U.S. Department of Labor

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

BRB No. 18-0531

DAVID COLLINS	)	
	)	
Claimant-Petitioner	)	
	)	DATE ISSUED: 03/07/2019
v.	)	
	)	
ELECTRIC BOAT CORPORATION	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Timothy J. McGrath, Administrative Law Judge, United States Department of Labor.

Aida R. Carini (Embry and Neusner), Groton, Connecticut, for claimant.

Edward W. Murphy (Morrison Mahoney LLP), Boston, Massachusetts, for self-insured employer.

Before: BUZZARD, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2017-LHC-00770) of Administrative Law Judge Timothy J. McGrath 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 administrative law judge's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant began working for employer in 1968 as an outside machinist in new construction. Tr. at 13. He testified there was "brown dust in the air that [] would get into

your nose," from the welding, grinding, and burning. *Id.* at 16. He was not provided with a respirator and the ventilation in the ship was poor. *See id.* at 16-17.

Claimant briefly left this employment in 1972 but returned to work for employer in 1973, doing overhaul work, which involved cleaning and repairing valve parts using cleaning fluids and solvents. He worked without protective equipment for about 20 years but employer eventually issued safety glasses, a hardhat, gloves, and boots. Tr. at 19. He used a paper dust mask starting in the late 1970s, which he described as one that "will keep heavy dust out, but it won't keep fine particles out or the fumes of solvents." *Id.* at 37. Claimant retired in 2014.

Claimant testified he started smoking, at most, approximately ten packs of cigarettes per week, at the age of 15. Tr. at 30. At the time of the hearing, he stated he smoked a little more than one-half pack of cigarettes each day. *Id.* at 38-39.

Claimant's pulmonologist, Dr. Keltner, diagnosed him in 2015 with chronic obstructive pulmonary disease (COPD) and obstructive airways disease. CX 1. Dr. Keltner also noted claimant's pulmonary function tests show he suffers from emphysema. CX 4 at 16-17. Dr. Keltner opined the majority of claimant's condition stems from his cigarette smoking but "an additive factor probably was his many years of exposure to some of the inhaled irritants at Electric Boat." *Id.* at 11.

Claimant filed a claim for benefits for his COPD.[1] The administrative law judge found claimant established a prima facie case entitling him to the Section 20(a) presumption, 33 U.S.C. §920(a), that his COPD is related to his work exposures. Decision and Order at 10. He found that employer rebutted the Section 20(a) presumption with the opinion of Dr. Teiger. *Id.* at 11 (citing EX 2). In weighing the evidence as a whole, he concluded claimant did not meet his burden of proving his work exposures caused or aggravated his COPD and therefore denied benefits. *Id.* at 15.

On appeal, claimant contends the administrative law judge erred in finding Dr. Teiger's opinion sufficient to rebut the Section 20(a) presumption and in concluding claimant did not establish a causal relationship between his COPD and his work exposures. Employer filed a response, urging affirmance.

In determining whether an injury is work-related, a claimant invokes the Section 20(a) presumption after he establishes a prima facie case. *American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001). In order to make a prima facie

[1] Claimant did not allege that he retired due to his lung condition. Tr. at 28, 32.

case, a claimant must show: (1) he sustained an injury; and (2) conditions existed at work which could have caused, aggravated, or accelerated the injury. *Rainey v. Director, OWCP,* 517 F.3d 632, 42 BRBS 11(CRT) (2d Cir. 2008). Once claimant invokes the Section 20(a) presumption, the burden shifts to employer to rebut it by producing substantial evidence that the injury was not caused or aggravated by claimant's working conditions. *Id.*, 517 F.3d at 634, 42 BRBS at 12(CRT). Employer satisfies its burden by producing "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.*, 517 F.3d at 637, 42 BRBS at 14(CRT); *see also American Grain Trimmers, Inc. v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999); *Sprague v. Director, OWCP*, 688 F.2d 862, 865, 15 BRBS 11(CRT) (1st Cir. 1982). If employer rebuts the presumption, it falls out of the case and claimant bears the burden of establishing working conditions caused his injury based on the record as a whole. *Marinelli*, 248 F.3d at 65, 35 BRBS at 49(CRT).

The administrative law judge found claimant established a prima facie case relating his COPD to his employment through his credible testimony about his exposure to dust and other irritants and the opinion of Dr. Keltner that working conditions aggravated his COPD. Decision and Order at 10. He found, however, that employer rebutted the Section 20(a) presumption with the opinion of Dr. Teiger that claimant's COPD was due solely to smoking. *Id.* at 11. Weighing the evidence as a whole, the administrative law judge concluded Dr. Keltner's opinion was not entitled to great weight. *Id.* at 12-13. In contrast, he found Dr. Teiger's opinion "particularly compelling." *Id.* at 14. He thus concluded claimant did not meet his burden to establish working conditions contributed to or aggravated his COPD and he denied the claim. *Id.* at 15.

Claimant contends the administrative law judge erred in finding Dr. Teiger's opinion sufficient to rebut the Section 20(a) presumption because Dr. Teiger stated that any effect claimant's working conditions had on his COPD was "trivial," but did not absolutely sever any causal connection between claimant's COPD and his work.

We reject claimant's contention that Dr. Teiger's opinion is insufficient to rebut the Section 20(a) presumption. An employer is not required to rule out any possible causal relationship between claimant's employment and his injury. *See, e.g., Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); *Bath Iron Works Corp. v. Director, OWCP [Shorette]*, 109 F.3d 53, 31 BRBS 19(CRT) (1st Cir. 1997). Dr. Teiger opined that "the cause of Mr. Collins' COPD is entirely due to his very heavy usage of tobacco over many years." EX 2 at 17, 20. When questioned about the possibility claimant's working conditions contributed to his COPD, Dr. Teiger acknowledged "[i]t's always possible to talk about the theoretical small possibility of contribution, but from a medical point of view that becomes logically unhelpful. . . ." *Id.* at 20.

Contrary to claimant's contention, Dr. Teiger's acknowledgement of a theoretical possibility of contribution does not render his opinion equivocal. Because "'absolute certainty' is a difficult concept in the medical profession," an opinion rendered within a reasonable degree of certainty sufficiently rebuts the presumption. *See O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 42 (2000). Dr. Teiger stated, to a reasonable degree of medical certainty, smoking alone caused claimant's COPD. The administrative law judge therefore rationally concluded Dr. Teiger's opinion constitutes substantial evidence claimant's working conditions did not cause or contribute to his COPD. We thus affirm the administrative law judge's finding as supported by substantial evidence and in accordance with the law. *Bath Iron Works Corp. v. Director, OWCP [Harford]*, 137 F.3d 673, 32 BRBS 45(CRT) (1st Cir. 1998).

We next address claimant's challenge to the administrative law judge's conclusion on the record as a whole. The administrative law judge gave less weight to Dr. Keltner's opinion, noting Dr. Keltner did not cite any studies or provide analysis of the causal relationship between claimant's exposures and his objective pulmonary test results. Decision and Order at 13. He further found Dr. Teiger's opinion more persuasive because he discussed claimant's test results about his lung function and "explained how those findings support that Claimant's permanent lung impairment is entirely due to long-term tobacco use." *Id.* at 14. The administrative law judge thus concluded claimant did not meet his burden and denied benefits. *See id.* at 15.

Claimant essentially asks the Board to reweigh the evidence, which it is not empowered to do. *See Sprague,* 688 F.2d at 865-866, 15 BRBS at 11(CRT). An administrative law judge is entitled to weigh the evidence and draw his own inferences and conclusions, *Mendoza v. Marine Personnel Co, Inc.*, 46 F.3d 498, 29 BRBS 79(CRT) (5th Cir. 1995), including whether to accept or reject medical testimony. *See Perini Corp. v. Heyde*, 306 F. Supp. 1321 (D.R.I. 1969). The administrative law judge rationally explained his reasons for giving less weight to Dr. Keltner's opinion. He also noted Dr. Keltner conceded claimant's smoking could be the sole cause of his lung condition. Decision and Order at 13. We thus affirm the administrative law judge's finding that claimant did not establish his COPD is work-related as supported by substantial evidence. *See Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171 (2001).

Accordingly, we affirm the administrative law judge's Decision and Order Denying Benefits.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge