

BRB Nos. 11-0297
and 11-0297A

KAREN B. HOLKO)	
)	
Claimant-Petitioner)	
Cross-Respondent)	
)	
v.)	
)	
SERVICE EMPLOYEES)	DATE ISSUED: 04/10/2012
INTERNATIONAL, INCORPORATED)	
)	
and)	
)	
INSURANCE COMPANY OF THE STATE)	
OF PENNSYLVANIA c/o)	
AIG WORLDSOURCE)	
)	
Employer/Carrier-)	
Respondents)	ORDER on MOTION
Cross-Petitioners)	FOR RECONSIDERATION

Employer has filed a timely motion for reconsideration of the Board's Decision and Order in *Holko v. Service Employees International, Inc.*, BRB Nos. 11-0297 and 11-0297A (Dec. 21, 2011) (unpub.). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Employer argues that the Board erred in vacating the administrative law judge's finding that claimant's lower back condition is not work-related and in remanding the case. Claimant has not responded to employer's motion. For the reasons set forth below, we deny employer's motion and affirm the Board's decision.

Relevant to employer's motion, claimant challenged the administrative law judge's finding that her back injury was not caused by the work accident in Iraq. The administrative law judge found claimant entitled to the Section 20(a) presumption in this regard and that employer rebutted the presumption. 33 U.S.C. §920(a). The Board vacated the denial of benefits and remanded the case because the administrative law judge did not specifically weigh the evidence as a whole to determine whether claimant satisfied her burden of establishing the work-relatedness of her back condition. *Holko*, slip op. 6-7.

On reconsideration, employer asserts that the basis for the Board's action in vacating the administrative law judge's finding, *i.e.*, that he did not specifically address the November 28, 2007, opinion of Dr. Bielowski or the January 14, 2008, report of Dr. North, is flawed. Employer contends that contrary to the Board's statements, the administrative law judge sufficiently addressed Dr. Bielowski's opinion on two separate occasions, *i.e.*, on pages 24 and 46 of his decision, and furthermore, considered but discounted Dr. North's January 14, 2008, report in light of the evidence showing that claimant's lower back condition is not work-related. The Board, in vacating the administrative law judge's finding, stated that "[t]he administrative law judge did not specifically weigh the evidence as a whole with regard to claimant's lower back injury," noting, in particular, that the administrative law judge did not fully address the November 28, 2007, opinion of Dr. Bielowski or the January 14, 2008, report of Dr. North, which may support the existence of a causal connection between claimant's lower back condition and the motor vehicle accident in Iraq. *Holko*, slip op. at 6-7.

Employer is correct that the administrative law judge, twice in his decision, referenced Dr. Bielowski's "conclusion" that "claimant's neck and back pain were the result of a motor vehicle accident [which claimant had in Iraq]." *See* Decision and Order at 24, 46. The administrative law judge's first reference to Dr. Bielowski's conclusion occurs in the "Medical Evidence" section of his decision and as such, merely constitutes his recitation of the evidence. Decision and Order at 23-24; CX 5. The second reference to Dr. Bielowski's conclusion is in the administrative law judge's discussion as to whether employer rebutted the Section 20(a) presumption with regard to claimant's cervical/neck injuries and not her lower back injury. Decision and Order at 46. Similarly, the administrative law judge set out Dr. North's opinion in his recitation of the "Medical Evidence," *see* Decision and Order at 24-25, and further noted that "Dr. North, a neurosurgeon, related [claimant's MRI showing degenerative changes in her lumbar spine] to claimant's previous surgery," *see* Decision and Order at 46-47, as part of his discussion culminating in his finding that employer rebutted the Section 20(a) presumption that claimant's lower back complaints are not work-related. The administrative law judge, however, did not discuss Dr. North's January 14, 2008, opinion which links claimant's history of low back pain to the work-related automobile accident.

Where, as here, the administrative law judge finds that the Section 20(a) presumption is rebutted, it drops from the case. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). The administrative law judge then must weigh all the relevant evidence and resolve the causation issue based on the record as a whole with claimant bearing the burden of persuasion to establish a causal relationship between the injury and the work accident by a preponderance of the evidence. *Id.*; *see Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996); *see generally Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). The administrative

law judge's recitation of the medical opinions in this case is not accompanied by findings as to the weight to be accorded to them with respect to claimant's back injury. Specifically, as the Board stated in its decision, the administrative law judge did not weigh the opinions of Drs. Bielowski and North or that of Dr. Zand,¹ EX 6, to determine whether claimant established a causal connection between her work accident and lower back injury based on the record as a whole. As additional fact-finding is necessary, the Board properly remanded the case to the administrative law judge. Employer's arguments are therefore rejected.

Accordingly, employer's motion for reconsideration is denied and the Board's decision is affirmed. 20 C.F.R. §802.409.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

¹Dr. Zand diagnosed claimant with degenerative arthritis of the lumbar spine which he attributed primarily to the laminectomy in 1997, to natural wear and tear, and to claimant's being overweight. EX 6. Dr. Zand also stated that any exacerbation of claimant's lumbar spine condition from the work accident would have resolved, without any permanent injury, within 10 to 12 weeks. EX 25, Dep. at 19-20, 25.