BRB No. 05-0349

DIANE R. REID	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
STEVEDORING SERVICES OF AMERICA	)	DATE ISSUED: 12/20/2005
	)	
and	)	
	)	
HOMEPORT INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of Decision and Order of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Edward E. Boshears, Brunswick, Georgia, for claimant.

Shari S. Miltiades, Savannah, Georgia, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (2004-LHC-00422) of Administrative Law Judge Richard K. Malamphy 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).

On January 11, 1999, claimant, while standing on a ladder during the course of her employment as a longshoreman with employer, was struck from behind by a forklift and was pinned between two large rolls of paper. The next day, claimant was treated in the hospital emergency room for a left elbow contusion. On January 14, 1999, claimant was

seen by Dr. Hagen, an orthopedic surgeon, for her complaints of pain in her left elbow, shoulder, neck, and right knee. Dr. Hagen, who diagnosed contusions of claimant's left shoulder and right knee, found no evidence of injury to her cervical or lumbosacral spine. He indicated that there was no evidence of serious injury and released claimant to return to work with no restrictions. Claimant returned to work on January 15, 1999, but stopped working on December 6, 1999.[1] Claimant sought compensation for temporary total disability and medical benefits for injuries to her neck, shoulder, elbows, right knee, and lumbosacral spine which she asserted were the result of her January 11, 1999 work-related accident. Employer agreed that claimant's left elbow was injured in the accident and voluntarily paid the costs of claimant's January 12, 1999 hospital emergency room treatment and Dr. Hagen's January 14, 1999 office visit. Employer, however, contested that claimant sustained any period of disability as the result of her work-related accident, or that any current medical problems claimant may have are causally related to her January 11, 1999, work-incident.

In his Decision and Order, the administrative law judge found the Section 20(a), 33 U.S.C. §920(a), presumption of causation invoked on the basis of employer's acknowledgment that claimant sustained an injury to her left elbow while at work on January 11, 1999. Next, the administrative law judge found the presumption rebutted based on his finding that the reports of Drs. Hagen, Thompson and Hein reflect the absence of "a chronicity of objective findings. . . ." Decision and Order at 10. After indicating that he had weighed all the evidence of record, the administrative law judge concluded that claimant's left elbow injury resolved without residuals and that any present conditions claimant may have are not causally related to her January 11, 1999, work accident. Accordingly, the administrative law judge denied all disability and medical benefits for any condition other than claimant's left elbow injury.

On appeal, claimant contends that the administrative law judge erred in finding the Section 20(a) presumption rebutted on the basis of an alleged lack of objective findings. Claimant further contends that the administrative law judge failed to make a proper determination concerning disability. Employer responds, urging affirmance.

The instant case involves issues relating to both causation and the extent of disability. Resolution of the issue of whether claimant's January 11, 1999 work accident

[1] Claimant testified that she continued to experience pain in several parts of her body after her January 11, 1999 work-related accident and therefore was unable to perform the strenuous work handling paper rolls that she had done prior to that accident. She further testified that, after her accident, because she accepted only the less strenuous work driving vehicles off "car ships," fewer hours of work were available to her than before her accident. Because she worked fewer than 700 hours during contract year 1998-99, claimant's seniority status, which affected the jobs available to her, was dropped one level effective December 4, 1999.

constitutes a cause of her continuing complaints regarding her neck, shoulder, elbows, right knee, and lumbosacral spine requires rendering a causation determination to which the Section 20(a) presumption applies. *See Seguro v. Universal Maritime Corp.*, 36 BRBS 28, 33-34 (2002); *Kubin v. Pro-Football, Inc.*, 29 BRBS 117, 118-119 (1995); *Leone v. Sealand Terminal Corp.*, 19 BRBS 100, 101 (1986).

Where, as in the instant case, claimant has established entitlement to invocation of the Section 20(a) presumption, *see Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989), the burden shifts to employer to rebut it with substantial evidence that claimant's condition was not caused, contributed to or aggravated by her employment. *See Brown v. Jacksonville Shipyards, Inc.*, 893 F.2d 294, 23 BRBS 22(CRT) (11th Cir. 1990); *see also Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); *American Grain Trimmers v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999) (*en banc*), *cert. denied*, 528 U.S. 1187 (2000); *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Bath Iron Works Corp. v. Director, OWCP*, 109 F.3d 53, 31 BRBS 19(CRT) (1st Cir. 1997); *Maher Terminals, Inc. v. Director, OWCP*, 992 F.2d 1277, 27 BRBS 1 (3d Cir. 1993), *aff'd sub nom. Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). Mere hypothetical probabilities and suggestions of alternate ways that claimant's injury might have occurred are insufficient to rebut the presumption. *See Delay v. Jones Washington Stevedoring Co.*, 31 BRBS 197 (1998); *Sinclair*, 23 BRBS 148. Where aggravation of a pre-existing condition is at issue, employer must establish that work events neither directly caused the injury nor aggravated the pre-existing condition resulting in injury. *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000). The aggravation rule provides that where an injury at work aggravates, accelerates or combines with a prior condition, the entire resultant disability is compensable. *Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966); *Kubin*, 29 BRBS at 119. This rule applies not only where the underlying condition itself is affected but also where the injury "aggravates the symptoms of the process." *Pittman v. Jeffboat, Inc.*, 18 BRBS 212, 214 (1986). If the administrative law judge finds that the Section 20(a) presumption is rebutted, it drops from the case. *See Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). The administrative law judge must then weigh all of the relevant evidence and determine whether a causal relationship has been established, with claimant bearing the burden of persuasion. *See Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT); *Santoro v. Maher Terminal, Inc.*, 30 BRBS 171 (1996).

In the instant case, after finding claimant entitled to invocation of the Section 20(a) presumption, the administrative law judge summarily found the presumption rebutted on the basis of the following determination:

> The employer argues that there has not been a chronicity of objective findings since early 1999. This contention is borne out in the reports of

> Drs. Hagen, Thompson, and Hein. This theory is sufficient for rebuttal of the Section 20(a) presumption.

D&O at 10. Although the administrative law judge found employer's theory of rebuttal to be supported by the reports of Drs. Hagen, Thompson and Hein, he provided no explanation of this finding. Moreover, the lack of objective findings alone cannot meet employer's burden under Section 20(a), which requires that it produce substantial evidence that the harm sustained by claimant was neither caused nor aggravated by her January 11, 1999, work accident. *See Brown*, 893 F.2d 294, 23 BRBS 22(CRT); *Seguro*, 36 BRBS at 33-34.

The Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A),[2] requires that an administrative law judge's decision must include a discussion of the reasons for his findings and conclusions. *See See v. Washington Metropolitan Area Transit Authority*, 36 F.3d 375, 28 BRBS 96(CRT) (4th Cir. 1994). As the administrative law judge's conclusory finding of rebuttal is insufficient to establish that he considered the evidence in accordance with the legal standards applicable to rebuttal of the Section 20(a) presumption, we vacate this determination and remand the case for a reasoned analysis of this issue. On remand, the administrative law judge must reconsider the evidence relevant to the cause of claimant's pain and alleged injuries to her left elbow, shoulder, neck and right knee in light of the relevant case law, as well as the aggravation rule. If the administrative law judge finds the presumption rebutted, he must weigh all of the evidence and resolve the causation issue based on the record as a whole, with claimant bearing the ultimate burden of persuasion. *See Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000)*; see also Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT).

If, on remand, the administrative law judge finds a causal relationship between claimant's work accident and any of claimant's medical conditions, in addition to her left elbow injury, he must then consider the issue of the nature and extent of claimant's disability.[3] In this regard, although the administrative law judge found that claimant's

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[2] The Administrative Procedure Act requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor on all the material issues of fact, law or discretion presented on the record." 5 U.S.C. §557(c)(3)(A). The Board consistently has held, in this regard, that an administrative law judge must independently analyze and discuss the evidence, and must adequately detail the rationale behind his decision and specify the evidence upon which he relied. *See, e.g., Marinelli v. American Stevedoring, Ltd.*, 34 BRBS 112, 118 n.9 (2000), *aff'd*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001).

[3] Additionally, even where a claimant is not found to be entitled to disability benefits, employer still may be liable for medical benefits for a work-related injury. *See Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993).

left elbow injury resolved without any period of residual disability, *see* Decision and Order at 10, he did not make specific findings with respect to the nature and extent of any disability resulting from the other conditions which claimant alleged were causally related to her work accident.[4] Thus, if, on remand, the administrative law judge finds that claimant sustained work-related injuries in addition to her left elbow injury, he must then determine whether claimant suffered any residual disability due to these conditions, *see, e.g., Seguro,* 36 BRBS at 33-34, and provide a reasoned discussion of this issue, *see Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1989).

Accordingly, the administrative law judge's denial of disability and medical benefits is vacated, and the case is remanded for further consideration in accordance with this opinion.

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

[4] Claimant is entitled to disability benefits for any period her work injury causes a total or partial loss of wage-earning capacity. *See generally Shell Offshore v. Director, OWCP*, 122 F.3d 312, 31 BRBS 129(CRT) (5th Cir. 1997); *Johnson v. Newport News Shipbuilding & Dry Dock Co.*, 25 BRBS 340 (1992).