

ROBERT FUNK)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
GLOBAL TERMINAL & CONTAINER)	DATE ISSUED:
SERVICE)	
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	
ASSOCIATION)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of James Guill, Administrative Law Judge, United States Department of Labor.

Philip J. Rooney (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

Christopher J. Field (Gallagher & Field), Jersey City, New Jersey, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (94-LHC-0494) of Administrative Law Judge James Guill 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).

Claimant, who is employed as a laborer at employer's warehouse and docks, filed a claim for benefits under the Act alleging that his hearing loss is due to his exposure to work-related noise. In his Decision and Order, the administrative law judge, after initially finding that claimant was entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption of causation, found that employer produced substantial evidence to rebut the presumption. Next, after considering the totality of the evidence, the administrative law judge concluded that claimant's hearing loss was not causally related to his work-related noise exposure. Accordingly, the administrative law judge denied claimant benefits under the Act.

On appeal, claimant challenges the administrative law judge's denial of his request for benefits, contending that the administrative law judge erred in his discussion of the evidence and in concluding that claimant failed to establish that his hearing loss arose as a result of his exposure to noise while working for employer. Employer responds, urging affirmance.

In the instant case, the administrative law judge properly invoked the Section 20(a) presumption, as he found that claimant suffered a harm, specifically a loss of hearing, and that working conditions existed which could have caused that harm. *See generally Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991). Upon invocation of the presumption, the burden shifted to employer to present specific and comprehensive evidence sufficient to sever the causal connection between claimant's hearing loss and his 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); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990). On appeal, claimant does not challenge the administrative law judge's determination that the opinions of Drs. Katz and Kramer, and the studies done by Noise Unlimited, are sufficient to rebut the presumption. *See Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988); *Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984). Thus, as the presumption was rebutted by employer, the administrative law judge was required to weigh all of the evidence contained in the record and resolve the causation issue based on the record as a whole. *See Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153 (1985); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT)(1994).

The administrative law judge next found that claimant failed to establish causation based on the record as a whole; specifically, the administrative law judge found employer's evidence on the issue of causation to be more persuasive than claimant's evidence regarding this issue. In addressing this issue, the administrative law judge credited the opinions of Dr. Katz, who is Board-certified in otolaryngology, and Dr. Kramer, a certified forensic audiologist, over those of Drs. West and Stingle. *See Decision and Order at 15-19.* Dr. Katz determined that claimant's hearing loss was not the result of noise exposure but, rather, was the result of chronic otitis media, an inflammatory process which causes tympanic thickening. Similarly, Dr. Kramer, based upon his testing of claimant's hearing,

reported that claimant's eardrums indicated old scarring or tympanal scherosis and thus opined that claimant's hearing loss is not noise-related.

In challenging the administrative law judge's findings regarding causation, claimant initially contends that the administrative law judge failed to consider Dr. West's opinion that otitis media as a child would cause only a conductive hearing loss; additionally, claimant contends that the administrative law judge erred by failing to state why the testimony of Dr. Stingle, an impartial medical examiner, was given less weight than those opinions credited by the administrative law judge. We disagree. In addressing the medical evidence of record, the administrative law judge acknowledged the opinion of Dr. West, but accorded that physician less weight based upon his finding that he did not fully account for the x-ray and physical examination evidence of record. Moreover, the administrative law judge, in addressing Dr. Stingle's testimony, stated that

The fact that Dr. Stingle is not affiliated with either party lends A [sic] inference of credibility to his findings. My primary concern with Dr. Stingle's report is that it neither notes nor discusses Claimant's tympanic thickening. . . . I would expect Dr. Stingle to have at least mentioned whether non-noise related factors potentially impacted his test results. Since he did not, I do not consider his ultimate conclusions regarding the source of Claimant's hearing loss to be compelling.

Decision and Order at 15. Thus, contrary to claimant's contention of error, the administrative law judge fully set forth and discussed the evidence relied upon by claimant.

In adjudicating a claim, it is well-established that an administrative law judge is entitled to evaluate the credibility of all witnesses, including doctors, and is not bound to accept the opinion or theory of any particular medical examiner; rather, the administrative law judge may draw his own inferences and conclusions from the evidence. See *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). In the instant case, the administrative law judge provided a rational basis for his decision to credit the opinions of Drs. Katz and Kramer over the contrary opinions of Drs. West and Stingle.¹ In fact, claimant concedes that Dr. Katz's

¹As these opinions support the conclusion that claimant's hearing loss in this case is not related to noise exposure, we need not address claimant's allegation that the administrative law judge erred in also relying on employer's evidence of compliance with the noise standards set by the Occupational Safety and Health Administration in addressing

opinion relating claimant's impairment to chronic otitis media as a child provides substantial evidence supporting the administrative law judge. We therefore affirm the administrative law judge's determination, based on the record as a whole, that claimant's present hearing loss is not causally related to his employment with employer. See, e.g., *Rochester v. George Washington University*, 30 BRBS 233 (1997).

Accordingly, the administrative law judge's decision denying compensation is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

causation.