

STEPHEN SMITH)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BATH IRON WORKS CORPORATION)	DATE ISSUED:
)	
and)	
)	
BIRMINGHAM FIRE INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Marcia J. Cleveland (McTeague, Higbee, Libner, MacAdam, Case and Watson), Topsham, Maine, for claimant.

Jennifer A. Holbrook (Robinson, Kriger, McCallum & Greene, P.A.), Portland, Maine, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (91-LHC-0585) of Administrative Law Judge Jeffrey Tureck 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).¹ 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 with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant was exposed to asbestos from 1983 to 1988 during the course of his employment

¹The issuance of this decision renders employer's motion for an extension is moot.

for employer. A pulmonary function study conducted in March 1988 was interpreted as indicating a mild restrictive lung impairment. Claimant, who retired in 1990 for various health-related reasons, filed a claim for benefits under the Act alleging that his lung impairment is due to his work-related asbestos exposure.

In his Decision and Order, the administrative law judge initially found Birmingham Fire Insurance Company to be the responsible carrier, as claimant's last exposure to asbestos was during the period it was the insurance carrier for employer. The administrative law judge next found that claimant's lung impairment is not related to his employment; specifically, the administrative law judge determined that claimant failed to establish the existence of asbestosis and that he is therefore not entitled to the Section 20(a) presumption of compensability. 33 U.S.C. §920(a). Assuming, *arguendo*, that claimant was entitled to invocation of the Section 20(a) presumption, the administrative law judge found that the reports of Dr. Killian constitute substantial evidence to rebut the presumption, and that the reports and deposition testimony of Dr. McCann are not substantial evidence to support a finding of work-related causation. Accordingly, as claimant did not establish a work-related impairment, the administrative law judge denied the claim for benefits under the Act.

On appeal, claimant challenges the administrative law judge finding that he is not entitled to the benefit of the Section 20(a) presumption, and the administrative law judge's ultimate finding that his impairment is not work-related. Employer responds, urging affirmance.

We hold that the administrative law judge committed no reversible error in initially finding that claimant was not entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption since the administrative law judge, in an alternative analysis, applied the presumption when addressing the issue of causation. Upon invocation of the 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 asserts that the administrative law judge erred in finding the Section 20(a) presumption rebutted. We disagree. The administrative law judge determined that the testimony of Dr. Killian is sufficient to rebut the presumption. Dr. Killian stated that he found no evidence to support a finding that claimant has any disease related to asbestos exposure. *See Emp. Exs. 36, 37*. 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 alleges further that the administrative law judge erred by failing to find that causation had been established based on the record as a whole. We disagree. After setting forth the medical evidence of record, the administrative law judge implicitly credited the opinion of Dr. Killian over the opinion of Dr. McCann, noting that Dr. McCann acknowledged that claimant's x-ray and CT scan were negative for asbestosis. *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; accordingly, we affirm his determination that claimant failed to establish an impairment related to asbestos exposure.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge