

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 20-0502

ANNIE BEAMON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED: 03/25/2021
HUNTINGTON INGALLS INDUSTRIES, INCORPORATED)	
)	
Self-Insured Employer- Petitioner)	DECISION and ORDER

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

Charlene A. Moring (The Law Firm of Charlene A. Moring, P.C.), Norfolk, Virginia, for Claimant.

Benjamin M. Mason (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for Self-insured Employer.

Before: BOGGS, Chief Administrative Appeals Judge, ROLFE and GRESH, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge Monica Markley’s Decision and Order Denying Benefits (2017-LHC-01043, 01044) rendered on claims filed pursuant to the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (Act). We must affirm the administrative law judge’s findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant sustained work-related injuries to her right knee on March 3, 2012, and left knee on July 16, 2013. She returned to work for Employer with restrictions following each injury, though she had several periods during which her treating physician, Dr. Arthur Wardell, deemed her unfit for duty. She had a right total knee replacement in July 2015, and did not return to work after that procedure. Claimant retired in August 2016. Employer voluntarily paid Claimant periods of temporary total disability benefits,¹ permanent partial disability benefits under the schedule for a 28 percent impairment of her right lower extremity, and medical benefits for treatment relating to both knees. 33 U.S.C. §§907, 908(b), (c)(2), (19).

A dispute arose regarding Claimant's entitlement to an award of continuing total disability benefits from November 1, 2016,² as well as for ongoing treatment of her left knee. Claimant submitted the opinion of Dr. Wardell, that all of her right knee problems are attributable to her March 2012 work injury and that her July 2013 work injury caused a permanent aggravation of the asymptomatic but pre-existing osteoarthritis in her left knee. In contrast, Employer submitted the November 16, 2016 opinion of Dr. Adrian Baddar in support of its contention that neither of Claimant's knee injuries is due to her work injuries. CX 12.

The administrative law judge found Claimant established a prima facie case entitling her to the Section 20(a) presumption, 33 U.S.C. §920(a), that her right and left knee conditions during the disputed periods of disability are work-related. She found Employer rebutted the Section 20(a) presumption through Dr. Baddar's opinion and, upon weighing the record as a whole, concluded Claimant did not establish either knee condition during the claimed period is related to her 2012 and 2013 work injuries. Accordingly, she denied Claimant's claim for additional disability and medical benefits.

On appeal, Claimant challenges the administrative law judge's findings that Employer rebutted the Section 20(a) presumption and that she did not establish a causal relationship between her knee conditions and her work accidents based on the record as a whole. Employer responds, urging affirmance of the administrative law judge's denial of benefits.

¹Employer paid Claimant temporary total disability benefits from June 15 to October 30, 2012, December 6, 2012 to January 1, 2013, and July 16, 2015 to September 27, 2016. The latter period was after Claimant's right knee replacement surgery.

²Claimant alleged she is entitled to temporary total disability benefits for her right knee injury from November 1, 2016 to July 10, 2017, and thereafter to a continuing award of temporary total disability benefits for her left knee injury.

Section 20(a) - Rebuttal

Claimant contends that, contrary to the administrative law judge's finding, Dr. Baddar's opinion does not rebut the Section 20(a) presumption.

Where, as here, the claimant invokes the Section 20(a) presumption that her injury is work-related, the burden shifts to the employer to produce substantial evidence that the claimant's injury is not work-related. *Ceres Marine Terminals v. Director, OWCP [Jackson]*, 848 F.3d 115, 120-121, 50 BRBS 91, 93-94(CRT) (4th Cir. 2016). Where the claimant makes a prima facie case alleging aggravation of a pre-existing condition, "the employer may rebut with substantial evidence demonstrating that the claimant's symptoms are a natural outgrowth of, or complication of, an existing predicate condition," or with substantial evidence that the claimant's condition was not aggravated by the subsequent incident. *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 225, 43 BRBS 67, 69(CRT) (4th Cir. 2009). Employer must "put forward as much relevant factual matter as a reasonable mind would need to accept, as one rational conclusion, that the employee's injury did not arise out of his employment." *Id.*

The administrative law judge found Dr. Baddar's opinion rebuts the Section 20(a) presumption for both Claimant's right and left knee conditions. Dr. Baddar stated Claimant "suffered from bilateral knee osteoarthritis," CX 12 at 10, and opined "[t]he greatest contributing factor to this is her weight. *Id.* With respect to the right knee, he stated Claimant's work-related right knee injury reached maximum medical improvement (MMI) in November 2012 and the December 2012 flare-up was due to her underlying osteoarthritis. *Id.* at 11. The administrative law judge rationally found Dr. Baddar's opinion, when considered in its totality, constitutes substantial evidence that the work-related right knee injury Claimant sustained in March 2012 had completely resolved by November 2012 and that any continuing issues Claimant had with her right knee were attributable to her pre-existing osteoarthritis and weight, and not the work injury.³

³Contrary to Claimant's contention, it was unnecessary for the administrative law judge to weigh Dr. Baddar's opinion against Claimant's testimony and the conflicting opinion Dr. Wardell proffered, as the weighing of conflicting evidence or of the credibility of evidence "has no proper place in determining whether [Employer] met its burden of production." *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 651, 44 BRBS 47, 50(CRT) (9th Cir. 2010). "Instead, at the second step the ALJ's task is to decide, as a legal matter, whether the employer submitted evidence that could satisfy a reasonable factfinder that the claimant's injury was not work-related." *Id.*; see also *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 44 BRBS 13(CRT) (1st Cir. 2010) (the determination of whether employer produced substantial evidence is a legal judgment not dependent on credibility).

Universal Maritime Corp. v. Moore, 126 F.3d 256, 262, 31 BRBS 119, 123(CRT) (4th Cir. 1997) (evidence “casting doubt on the causative link between [work incident] and [injury]” sufficient “as a matter of law” to “drop presumption from case”). We therefore affirm the administrative law judge’s finding that Dr. Baddar’s opinion rebuts the Section 20(a) presumption with regard to Claimant’s right knee injury. *Holiday*, 591 F.3d 219, 225, 43 BRBS 67, 69(CRT); *Moore*, 126 F.3d at 262, 31 BRBS at 123(CRT).

With respect to Claimant’s left knee condition, Dr. Baddar stated Claimant’s “left knee is directly related to her weight and not related to the injury with her right knee.” CX 12 at 10-11. We hold this opinion is insufficient to rebut the Section 20(a) presumption. Unlike his discussion of Claimant’s right knee, Dr. Baddar’s November 29, 2016 opinion does not assess Claimant’s left knee condition in terms of her July 16, 2013 work injury. Dr. Baddar’s “review” of Claimant’s “left knee records” begins with the diagnostic findings of an October 2013 MRI of Claimant’s left knee and does not mention the treatment she received following her July 16, 2013 work incident.⁴ CX 12 at 5-9. While he attributes Claimant’s left knee condition to her pre-existing osteoarthritis and weight, and further indicates it is unrelated to her right knee work injury, he fails to state it is not related to her July 2013 work accident. Thus, it cannot rebut the Section 20(a) presumption because it does not address whether Claimant’s July 2013 work accident aggravated or accelerated her underlying osteoarthritis. *Holiday*, 591 F.3d 219, 43 BRBS 67(CRT) (Where aggravation is raised, the evidence an employer offers on rebuttal must address aggravation). For these reasons, we hold Dr. Baddar’s opinion is insufficient as a matter of law to rebut the Section 20(a) presumption. *See Holiday*, 590 F.3d at 226, 43 BRBS at 69-70(CRT); *Burley v. Tidewater Temps, Inc.*, 35 BRBS 185, 189 (2002).

As there are no medical reports stating Claimant’s present left knee condition was not caused, contributed to, or aggravated by her July 16, 2013 work injury, we reverse the administrative law judge’s finding that Employer rebutted the Section 20(a) presumption with regard to Claimant’s left knee condition. *Id.* Claimant’s left knee condition is compensable as a matter of law. *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988). We remand the case for consideration of the remaining issues pertinent to Claimant’s entitlement to benefits for that condition.

⁴The record reflects Claimant sought treatment of her work-related left knee injury from Dr. Wardell on July 18, August 22, September 23, and October 23, 2013 – all of which predated the October 29, 2013 MRI. CX 9. Dr. Wardell’s treatment records reflect an initial diagnosis on July 18, 2013, of an internal derangement, which he ultimately opined permanently aggravated an asymptomatic but pre-existing osteoarthritis condition of Claimant’s left knee.

Weighing the Record as a Whole on Causation – Right Knee

Claimant contends the administrative law judge erred by finding, based on the record as a whole, that her disabling right knee condition is not related to her March 2012 work accident. She contends the administrative law judge improperly assigned little weight to the credible and well supported medical opinion of Dr. Wardell. Cl. Br. at 30.

If the administrative law judge finds the Section 20(a) presumption rebutted, the issue of causation must be resolved on the record as a whole, with the claimant bearing the burden of establishing, by a preponderance of the evidence, a causal relationship between the work accident and her injury. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). It is well established that an administrative law judge is entitled to weigh the medical evidence and to draw her own inferences therefrom. *See, e.g., Newport News Shipbuilding & Dry Dock Co. v. Cherry*, 326 F.3d 449, 37 BRBS 6(CRT) (4th Cir. 2003). Moreover, it is impermissible for the Board to reweigh the evidence or substitute its own views for those of the administrative law judge. *See, e.g., Pittman Mechanical Contractors, Inc. v. Director, OWCP*, 35 F.3d 122, 28 BRBS 89(CRT) (4th Cir. 1994).

The administrative law judge's finding that Claimant did not establish her disabling right knee condition was related to her March 5, 2012 work accident is based on a rational weighing of the medical evidence and is supported by substantial evidence in the form of Dr. Baddar's opinion. *See generally Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 21 BRBS 10(CRT) (4th Cir. 1988). The administrative law judge thoroughly addressed all the relevant evidence pertaining to Claimant's right knee injury, including the circumstances of Claimant's March 3, 2012 work accident, her treatment records, and the opinions of Drs. Baddar and Wardell. *See* Decision and Order at 4-11, 15-20. Her review also encompassed Claimant's testimony, including her statements regarding the physical requirements of her job, that she has always been the same weight and had never had any problems performing that work at her weight, and that she had never encountered any issues with her right knee prior to her March 3, 2012 work injury.⁵ Decision and Order at 5 (citing HT at 18, 19), 6 (citing EX 4 at 4, 6, 25-26).

Dr. Baddar opined Claimant suffered from bilateral knee osteoarthritis, weight/obesity "is the single largest contributing factor to osteoarthritis," and "[t]he injury

⁵Thus, contrary to Claimant's contention, the administrative law judge adequately addressed Claimant's testimony regarding her pre-injury working conditions, as well as the lack of any pre-existing problems.

to her right knee back on March 3, 2012 did not contribute in any significant way to her arthritis.” CX 12 at 10. He further opined that Claimant’s right knee was at maximum medical improvement three months after her July 24, 2012 arthroscopy and explained that while the medical records indicated Claimant had a flare-up of right knee pain in December 2012 from increased activity on that knee, the flare-up “is related to the worsening arthritis in her knee, which she was at high risk for given her body size weight.” *Id.* The administrative law judge accorded greatest weight to Dr. Baddar’s conclusions as they are “better supported by the medical evidence and better explained by his discussion of the interplay between osteoarthritis and obesity.” Decision and Order at 27. In contrast, she accorded “little weight” to Dr. Wardell’s “blanket unexplained statements and conclusions” that Claimant’s present right knee condition is the result of a permanent work-related aggravation of her pre-existing asymptomatic right knee arthritis as she found them unsupported by the medical evidence. *Id.*

Contrary to Claimant’s argument, Dr. Wardell is not more “qualified” than Dr. Baddar.⁶ *See generally Stiltner v. Island Creek Coal Co.*, 86 F.3d 337 (4th Cir. 1996); *Doss v. Director, OWCP*, 53 F.3d 654 (4th Cir. 1995). Moreover, the administrative law judge is not required to accord determinative weight to Dr. Wardell’s opinion merely because he is Claimant’s treating physician. The administrative law judge is entitled to determine which opinions are entitled to determinative weight based on their reasoning. *See, e.g., Pisaturo v. Logistec, Inc.*, 49 BRBS 77 (2015) (affirming the crediting of the employer’s medical expert over claimant’s treating physician as the latter’s opinion was not well reasoned); *see also Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1097, (4th Cir. 1993). Thus, contrary to Claimant’s contentions, the administrative law judge sufficiently discussed all the relevant evidence and rationally concluded, based on Dr. Baddar’s opinion, that Claimant’s present right knee condition is not work-related. As it is supported by substantial evidence, we affirm the administrative law judge’s determination that Claimant did not meet her burden of establishing a causal relationship between her disabling right knee condition and her work injury for the period from November 1, 2016 to July 10, 2017. *See Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Hice v. Director, OWCP*, 48 F. Supp. 2d 501 (D. Md. 1999); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000). Consequently, we affirm the administrative law judge’s denial of disability benefits for Claimant’s right knee injury from November 1, 2016 to July 10, 2017.

⁶The administrative law judge recognized that Dr. Wardell is board certified in orthopedics, Decision and Order at 16, n.5 (citing CX 16 at 4), and that Dr. Baddar is board certified in orthopedic surgery, *id.* at 15, n.4 (citing EXs 6, 7).

Accordingly, we reverse the administrative law judge's finding that Employer rebutted the Section 20(a) presumption with regard to Claimant's left knee condition and hold it is work-related as a matter of law. We vacate the denial of benefits for that condition and remand the case for consideration of any remaining issues pertaining to Claimant's left knee injury. In all other regards, we affirm the administrative law judge's decision.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge