U.S. Department of Labor

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

BRB Nos. 18-0013
and 18-0013A

MIKE WILDER	)	
	)	
Claimant-Respondent	)	
Cross-Petitioner	)	
	)	
v.	)	DATE ISSUED: 10/30/2018
	)	
LONG BEACH CONTAINER TERMINAL	)	
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION	)	
	)	
Employer/Carrier-Respondents	)	
	)	
PORTS AMERICA	)	
	)	
and	)	
	)	
PORTS INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	
Cross-Respondents	)	DECISION and ORDER

Appeals of the Decision and Order Denying Compensation Benefits and Awarding Medical Benefits of William J. King, Administrative Law Judge, United States Department of Labor.

Lara D. Merrigan (Merrigan Legal), San Rafael, California, Joshua T. Gillelan II (Longshore Claimants' National Law Center), Washington, D.C., and Eric A. Dupree and Paul Myers, Coronado, California, for claimant.
David L. Doeling (Aleccia & Mitani), Long Beach, California, for Long Beach Container Terminal and Signal Mutual Indemnity Association.
David Utley (Samuelsen, Gonzalez, Valenzuela & Brown, LLP), San Pedro, California, for Ports America and Ports Insurance Company.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Ports America (PA) appeals, and claimant cross-appeals, the Decision and Order Denying Compensation Benefits and Awarding Medical Benefits (2015-LHC-01732, 2016-LHCA-00727) of William J. King 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 allegedly sustained cumulative traumatic injuries to his right knee in the course of his work as a UTR driver with PA through February 2009 and subsequently as a hatch clerk with Long Beach Container Terminal (LBCT) through March 23, 2009, when he first stopped working due to worsening pain. In April 2009, Dr. Malekafazli ordered an MRI which showed arthritis and a chronic tear of the anterior cruciate ligament (ACL) consistent with a prior knee injury/surgical procedure,[1] as well as marked degeneration of the medial meniscus and a large Baker's cyst containing multiple loose bodies. On September 4, 2009, claimant underwent surgery to remove the cyst and loose bodies and to repair defects to his right knee joint. Claimant received disability benefits from the State of California while he was off work. HT at 49.

Claimant returned to full-duty longshore union work without limitations on January 16, 2010. He continued to work in that capacity, which included driving UTRs for PA,

[1]Sometime around 1988, claimant had arthroscopic surgery for a right knee injury he sustained as a result of a skateboard accident. HT at 34. Claimant tore his anterior cruciate ligament in the accident but apparently that condition was not repaired during the surgery.

until he sustained a work-related cumulative trauma neck injury on February 26, 2012, a diagnosis confirmed by Dr. Malekafazli on April 9, 2012.[2] Claimant underwent a cervical spine fusion and returned to work on February 19, 2013, under an Americans with Disabilities Act (ADA) accommodation for his neck that precludes him from working as a hatch clerk and/or a UTR driver. Claimant stated he has since worked as a floor runner, which is "keeping [him] painless." HT at 62-63.

On November 5, 2014, and January 20, 2016, claimant filed claims against, respectively, LBCT and PA for the 2009 right knee injury. Claimant maintained that his 2009 cumulative trauma injury consisted of aggravations of his 1988 right knee condition from working as a hatch clerk with LBCT and as a UTR driver with PA. Claimant later added a claim against PA for benefits for a scheduled right knee impairment and medical benefits resulting from cumulative trauma allegedly incurred from driving UTRs from January 2010 until February 2012, a claim to which LBCT successfully sought to be joined.

In his Decision and Order, the administrative law judge found claimant's claim for disability benefits for his right knee condition barred by Section 12 of the Act because claimant did not provide timely notice to LBCT or PA of the 2009 injury pursuant to Section 12(a), and his failure to do so was not excused under Section 12(d). 33 U.S.C. §912(a), (d). The administrative law judge also found the claims were untimely filed pursuant to Section 13(a) of the Act, 33 U.S.C. §913(a). The administrative law judge thus denied disability benefits for claimant's alleged work-related right knee injury. The administrative law judge, however, found claimant entitled to medical benefits arising out of his right knee cumulative trauma sustained while working for PA through February 2009. He ordered PA to pay claimant medical benefits for his February 2009 work-related right knee injury. The administrative law judge also found that claimant did not sustain a work-related cumulative trauma knee injury from January 2010 through February 2012.

On appeal, PA challenges the administrative law judge's finding that it, rather than LBCT, is liable for medical benefits for claimant's 2009 right knee injury. BRB No. 18-0013. LBCT responds, urging affirmance of the administrative law judge's finding that PA is liable for claimant's medical benefits relating to his 2009 right knee injury. In a consolidated brief, claimant responds in support of PA's position on appeal, and contends in support of his cross-appeal that the administrative law judge erred in denying his claims for disability benefits as untimely and in finding that his 2009 right knee condition was not aggravated by his work with PA from January 2010 through February 2012, such that PA

[2]In 2012, claimant filed a claim for a neck injury against PA based upon cumulative trauma related to his driving UTRs. This claim was not before the administrative law judge.

is liable for benefits after that date. BRB No. 18-0013A. LBCT responds, urging affirmance of the administrative law judge's denial of claimant's claims for disability benefits. Claimant has filed a reply.

Claimant's Cross-Appeal/Sections 12 and 13 Awareness

Claimant appeals the finding that his notices of injury and claims for compensation were untimely filed. He contends it is irrational for the administrative law judge to find he "should have known" that his right knee condition is work-related when the opinions of his treating physician, Dr. Malekafazli, and of employer's medical expert, Dr. Reff, establish the lack of any such causal connection. Claimant avers that these facts, in accordance with *SSA Terminals v. Carrion*, 821 F.3d 1168, 50 BRBS 61(CRT) (9th Cir. 2016), establish that he was not "aware of the full character, extent, and impact of the harm done to him" until 2014, when he realized, with his attorney's assistance, that his work in 2009 for LBCT and PA caused a cumulative trauma knee injury resulting in an impairment of his earning power.

Section 12(a) of the Act, 33 U.S.C. §912(a), requires that claimant must, in a traumatic injury case, give employer written notice of his injury within 30 days of the injury or of the date claimant is aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the injury and his employment.[3] *Todd Shipyards Corp. v. Allan*, 666 F.2d 399, 14 BRBS 427 (9th Cir.), *cert. denied*, 459 U.S. 1034 (1982). Section 13(a) states, in relevant part:

> Except as otherwise provided in this section, the right to compensation for disability or death benefits under this chapter shall be barred unless a claim therefore is filed within one year after the injury or death . . . . The time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment.

33 U.S.C. §913(a). In the absence of substantial evidence to the contrary, it is presumed, pursuant to Section 20(b) of the Act, 33 U.S.C. §920(b), that employer has been given sufficient notice of the injury and that claimant timely filed his claim. *See Lucas v. Louisiana Ins. Guaranty Ass'n*, 28 BRBS 1 (1994). "Awareness" in a traumatic injury case occurs when the claimant is aware, or should have been aware, of the relationship between the injury, the employment, and an impairment of his earning power, and not necessarily

[3]Claimant's written notices of injury in this case were the claim forms filed in 2014 and 2016.

on the date of the accident, or in this repetitive trauma case, the date of the last trauma. *See Abel v. Director, OWCP*, 932 F.2d 819, 24 BRBS 130(CRT) (9th Cir. 1991); *J.M. Martinac Shipbuilding v. Director, OWCP*, 900 F.2d 180, 23 BRBS 127(CRT) (9th Cir. 1990). A claimant's awareness of the work-relatedness of his injury can arise prior to his being so informed by a physician. *Ceres Gulf, Inc. v. Director, OWCP*, 111 F.3d 17, 31 BRBS 21(CRT) (5th Cir. 1997); *Wendler v. American Red Cross*, 23 BRBS 408 (1990) (McGranery, J., concurring and dissenting).

In *Carrion*, 821 F.3d 1168, 50 BRBS 61(CRT), the United States Court of Appeals for the Ninth Circuit, within whose jurisdiction this case arises, affirmed the finding that the claimant's claim against SSA, the second employer, was timely filed. In reaching this conclusion, the Ninth Circuit stated the claimant was not "aware of the full character, extent, and impact of the harm done to him" until he appreciated that his work for the last employer, SSA, caused a cumulative trauma knee injury resulting in an impairment of his earning power. The court stated that the claimant's pain and ongoing medical treatment since the time of the first injury were insufficient to put him on notice that he had suffered a cumulative trauma injury, particularly in view of the first employer's continued payment of his medical bills and a doctor's statement that he had never explained the concept of cumulative trauma to claimant.

The administrative law judge found claimant knew of the existence of his right knee injury in 2009 when he required surgery. Decision and Order at 8. The administrative law judge next found claimant was aware or should have been aware of the relationship between his work and the right knee problem in April 2012 when Dr. Malekafazli explained to claimant how cumulative trauma works with regard to claimant's February 26, 2012 neck injury. *Id.* at 8-9. The administrative law judge found that once claimant "understood" the work-relatedness of his neck problems, he should have known that the work-related 2009 right knee problem caused his loss of earning capacity following surgery. *Id.* at 9. The administrative law judge thus concluded that, since claimant's claims were filed in 2014 and 2016, more than 30 days and one year after the 2012 date of awareness, he did not timely give notice to LBCT or PA of his 2012 right knee injury under Section 12(a) or file timely claims against them under Section 13(a). *Id.* at 8, 10.

The administrative law judge premised his awareness finding on his supposition that all cumulative trauma, regardless of the body part, is essentially the same, and his further inference that claimant should have understood this concept from his discussions with Dr. Malekafazli regarding his neck injury. Decision and Order at 8. The administrative law judge imputed awareness to claimant that his 2009 right knee condition was also due to cumulative trauma sustained in the course his work from Dr. Malekafazli's 2012 opinion tying claimant's neck condition to cumulative trauma. The administrative law judge did not sufficiently explain how claimant should have understood this concept, however, in

view of medical evidence stating that claimant's right knee condition is not work-related at all.

In his report dated June 23, 2014, Dr. Malekafazli stated "[t]he patient was my patient for severe arthritis to his knee, which was treated with a satisfactory result. *This knee condition was not related to an industrial accident*, nor related to his [work-related] cervical spine condition." LBCTX 15 (emphasis added).[4] Similarly, Dr. Reff, in his June 17, 2016 report, opined that claimant's "current knee pain, knee deformity and associated disability is entirely related to a natural history of a knee with severe internal derangement as was the case after the 1988 [non-work-related] injury." PAX 3. While claimant stated that he generally became aware of what a cumulative trauma injury was "when I spoke to [Dr. Malekafazli] on the date of the [neck] injury," which "I'm going to say it's in 2012 before my [spine] surgery," LBCTX 11, Dep. at 56-58, he also stated the cumulative trauma injury discussion he had with Dr. Malekafazli was limited only to his neck condition and that, at that time, it "didn't cross my mind" that his prior right knee condition could also have been the result of a cumulative trauma work injury. *Id.*, Dep. at 59-60. Claimant also answered "no" when asked whether he thought he should have been aware in 2012 of the fact that he had a cumulative trauma right knee injury. *Id.*, Dep. at 61.

There is also evidence, however, that claimant was aware of a cumulative trauma injury to his right knee. He testified that his driving of UTRs "aggravated his knee," HT at 86, 88, and that he told his co-workers and bosses in early 2009 that he was having right knee problems as a result of operating UTRs. LBCTX 11, Dep. at 34-35; HT at 81-82. This evidence is relevant to claimant's date of awareness of the relationship between his knee injury, work, and disability. *See generally Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP* [*Jenkins*], 583 F.2d 1273, 8 BRBS 723 (4th Cir. 1978), *cert. denied*, 440 U.S. 915 (1979); *Cooper Stevedoring, Inc. v. Washington*, 556 F.2d 268, 6 BRBS 324 (5th Cir. 1977); *Bivens v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 233 (1990); *Pittman v. Jeffboat, Inc.*, 18 BRBS 212 (1986); *see also Ceres Gulf, Inc. v. Director, OWCP*, 111 F.3d 17, 31 BRBS 21(CRT) (5th Cir. 1997) (a claimant's awareness of the work-relatedness of his injury can arise prior to his being so informed by a physician).

[4]This report supports claimant's testimony that Dr. Malekafazli certified claimant's 2009 right knee disability as non-industrial. HT at 49. In this regard, claimant contends that the fact that Dr. Malekafazli certified his right knee condition as not work-related but opined that claimant's neck condition was work-related supports a finding that he should not have been aware in 2009 or 2012 of the causal connection between his work for employer and his right knee condition.

The Administrative Procedure Act (APA) requires that every adjudicatory decision include a statement of "findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented in the record." 5 U.S.C. §557(c)(3)(A); *see* 33 U.S.C. §919(d). Thus, the administrative law judge must adequately detail the rationale behind his decision and specify the evidence upon which he relies. *See Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996); *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380 (1990); *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988). As the administrative law judge did not adequately explain his inferences or the conclusions drawn therefrom, in light of the conflicting evidence of record, we vacate his finding regarding claimant's date of awareness for purposes of Sections 12(a) and 13(a) and remand for reconsideration of this issue in light of all the relevant evidence of record.

Section 12(d)

In the interest of judicial economy, we address claimant's contentions relating to the Act's excusing and tolling provisions. Failure to provide timely written notice under Section 12(a) bars a claim unless the untimely filing is excused under Section 12(d), 33 U.S.C. §912(d). *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004). Claimant's failure to provide timely written notice of injury may be excused for any of three reasons: "(a) The employer, carrier, or designated official had actual knowledge of the injury or death; or (b) the district director or ALJ determines the employer or carrier has not been prejudiced: or (c) the district director excuses failure to file notice." 20 C.F.R. §702.216.[5] Pursuant to Section 20(b), 33 U.S.C. §920(b), an employer bears the burden of showing that an excusing provision applies. *Steed v. Container Stevedoring Co.*, 25 BRBS 210 (1991); *Shaller v. Cramp Shipbuilding & Dry Dock Co.*, 23 BRBS 140 (1989). Knowledge under Section 12(d)(1) requires that the employer know of the fact of injury, as well as that it is work-related. *Addison v. Ryan-Walsh Stevedoring Co.*, 22 BRBS 32 (1989). The implementing regulation states that "actual knowledge" of the injury "is deemed to exist if the employee's immediate supervisor was aware of the injury. . . ." 20 C.F.R. §702.216.

Claimant correctly asserts that the administrative law judge did not address whether employer had knowledge of claimant's right knee injury pursuant to Section 12(d)(1).[6]

[5]There is no evidence that the district director excused claimant's failure to file his notice in this case. 33 U.S.C. §912(d)(3).

[6]The administrative law judge's discussion of the excusing provisions of 33 U.S.C. §912(d) was limited to addressing whether employers were prejudiced by claimant's late

Claimant testified at his deposition that prior to March 23, 2009, he "in general" told "[c]o-workers," "bosses," and the "mechanics, particularly" about how his right knee hurt at work. LBCTX 11, Dep. at 34. When asked whether he told them about experiencing right knee pain as a result of his work activities as a UTR operator, he answered "yes" as a result of his having to operate "the throttle pedals." *Id.* Claimant also testified he told his supervisor at PA, i.e., "my walking boss," although he could not recall the names of any of the walking bosses. *Id.*, Dep. at 34-35. At the hearing, claimant testified that he had told his co-workers and bosses in early 2009 that he was having right knee problems as a result of operating UTRs. HT at 81-82.

The administrative law judge relied, in part, on these statements in finding that claimant gained "awareness" by April 2012. *See* Decision and Order at 8. The administrative law judge, however, did not address whether this evidence is sufficient to establish that employers had actual knowledge of that injury as of that time. 20 C.F.R. §702.216; *see also Matthews v. Jeffboat, Inc.*, 18 BRBS 185 (1986) (employer had knowledge of the injury through claimant's oral notification to his lead man and foreman). Thus, on remand, the administrative law judge must address whether employers had knowledge of claimant's injury. 33 U.S.C. §912(d)(1). Moreover, whether employers had "knowledge" pursuant to Section 12(d)(1) is relevant to the determination of whether or not an employer was prejudiced by claimant's failure to give timely notice of injury.

In this case, the administrative law judge found that LBCT and PA were prejudiced largely because they were deprived of the ability to obtain contemporaneous reports from their own medical experts and because neither had the opportunity to depose Dr. Malekafazli prior to the 2009 surgery to inquire about medical causation. Decision and Order at 9-10; *see Kashuba v. Legion Ins. Co.*, 139 F.3d 1273, 32 BRBS 62(CRT) (9th Cir. 1998), *cert. denied*, 525 U.S. 1102 (1999). However, the prejudice inquiry is moot if the administrative law judge finds on remand that employers had knowledge of the work-relatedness of claimant's right knee condition.[7] We therefore vacate the administrative law judge's finding that claimant's failure to give timely notice of his injuries is not excused

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notice, which in appropriate cases is sufficient to end the inquiry into the notice of injury issue. *See* discussion, *infra*.

[7]If the issue is reached and the administrative law judge finds that employers did not have knowledge, he may reinstate his prejudice finding. Claimant did not appeal this issue and therefore, the finding of prejudice is affirmed. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007).

and we remand the case for further consideration.[8] If claimant's claims are not time-barred by Sections 12 and 13, the administrative law judge must address claimant's entitlement to disability compensation. *See* discussion, *infra*.

Liability for Medicals for 2009 Right Knee Injury

PA contends the administrative law judge erred in holding it liable for medical benefits for claimant's 2009 right knee injury.[9] PA contends LBCT is liable because Dr. London stated that claimant's work through March 23, 2009, aggravated his Baker's cyst.[10]

The Ninth Circuit has stated that the rule for determining which employer is liable for medical benefits in a case involving cumulative traumatic injuries is as follows: if the work-related condition results from the natural progression of an initial injury and would have occurred notwithstanding a subsequent injury, then the initial injury is the compensable injury, and the employer at the time of that injury is responsible for the payment of benefits. If, however, the subsequent injury aggravates, accelerates, or combines with claimant's prior injury, then the subsequent injury is the compensable injury and the subsequent employer is fully liable. *Metropolitan Stevedore Co. v. Crescent Wharf & Warehouse Co.* [*Price*], 339 F.3d 1102, 37 BRBS 89(CRT) (9th Cir. 2003), *cert. denied*, 543 U.S. 940 (2004); *Foundation Constructors, Inc. v. Director, OWCP*, 950 F.2d 621, 25 BRBS 71(CRT) (9th Cir. 1991). Aggravations of an injury, caused by conditions at the subsequent job, constitute new "injuries," as "each flare-up of pain represent[s] cumulative trauma and aggravate[s] the underlying injury." *See Kelaita v. Director, OWCP*, 799 F.2d 1308, 1311-1312 (9th Cir. 1986).

The administrative law judge found LBCT rebutted the Section 20(a) presumption that claimant's employment with LBCT contributed to his knee injury with Dr. London's testimony that claimant's hatch clerk work did not affect his right knee condition. The

[8]If, on remand, the administrative law judge finds that either employer had "knowledge" for purposes of Section 12(d)(1), he should address whether it applies as well to the Section 30(a) inquiry, 33 U.S.C. §930(a), in order to determine if the Section 13(a) time limit is tolled by Section 30(f), 33 U.S.C. §930(f).

[9]A claim for medical benefits is not subject to any statutes of limitations. *Siler v. Dillingham Ship Repair*, 28 BRBS 38 (1994) (en banc).

[10]Claimant worked for PA until February 26, 2009. He worked the next month, until March 23, 2009, for LBCT. The administrative law judge found PA liable for medical benefits for the 2009 knee injury.

administrative law judge's consideration of Dr. London's opinion, however, is incomplete. While Dr. London stated that claimant's osteoarthritis was not aggravated by his work through March 23, 2009, LBCTX 7 at 40, 47; LBCTX 24, Dep. at 27, 60, 61, he also stated that claimant aggravated the synovial sac/cyst as a result of his work activities through March 23, 2009, which was removed by the September 2009 surgery.[11] LBCTX 7 at 40; LBCTX 24, Dep. at 21, 60, 61. Thus, Dr. London's opinion does not rebut the Section 20(a) presumption that claimant's March 2009 hatch clerk work with LBCT aggravated his right knee condition. Consequently, as there is no other evidence addressing whether claimant's March 2009 work with LBCT caused or aggravated his knee condition, we reverse the administrative law judge's finding that LBCT rebutted the Section 20(a) presumption and modify the decision to reflect that LBCT, as the last employer to contribute to claimant's condition prior to his 2009 right knee surgery is liable for the medical benefits relating to claimant's March 2009 work-related right knee injury, including the surgery performed on September 4, 2009, to remove the cyst and loose bodies. *Lopez v. Stevedoring Services of America*, 39 BRBS 85 (2005), *aff'd*, 377 F. App'x 640 (9th Cir. 2010).

Aggravating Right Knee Injury due to January 2010-February 2012 Work

Claimant contends that the administrative law judge either misapplied or did not apply the Section 20(a) presumption in finding Dr. Reff's opinion rebuts the Section 20(a) presumption that claimant's right knee arthritic condition was aggravated by his driving UTRs for PA from January 2010 through February 2012. Claimant asserts that because the administrative law judge, in weighing the evidence, explicitly stated he would "afford Dr. Reff's opinions no weight," Decision and Order at 13, that opinion is insufficient as a matter of law to rebut the Section 20(a) presumption. Claimant also contends the record as a whole supports his contention that his continued employment aggravated his knee condition.

[11]Dr. London's written reports are somewhat contradictory in that he stated claimant aggravated the synovial sac as a result of his work activities through March 23, 2009, LX 40, but then later stated that claimant "did not sustain cumulative trauma to his right knee as a result of his work activities at [LBCT] culminating on 3/23/09," LBCTX 7 at 47. Dr. London, however, cleared up any ambiguity during his deposition when, upon being asked whether he had changed his causation opinion, he conclusively stated "[m]y opinion is that [claimant] aggravated the synovial sac as a result of his work activities culminating on 3/23/09," but "didn't aggravate or worsen the arthritis in his right knee." LBCTX 24, Dep. at 60, 61.

We reject claimant's contention that Dr. Reff's opinion is insufficient to rebut the Section 20(a) presumption.[12] The administrative law judge applied the appropriate standard in addressing whether Dr. Reff's opinion "could satisfy a reasonable factfinder that the claimant's injury was not work-related." *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 651, 44 BRBS 47, 50(CRT) (9th Cir. 2010). In addressing the sufficiency of the evidence at rebuttal, the weighing of conflicting evidence or of the credibility of evidence "has no proper place in determining whether [employer] met its burden of production." *Ogawa*, 608 F.3d at 651, 44 BRBS at 50(CRT); *see also Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5 (2013). The administrative law judge's decision, on the record as a whole, to afford no weight to Dr. Reff's opinion, does not preclude him from finding it sufficient to rebut the Section 20(a) presumption. *Id.* Consequently, the administrative law judge's finding that PA rebutted the presumption through Dr. Reff's opinion that claimant's right knee condition is due solely to osteoarthritis from his 1988 skateboarding accident is affirmed.

We also reject claimant's contention that the administrative law judge erred in finding the evidence as a whole does not demonstrate that he sustained a cumulative trauma injury at work from 2010-2012 that accelerated, combined with, or aggravated his pre-existing arthritis. Once, as here, the Section 20(a) presumption is invoked and rebutted, it drops out of the case, and the administrative law judge must weigh all of the evidence relevant to the causation issue, with the claimant bearing the burden of proving that his injuries are work-related. *See Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT); *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). Under the aggravation rule, when the employment injury aggravates, exacerbates or combines with a prior condition, the entire resulting disability is compensable. The relative contribution of the pre-existing condition and the aggravating injury are not weighed for purposes of this particular injury. *Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966).

The administrative law judge rationally concluded that claimant did not establish he suffered cumulative trauma to his right knee after he returned to work in January 2010. In reaching this conclusion, the administrative law judge relied on claimant's testimony about

[12]Dr. Reff, in his June 17, 2016 report, opined that claimant's "current knee pain, knee deformity and associated disability is entirely related to a natural history of a knee with severe internal derangement as was the case after the 1988 injury." PAX 3.

his 2010 return to work,[13] Dr. Malekafazli's treatment records,[14] and Dr. London's opinion,[15] which he found established that claimant's right knee was completely recovered from the 2009 injury by the time he returned to work in 2010.

The administrative law judge is entitled to weigh the evidence and to draw his own inferences and conclusions therefrom. The Board is not empowered to reweigh the evidence, but must affirm the administrative law judge's findings that are rational and supported by substantial evidence. *See generally Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT); *Cordero v. Triple a Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). The administrative law judge's finding that claimant did not demonstrate that he suffered cumulative trauma to his right knee from January 2010 through February 26, 2012, is rational, within his discretion as a factfinder, and supported by substantial evidence. Thus, we affirm the finding that claimant is not entitled to disability and medical benefits for his current knee condition.[16] *Id.*

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[13]The administrative law judge found that although claimant alleged he suffered from right knee pain periodically since returning to work in 2010, he did not avoid working on UTRs, his wage records indicate he often drove UTRs during that time, he did not seek any treatment or an ADA accommodation for his right knee condition, and unlike with his 2009 knee injury, claimant did not allege that he complained about knee pain to his co-workers and/or supervisors. Decision and Order at 14-15. In making these findings, the administrative law judge found relevant claimant's testimony that he did not experience right knee pain while operating UTRs upon his 2010 return to work because the pedals had been changed and were now easier to operate. Decision and Order at 14; *see also* HT at 80-81; LX 11 at 145.

[14]Dr. Malekafazli stated, in his report dated June 23, 2014, that claimant's osteoarthritis was not related to any industrial condition. LBCTX 15. He stated that claimant's previous right knee injury had resolved.

[15]Dr. London stated that claimant's work through March 23, 2009, "didn't aggravate or worsen the [pre-existing] arthritis in his right knee." LBCTX 24, Dep. at 60, 61.

[16]We reject claimant's contention that the evidence requires an ongoing award of medical benefits for his arthritis. 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., dissenting on other grounds); *Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988). In this case, we have affirmed the administrative law judge's finding that claimant's work did not

Accordingly, we vacate the administrative law judge's finding that claimant did not give timely notice of his injury or file timely claims for benefits, and we remand the case for further findings consistent with this opinion. The administrative law judge's finding that PA is liable for medical benefits for claimant's 2009 right knee cyst injury is reversed, and the decision is modified to reflect that LBCT is liable for medical benefits relating to claimant's March 2009 work-related right knee injury. In all other respects, the administrative law judge's Decision and Order Denying Compensation Benefits and Awarding Medical Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

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aggravate the pre-existing osteoarthritis in his right knee. Consequently, claimant is not entitled to medical benefits for his arthritis because that condition is not work-related.