BRB No. 96-0609

JAMES HERRINGTON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TARTAN TERMINALS, INCORPORATED	)	DATE ISSUED: _____
	)	
and	)	
	)	
SIGNAL ADMINISTRATION, INCORPORATED	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits of Robert S. Amery, Administrative Law Judge, United States Department of Labor.

Karl H. Goodman (Law Office of Karl H. Goodman, P.A.), Baltimore, Maryland, for claimant.

William H. Cable and Lawrence G. Giambelluca (Semmes, Bowen & Semmes), Baltimore, Maryland, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order - Awarding Benefits (94-LHC-2653) of Administrative Law Judge Robert S. Amery 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 crane operator, was injured on October 16, 1988, during the course of his employment with employer. Complaining of a left foot injury, claimant subsequently sought treatment on October 25, 1988, and was diagnosed with a soft tissue injury to his left ankle. CX 14. Claimant returned to work in February 1989 and continued to work until October 1989. HT at 50,

58. He has not worked since that time. Employer voluntarily paid temporary total disability compensation for claimant's left ankle injury from October 26, 1988 to December 1, 1988. 33 U.S.C. §908(b); EX 1. Subsequently, claimant filed a claim for benefits contending that he sustained injuries to his left knee, left foot, and back arising out of the October 1988 work-incident.

In his Decision and Order, the administrative law judge, after initially finding that claimant was entitled to the Section 20(a), 33 U.S.C. §920(a), presumption, addressed the totality of the medical evidence and concluded that only claimant's left ankle condition was causally related to the October 16, 1988, work-incident. The administrative law judge thereafter awarded claimant temporary total disability benefits from October 17, 1988 to June 5, 1990, except for the seven to eight month period during which claimant worked, and medical benefits under Section 7(a), 33 U.S.C. §907(a), for the treatment of this injury.

On appeal, claimant argues that employer failed to establish rebuttal of the Section 20(a) presumption, and asserts that his other conditions are also causally related to the October 1988 work-incident. Claimant further argues that if this causal relationship is established, then employer would be liable for related medical expenses and that a different date of maximum medical improvement would be appropriate. 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 contends that employer did not rebut the Section 20(a) presumption. We disagree. After setting forth and discussing the medical evidence of record, the administrative law judge credited the opinions of Drs. Dvorkin, Friedler, and Cohen, who found that only claimant's ankle condition was causally related to his October 1988 work accident. As these opinions constitute substantial evidence sufficient to rebut the presumption as it applies to claimant's other conditions, we reject claimant's contention that employer has failed to rebut the Section 20(a) presumption. *See generally Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

Claimant next contends that the administrative law judge erred by failing to find that causation had been established based on the record as a whole. After setting forth the medical evidence of record, the administrative law judge relied upon the opinion of Dr. Dvorkin, claimant's treating physician, rather than the opinions of Drs. Honick and Manekin, who found that claimant's

injuries are related to the October 16, 1988, work accident. In rendering this credibility determination, the administrative law judge found Dr. Dvorkin's opinion to be well-reasoned and supported by both the record and the opinions of Drs. Friedler and Cohen, while, in contrast, he noted that Drs. Honick and Manekin were not treating physicians, they did not have the benefit of all of claimant's medical records, and their opinions were rendered after Dr. Dvorkin's extended treatment and were based primarily on claimant's account of the work accident. CXS 1, 22, 38, 40 Honick depo. at 9-10, 17; EX 5-1 Manekin depo. at 8-10; HT at 23-34. 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. *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 neither inherently incredible nor patently unreasonable; accordingly, we affirm the administrative law judge's finding that claimant's injuries to his left knee, foot, and back are not work-related. *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).[1]

Claimant next asserts that the administrative law judge erred in denying his request for medical benefits for these conditions. Entitlement to medical benefits is contingent upon a finding of a causal relationship between the injury and employment. *See generally Wendler v. American National Red Cross*, 23 BRBS 408 (1990)(McGranery, J., concurring in part and dissenting in part on other grounds). Thus, in light of our affirmance of the administrative law judge's finding that no causal relationship exists between claimant's employment and any of claimant's conditions other than his left ankle, we affirm his finding that employer is not liable for medical benefits related to the treatment of claimant's other conditions.

Lastly, we reject claimant's assertion that a different date of maximum medical improvement is appropriate in the instant case; the administrative law judge rationally relied on Dr. Dvorkin's medical opinion to find that claimant's condition reached maximum medical improvement on June 5, 1990. *See generally Leone v. Sealand Terminal Corp.*, 19 BRBS 100 (1986).

[1]Contrary to claimant's contention, proof of another agency of causation is not necessary to rebut the Section 20(a) presumption. *See Todd Pacific Shipyards v. Stevens*, 722 F.2d 747 (9th Cir. 1983), *cert. denied*, 467 U.S. 1243 (1984).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge