

H.R.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
NATIONAL INSPECTION)	DATE ISSUED: 04/29/2008
CONSULTANTS)	
)	
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 Kenneth A. Krantz, Administrative Law Judge, United States Department of Labor.

Andrew Hanley (Crossley McIntosh & Collier), Wilmington, North Carolina, for claimant.

Dana Adler Rosen (Clarke, Dolph, Rapaport, Hull, Brunick & Garriott, P.L.C.), Norfolk, Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (2005-LHC-01835) of Administrative Law Judge Kenneth A. Krantz 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 findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence and in

accordance with law. *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, on June 4, 2002, tripped while working on an aircraft carrier and fell on both knees. CX 6 at 8. Claimant reported the injury to his supervisor, who recorded that claimant fell on his right knee. CX 1. Claimant did not seek medical attention until July 15, 2002, when he reported swelling in his legs.¹ EX 11 at 8. Claimant continued working at light-duty jobs with employer until he voluntarily quit on November 2, 2002. Claimant last obtained medical attention for swelling in November 2002. EX 1. Subsequently, in July 2003, claimant first obtained treatment for back pain with radiculopathy in both legs. CX 9. Claimant was diagnosed with degenerative disc disease and stenosis, with a central herniation at L3-4. Claimant underwent a decompression fusion at L4-S1 on August 10, 2006. CX 19. Claimant consistently informed the physicians that the onset of his back pain with radiculopathy occurred at the time of the work accident. CXs 9, 10; EXs 1, 7. Claimant filed a claim alleging that the injury to his back and legs is related to his fall on June 4, 2002. CX 1.

In his decision, the administrative law judge found that claimant’s claim for benefits was timely filed pursuant to Section 13, 33 U.S.C. §913. The administrative law judge denied benefits, however, finding that claimant failed to establish his *prima facie* case, “in that he has not demonstrated that he suffered a harm that could have arisen from his work injury.” Decision and Order at 11. The administrative law judge found that without corroboration by medical evidence, he could not rely on claimant’s subjective linking of his conditions to the fall at work.

On appeal, claimant contends the administrative law judge erred in finding the Section 20(a) presumption inapplicable, and in finding, in the alternative, that employer rebutted the Section 20(a) presumption. 33 U.S.C. §920(a). Employer responds, urging affirmance of the denial of benefits.

In establishing that an injury is work-related, a claimant is aided by Section 20(a) of the Act which provides a presumed causal nexus between the injury and the employment. In order to be entitled to the Section 20(a) presumption, however, claimant must establish a *prima facie* case by proving the existence of a harm and that a work-

¹ At Bon Secours Maryview Medical Center, claimant was first diagnosed with a sprain/contusion to his right lower leg with swelling of his foot and ankle. At two subsequent visits to the emergency room, claimant was diagnosed with edema in both legs, but he was released to return to work on each of his three visits in July and August 2002. CX 13.

related accident occurred or that working conditions existed which could have caused the harm alleged. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). The claimant “must at least allege an injury that arose in the course of employment as well as out of employment.” *Id.*, 126 F.3d at 262, 31 BRBS at 123(CRT), quoting *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 615, 14 BRBS 631, 633 (1982). Claimant’s theory as to how the injury occurred must go beyond “mere fancy.” *Champion v. S & M Traylor Bros.*, 690 F.2d 285, 295 (D.C. Cir. 1982); *Wheatley v. Adler*, 407 F.2d 307, 313 (D.C. Cir. 1968). “The presumption is a broad one, and advances the facility with which claims are to be treated to further the Act’s purpose of compensating injured workers regardless of fault.” *Universal Maritime Corp.*, 126 F.3d at 262, 31 BRBS at 122(CRT).

We agree with claimant that the administrative law judge’s findings cannot be affirmed. The administrative law judge’s decision contains several statements underscoring his misperception of the scope of the Section 20(a) presumption. *See Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1990). In this case, it is uncontested that claimant fell at work on June 4, 2002. Thus, claimant has satisfied the “accident” prong of his *prima facie* case. *Quinones v. H.B. Zachery, Inc.*, 32 BRBS 6 (1998), *rev’d on other grounds*, 206 F.3d 474, 34 BRBS 23(CRT) (5th Cir. 2000). It also is uncontested that claimant suffered edema in both legs and currently suffers from back and leg pain. As “something has gone wrong with [claimant’s] frame, claimant has established the “harm element” of his case, contrary to the administrative law judge’s statement that such was not demonstrated due to the lack of medical evidence affirmatively linking the harm to the accident. Decision and Order at 11; *Kelaita v. Triple A Machine Shop.*, 13 BRBS 326 (1981).

The administrative law judge further erred in requiring medical evidence to substantiate claimant’s claim. It is well established that claimant does not need to introduce medical evidence affirmatively connecting his harm to the work accident in order to establish his *prima facie* case. *See, e.g., Ramey v. Stevedoring Services of America*, 134 F.3d 954, 31 BRBS 206(CRT) (9th Cir. 1998); *Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141 (1990); *Addison v. Ryan-Walsh Stevedoring Co.*, 22 BRBS 32 (1989); *Frye v. Potomac Electric Power Co.*, 21 BRBS 194 (1988); *Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984); *Fortier v. General Dynamics Corp.*, 15 BRBS 4 (1982), *aff’d mem.*, 729 F.2d 1441 (2^d Cir. 1983); *Woodside v. Bethlehem Steel Corp.*, 14 BRBS 601 (1982) (Ramsey, C.J.. dissenting on other grounds). Rather, the Section 20(a) presumption provides this link. *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004). The mere fact that claimant’s physical problems did not immediately manifest themselves is an insufficient basis on which to find that the presumption was not invoked, as the administrative law judge did not account for the fact

that the Act recognizes latent traumatic injuries.² *LeBlanc v. Cooper/T. Smith Stevedoring, Inc.*, 130 F.3d 157, 31 BRBS 195(CRT) (5th Cir. 1997). In relating his history to the various physicians, claimant consistently maintained that the onset of his edema and back and leg pain was the work incident, and a claim that these injuries arose from the fall at work goes “beyond mere fancy.” *Champion*, 690 F.2d at 295. Claimant clearly alleged injuries arising out of the work accident and the claim thus comes within the scope of Section 20(a), as such injuries *could have* been caused by the fall. *Ramey*, 134 F.3d 954, 31 BRBS 206(CRT). Therefore, claimant established his *prima facie* case and is entitled to the Section 20(a) presumption that his leg and back injuries are related to the fall at work. *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000).

The administrative law judge further stated that, assuming, *arguendo*, that the presumption was invoked, employer established rebuttal thereof. Decision and Order at 12. In finding that employer established rebuttal, the administrative law judge observed that none of the physicians stated that claimant’s condition was caused by the fall at work. This statement reflects an erroneous application of law.

Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption with substantial evidence that claimant’s condition is not due to the work accident. *See, e.g., Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); *American Grain Trimmers v. Director, OWCP [Janich]*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999), *cert. denied*, 528 U.S. 1187 (2000); *Bath Iron Works Corp. v. Director, OWCP*, 137 F.3d 673, 32 BRBS 45(CRT) (1st Cir. 1998); *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 820 (1976). In this case, there is no medical evidence in the record stating that claimant’s conditions are not related to his work accident as none of the physicians of record states that there is no causal connection between claimant’s injuries and the work accident.³ *Bath Iron Works Corp. v. Director, OWCP [Shorette]*, 109 F.3d 53, 31 BRBS 19(CRT) (1st Cir. 1997). Moreover, the administrative law judge’s reliance on the gap between claimant’s accident and his reports of pain is insufficient evidence by itself to establish rebuttal of the Section 20(a) presumption. *See generally Hunter*, 227

² Moreover, the fact that claimant testified that he was not placed under any work restrictions due to his edema may be relevant to disability, but is of no consequence to the inquiry concerning a causal relationship between the harm and the work accident.

³ Dr. Azzato stated that the cause of claimant’s leg swelling was elusive and that the condition is work-related only by history of the onset occurring after the accident. EX 1. Drs. Seidel, Miller, Messina, Alsina and Joachim did not provide any opinions as to the cause of claimant’s conditions. EXs 3, 4, 5, 7; CX 10.

F.3d 285, 34 BRBS 96(CRT); *Louisiana Ins. Guar. Ass'n v. Bunol*, 211 F.3d 294, 34 BRBS 29(CRT) (5th Cir. 2000). In the absence of any evidence, much less substantial evidence, that claimant's condition is not work-related, claimant's claim is work-related as a matter of law by operation of Section 20(a). *Preston*, 380 F.3d 597, 38 BRBS 60(CRT). Therefore, we reverse the administrative law judge's finding that claimant's back and leg conditions are not work-related. We vacate the denial of benefits and remand the case for the administrative law judge to address any remaining issues including employer's application for Section 8(f) relief, 33 U.S.C. §908(f).

Accordingly, the administrative law judge's finding that claimant's back and leg conditions are not work-related is reversed, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge