BRB No. 07-0981

E.F.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ELECTRIC BOAT CORPORATION	)	DATE ISSUED: 06/20/2008
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Colleen A. Geraghty, Administrative Law Judge, United States Department of Labor.

James P. Berryman (Suisman, Shapiro, Wool, Brennan, Gray & Greenberg, P.C.), New London, Connecticut, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2006-LHC-01667) of Administrative Law Judge Colleen A. Geraghty 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 supported by substantial evidence, are rational, and are 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 worked for employer as a carpenter from 1969 to 1996. Claimant's job duties required that he climb ladders, crawl and kneel. Claimant has worked for employer since 1996 as a structural designer, which is more sedentary work. On October 17, 2003, an x-ray of claimant's knees showed mild degenerative changes. CX 3. Claimant sought medical attention for knee pain from Dr. Gross on November 17, 2003.

CX 4. Dr. Gross diagnosed early-stage bilateral osteoarthritis. Claimant received a cortisone injection and a series of Synvisc injections in his right knee.

In February 2004, claimant was sent to work for 33 days at Todd Shipyards in Seattle. Claimant testified that this employment required that he climb ladders and kneel. Claimant returned to Dr. Gross in December 2004 for additional Synvisc injections, which did not significantly improve his knee symptomatology. On May 31, 2005, Dr. Gross opined that claimant's knee condition was due, in part, to his shipyard employment. CX 4. Claimant filed a claim for benefits under the Act alleging he sustained bilateral knee injuries due to repetitive kneeling during the course of his employment. CX 1. He underwent a total right knee replacement on September 28, 2006.

In her decision, the administrative law judge found that claimant became aware that his knee condition may be related to his employment on May 31, 2005, and that he did not give employer timely notice of his injury as he filed his claim more than 30 days later, on July 14, 2005. *See* 33 U.S.C. §912(a). The administrative law judge found, however, that claimant's untimely notice is excused because employer was not prejudiced by the delay in receiving notice. *See* 33 U.S.C. §912(d)(2). The administrative law judge found that claimant's testimony of his working conditions as a carpenter and Dr. Gross's opinion that these activities exacerbated claimant's underlying osteoarthritis are sufficient to invoke the Section 20(a) presumption linking claimant's knee condition to his employment. 33 U.S.C. §920(a). The administrative law judge found that the opinions of Drs. Gaccione and Froehlich that claimant's employment did not cause or exacerbate his osteoarthritis establish rebuttal of the Section 20(a) presumption. The administrative law judge concluded, upon weighing the evidence as a whole, that the opinions of Drs. Gaccione and Froehlich are more persuasive than the opinion of Dr. Gross. Accordingly, the administrative law judge denied the claim for benefits.

On appeal, claimant challenges the administrative law judge's finding that employer established rebuttal of the Section 20(a) presumption and her finding that claimant's osteoarthritis is not related to his employment. Employer responds, urging affirmance of the administrative law judge's finding on the basis that it is supported by substantial evidence.

Once, as here, the Section 20(a) presumption is invoked, the burden shifts to employer to produce substantial evidence that claimant's employment did not cause or contribute to his injury. *See Rainey v. Director, OWCP*, 517 F.3d 632 (2d Cir. 2008); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). If the administrative law judge finds that the Section 20(a) presumption is rebutted, then all relevant evidence must be weighed to determine if a causal relationship has been established, with claimant bearing the burden of persuasion. *See Universal Mar. Corp. v.*

Moore, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

Claimant contends that the administrative law judge erred in finding that the opinions of Drs. Gaccione and Froehlich are sufficient to rebut the Section 20(a) presumption, arguing that they do not specifically refute the connection between claimant's employment and his osteoarthritis. We reject this contention. Dr. Gaccione opined in his November 10, 2006, report that claimant's osteoarthritis "was not caused, hastened, or accelerated by his employment …" EX 2. Dr. Froehlich opined that claimant's knee condition "is not the result of, or exacerbated by," his employment. EX 4. As the opinions of Drs. Gaccione and Froehlich constitute substantial evidence of the absence of a relationship between claimant's osteoarthritis and his employment, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebutted. *See Rainey*, 517 F.3d 632; *see also Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert. denied*, 540 U.S. 1056 (2003).

We also reject claimant's contention that the administrative law judge erred in her weighing of the evidence as a whole. The administrative law judge thoroughly summarized the opinions of Drs. Gross, Gaccione, and Froehlich, *see* Decision and Order at 16-19, and she gave greater weight to the opinions of Drs. Gaccione and Froehlich that claimant's osteoarthritis was not caused or aggravated by his employment based on the absence of any traumatic injury to claimant's knees. The administrative law judge also found these opinions persuasive because they accounted for claimant's risk factors of age and weight. The Board is not empowered to reweigh the evidence, but must accept the rational inferences and findings of fact of the administrative law judge that are supported by the record. *See, e.g., Sealand Terminals, Inc. v. Gasparic*, 7 F.3d 321, 28 BRBS 7(CRT) (2d Cir. 1993); *see also Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994). In this case, the administrative law judge's conclusion that claimant did not meet his burden of establishing that his osteoarthritis was caused, aggravated, or exacerbated by his employment is supported by substantial evidence. Therefore, the administrative law judge's denial of benefits premised on claimant's failure to establish a causal link between his osteoarthritis and his work for employer is affirmed. *See Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Rochester v. George Washington Univ.*, 30 BRBS 233 (1997).

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