BRB No. 12-0375

WILLIE R. CUNNINGHAM	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
HUNTINGTON INGALLS INCORPORATED	)	DATE ISSUED: 03/18/2013
	)	
	)	
Self-Insured Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-In-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

Willie R. Cunningham, Sr., Newport News, Virginia, *pro se.*

Jonathan H. Walker (Mason, Mason, Walker and Hedrick, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (2009-LHC-01861) of Administrative Law Judge Daniel A. Sarno, Jr., 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). In an appeal by a claimant without representation by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law to determine if they are rational,

supported by substantial evidence, and in accordance with law. If they are, they must be affirmed. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On February 20, 1995, claimant, who had previously been diagnosed with degenerative disc disease, sustained an injury to his back while working for employer as a shipfitter. Claimant sought and received medical care following this incident, returned to work for employer, and remained employed until May 1999 when he left work due to a right ankle injury. Claimant sought permanent partial disability benefits commencing in May 1999, alleging that his back complaints and restrictions are related to his February 20, 1995, work injury.

The parties stipulated before the administrative law judge that claimant had sustained a work-related injury to his back on February 20, 1995, but they disagreed whether claimant's present condition is related to that injury. In his Decision and Order, the administrative law judge applied Section 20(a), 33 U.S.C. §920(a), to presume that claimant's post-May 1999 back condition is related to his February 20, 1995 work incident, found that employer established rebuttal of the Section 20(a) presumption, and determined that, on the record as a whole, claimant's post-May 1999 back symptoms are not related to his February 1995 work injury. Accordingly, the administrative law judge denied claimant's claim for ongoing permanent partial disability benefits.

On appeal, claimant, representing himself, challenges the administrative law judge's denial of his claim for benefits under the Act. Employer responds, urging affirmance of the administrative law judge's decision in its entirety.

In his Decision and Order, the administrative law judge invoked the Section 20(a) presumption based on findings that claimant suffered a harm, specifically back pain, and the existence of an accident at work, specifically the undisputed February 20, 1995, incident, which could have caused that condition. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996). The burden then shifted to employer to rebut the presumed causal connection with substantial evidence that claimant's injury was not caused or aggravated by his employment. *See Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009). If the administrative law judge finds that the Section 20(a) presumption is rebutted, it no longer controls, and the issue of causation must be resolved on the evidence of record as a whole, with claimant bearing the burden of persuasion. *See 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).

The administrative law judge found that employer established rebuttal of the Section 20(a) presumption based on the reports of Drs. Swenson, Neal and Kerner. In this regard, the administrative law judge stated that Dr. Swenson, the physician who treated claimant following his February 20, 1995, work injury, opined that that injury was more probably than not a temporary exacerbation that had resolved. Decision and Order at 14; EX 22. The administrative law judge found that Dr. Neal, who conducted a neurological examination of claimant in August 1996, similarly opined that claimant had had an adequate length of time to recover from a low back muscular strain imposed on his pre-existing degenerative arthritic spine and that claimant had no work restrictions. Decision and Order at 15; EX 17. Lastly, the administrative law judge found that Dr. Kerner, who commenced treating claimant in October 2000 and who reviewed claimant's medical records, opined that claimant's February 20, 1995, work injury was a minor aggravation of claimant's degenerative lumbar back changes, that claimant's pain had resolved, and that he could find no evidence of an acute injury to claimant's back. Decision and Order at 15; EX 24. The administrative law judge rationally found that these opinions constitute substantial evidence that claimant's current back complaints are not related to the February 20, 1995, work incident. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT). Therefore, we affirm the administrative law judge's finding that the Section 20(a) presumption was rebutted. *Id.*

The administrative law judge proceeded to weigh the relevant evidence and he concluded that claimant's 1995 work injury resulted in only a temporary aggravation of his underlying degenerative back condition which had resolved and did not cause claimant's post-May 1999 back symptoms. Decision and Order at 15-17. The administrative law judge specifically found that Dr. Swenson opined that claimant's February 20, 1995 injury was probably a temporary aggravation that resolved, that Dr. Swenson removed claimant's work restrictions as of March 3, 1997, and that claimant did not seek medical treatment for his back condition between March 1997 and June 13, 2000. *Id.* at 15-16. The administrative law judge further found that Dr. Kerner similarly concluded in his revised opinion that claimant's 1995 work injury was only a minor aggravation of low back pain secondary to degenerative lumbar changes. *Id.* at 16-17. The administrative law judge also found that none of the doctors stated that claimant's post-May 1999 back complaints are a result, or due to an aggravation, of claimant's February 20, 1995, work injury. Therefore, the administrative law judge concluded that claimant's back condition is not compensable.

It is well-established that an administrative law judge is entitled to weigh the medical evidence and to draw his own inferences therefrom. *See Newport News Shipbuilding & Dry Dock Co. v. Cherry*, 326 F.3d 449, 37 BRBS 7(CRT) (4th Cir. 2003); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). In this case, the administrative law judge properly found that there is no medical evidence relating claimant's condition, in fact, to the 1995 injury, and he rationally concluded that the

evidence does not support a finding that claimant's injury resulted in anything more than a temporary aggravation of his underlying back condition. Thus, as it is supported by substantial evidence, we affirm the administrative law judge's finding that claimant did not establish that his post-May 1999 back condition is related to his 1995 employment injury, as well as the consequent denial of benefits. *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171 (2001); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000); *Rochester v. George Washington Univ.*, 30 BRBS 233 (1997).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge