits. Upon his return to work, claimant performed light-duty work. Claimant was subsequently terminated on January 7, 1987; however, on January 19, 1989, he was rehired by employer and assigned grinding work. Claimant complained that he was unable to perform the work due to his leg and back pain. Claimant subsequently sought compensation under the Act, contending that his back condition was the result of his November 1983 injury.

In his Decision and Order, the administrative law judge determined that employer had rebutted the presumption of causation contained in Section 20(a), 33 U.S.C. §920(a). The administrative law judge next found, based upon the record as a whole, that claimant's low back condition was not caused by the residuals of his November 1983 injury. Accordingly, the claim for benefits was denied.

On appeal, claimant challenges the administrative law judge's finding that employer rebutted the Section 20(a) presumption and that the evidence of record establishes that claimant's low back condition is unrelated to his 1983 work-injury. Employer responds, urging affirmance.

In the instant case, it is uncontroverted that claimant is entitled to the presumption at 33 U.S.C. §920(a) that his back condition is related to his employment with employer. *See Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981). Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's back condition was not caused by, contributed to, or aggravated by his employment. *Holmes v. Universal Maritime Service Corp.*, 29 BRBS 18 (1995)(Decision on Recon.); *Sam v. Loffland Brothers Co.*, 19 BRBS 228 (1987). It is employer's burden on rebuttal to present specific and comprehensive evidence sufficient to sever the causal connection between the injury and the employment. *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 injury and a claimant's employment is sufficient to rebut the presumption. *See Phillips v. Newport News Shipbuilding and Dry Dock Co.*, 22 BRBS 94 (1988). 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 based on the record as a whole. *See Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990).

Claimant initially alleges that the administrative law judge erred in finding the Section 20(a) presumption rebutted. Specifically, claimant contends that the administrative law judge erred in relying upon the 1991 opinion of Dr. Goldner. After setting forth the medical evidence of record, the administrative law judge found that the testimonies of Drs. McAdams and Goldner were sufficient to rebut the presumption. Dr. McAdams opined that claimant's bilateral leg and low back symptoms were not related to his 1983 work-related injury. *See* Employer's Exhibit 18. Dr. Goldner initially opined that a casual connection existed between claimant's back complaints and his employment; however, in August 1991, Dr. Goldner concurred with the opinion of Dr. McAdams that claimant's back pain was not related to his employment. We hold that any error committed by the administrative law judge in relying upon the testimony of Dr. Goldner is harmless, inasmuch as Dr. McAdams' unequivocal opinion that no relationship exists between claimant's low back condition and his November 1983 injury alone constitutes substantial evidence sufficient to sever the causal connection between claimant's back condition and his employment. We thus affirm the administrative law judge's finding that employer established rebuttal of the Section 20(a) presumption. *See Phillips*, 22 BRBS at 94.

Claimant next alleges that the administrative law judge erred by failing to find that causation

had been established on the record as a whole. In support of this allegation of error, claimant contends that the administrative law judge failed to consider the record as a whole in determining the issue of causation based on the entire body of proof, and that "overwhelming" medical evidence supports a finding of causation. Claimant fails, however, to cite any testimony which affirmatively links his current back condition to his 1983 injury. In the instant case, the administrative law judge concluded, based upon the record in this case, that claimant's back complaints are not related to his employment with employer. Prior to rendering this finding, the administrative law judge noted the testimony of Dr. McAdams, who opined that claimant's back symptoms were unrelated to his employment, Dr. Loxley, who reported an absence of low back findings, and Dr. Goldner, who ultimately opined that claimant's complaints were not work-related. The administrative law judge is entitled to weigh the medical evidence and draw his own inferences from it. *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 that there is no causal nexus between claimant's back complaints and his employment since that finding is rational and supported by substantial evidence in the record.

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

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge