

BRB No. 93-1618

OSCAR A. HERNANDEZ	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
AVONDALE INDUSTRIES,	)	DATE ISSUED:
INCORPORATED	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Romualdo Gonzalez and Esperanza Diaz Briscoe (Braden, Gonzalez & Ormond), New Orleans, Louisiana, for claimant.

Wayne G. Zeringue, Jr. (Jones, Walker, Waechter, Pointevent, Carrere & Denegre), New Orleans, Louisiana, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (92-LHC-1768) of Administrative Law Judge Richard D. Mills 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 July 9, 1990, claimant sustained injuries to his right arm, shoulder, and chest during the course of his employment as a welder when he attempted to hold onto a welding line that was falling overboard. Claimant initially received treatment from Dr. Mabey and Ken Tabony, a physical therapist. On August 31, 1990, claimant informed Dr. Mabey that he felt 100 percent better; Dr. Mabey therefore released to return to work without restrictions. Claimant subsequently sought treatment from Dr. Guthrie on September 18, 1990, for right shoulder pain. On October 18, 1990, Dr. Guthrie, who reported claimant as stating that he had neck pain which had commenced a week earlier and lower back pain, diagnosed cervical and lumbar strains. Claimant's neck strain was subsequently diagnosed in March 1991 by Dr. Rodriguez as a disc herniation at C6-7. Claimant

sought benefits under the Act for this injury and for his lower back pain. Employer controverted the claim, contending that claimant's cervical and lumbar conditions are not related to his July 9, 1990 work accident.

In his Decision and Order, the administrative law judge initially found that claimant was entitled to the Section 20(a), 33 U.S.C. §920(a), presumption, which employer rebutted by the testimony and reports of Dr. Mabey. The administrative law judge next found that claimant failed to establish work-related causation of his cervical and lumbar conditions based on the reports and testimony of Drs. Mabey, Garcia, and Mr. Tabony that there were no complaints of lumbar or cervical pain by claimant until October 1990, and the medical opinions of Drs. Mabey, Guthrie, Waxman and Kleinschmidt that, given the 3 month delay in the onset of claimant's complaints, his cervical and lumbar conditions are not related to the July 9, 1990, work accident. Lastly, the administrative law judge concluded that claimant's right shoulder injury reached maximum medical improvement on August 31, 1990, with no residual disability. Accordingly, claimant's claim for additional compensation under the Act was denied.

On appeal, claimant challenges the administrative law judge's finding of rebuttal of the Section 20(a) presumption, and the administrative law judge's ultimate finding that claimant's cervical and lumbar conditions are not work-related. 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. *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 contained in the record and resolve the causation issue based on the record as a whole. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990).

Claimant initially challenges the administrative law judge's finding that employer rebutted the Section 20(a) presumption. In finding rebuttal, the administrative law judge credited the medical opinion of Dr. Mabey, who unequivocally opined that claimant's cervical and lumbar conditions are not related to the July 9, 1990, accident, which he described as solely being a soft tissue injury. *See Tr.* at 171-172. 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. *See generally Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

Claimant next alleges that the administrative law judge erred by placing the burden of proof on claimant to establish work-related causation and by finding that causation was not established based on the record as a whole. We disagree. After setting forth the medical evidence of record, the administrative law judge credited the opinions of Drs. Mabey, Guthrie, Waxman and Kleinschmidt in concluding that claimant's present cervical and lumbar conditions are not related to his July 9, 1990, work accident. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir.

1978), *cert. denied*, 440 U.S. 911 (1979). It is well-established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences therefrom, and he is not bound to accept the opinion or theory of any particular medical examiner. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). In the instant case, the administrative law judge's credibility determinations regarding the medical opinions of record are reasonable. Moreover, pursuant to the decision of the United States Supreme Court in *Director, OWCP v. Greenwich Collieries*, 114 S.Ct. 251, 28 BRBS 43 (CRT)(1994), the "true doubt rule" does not apply to cases under the Act, because it violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. §556(d), which requires that the party seeking the award bear the burden of persuasion. We therefore find no error in the administrative law judge's ultimate finding that claimant failed to prove work-related causation based on the record as a whole. Accordingly, we affirm the administrative law judge's determination that claimant failed to establish that his cervical and lumbar conditions are related to his July 9, 1990, work injury.

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

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge