BRB Nos. 11-0297
and 11-0297A

KAREN B. HOLKO	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
SERVICE EMPLOYEES INTERNATIONAL, INCORPORATED	)	DATE ISSUED: 12/21/2011
	)	
and	)	
	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA c/o AIG WORLDSOURCE	)	
	)	
Employer/Carrier-Respondents Cross-Petitioners	)	DECISION and ORDER

Appeals of the Decision and Order – Denying in Part and Awarding Benefits in Part and the Reconsideration of Decision and Order of Robert B. Rae, Administrative Law Judge, United States Department of Labor.

Herbert J. Chestnut (Herbert Chestnut & Associates), Marietta, Georgia, for claimant.

P. Vincent Gaddy (Asmus & Gaddy, LLC), Mobile, Alabama, for employer/carrier.

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

PER CURIAM:

Claimant appeals, and employer cross-appeals, the Decision and Order – Denying in Part and Awarding Benefits in Part and the Reconsideration of Decision and Order (2010-LDA-00019) of Administrative Law Judge Robert B. Rae 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.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *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 began working for employer as a truck driver in Iraq on a one-year contract on February 28, 2005, and was stationed at Cedar 2. On September 5, 2005, while driving in a convoy, claimant allegedly sustained injuries as a result of a motor vehicle accident. Claimant stayed in Baghdad for two and a half days feeling stiff, sore and bruised all over. Upon her return to Cedar 2, she went to the medics, who noted that she had bruising and diagnosed her as having a concussion with whiplash. Approximately ten days later, claimant returned to the medics with complaints of continued pain and stiffness. She was issued muscle relaxers and pain medication, and given ten days of Rest and Relaxation (R and R) in London and Scotland. Claimant returned to work in Iraq, and was first assigned to work in the telephone and computer room. As a result of a surge, she was reassigned to driving with convoys. Claimant stated that as a result of the renewed convoy work she experienced headaches and pain in her neck and shoulder which were aggravated by her having to wear 70-pounds of body armor.

In late December 2005, claimant switched to a clerical position which she performed until she took her final contracted R and R in March 2006 in Michigan. While at home in Michigan, claimant sought treatment from a physician's assistant, Brian MacAuley. Claimant returned to Iraq in April 2006 and worked as an administrative specialist until the first week of October 2006, when she obtained a voluntary demobilization. Claimant stated that while she enjoyed working in Iraq, she sought the demobilization because she had increased pain and had also developed a skin condition. HT at 40-41.

Claimant subsequently obtained employment as a truck driver, first with a company in Flint, Michigan, E. L. Hollingsworth, and then with a company in Seattle, Washington, KLB Construction. Claimant testified she began to experience bothersome memories of Iraq, resulting in nightmares and anxiety attacks triggered by loud noises and bright flashing lights, which culminated in a suicide attempt, on July 25-26, 2007, following an incident at work with KLB Construction. HT at 58-60. As a result, claimant was hospitalized for four or five days. She thereafter returned to Michigan and began treating with Ken Kish, M.S.W, L.M.S.W. and with Mr. MacAuley for continued treatment of her orthopedic problems. Mr. MacAuley took claimant out of work and on December 7, 2007, imposed physical restrictions. Claimant testified that she has not

worked since the July 2007 incident, as she is no longer capable of working as a truck driver. HT at 69. However, claimant testified that she continues, without any success, to look for clerical work in the freight industry in Afghanistan and Iraq.

Claimant sought benefits under the Act for alleged injuries to her neck/shoulder and lower back resulting from the work accident, and for a skin condition and post-traumatic stress disorder (PTSD), as well as other stress-related symptoms, resulting from her work in Iraq for employer. The administrative law judge found that claimant is entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), with regard to her neck/shoulder condition, lower back pain, skin injury, and PTSD, and that employer introduced sufficient evidence to rebut the presumption only with respect to the alleged lower back injury and the PTSD.[1] Addressing the evidence as a whole with regard to claimant's PTSD, the administrative law judge found that claimant's psychological injuries did not arise out of her employment in Iraq, but arose afterwards due to dissatisfaction with her quality of life and subsequent work environments. The administrative law judge found that claimant did not establish that she is unable to return to her usual work due to her work-related neck and shoulder injuries. Consequently, the administrative law judge found that claimant is not entitled to any disability benefits. The administrative law judge found claimant entitled to medical benefits for her work-related skin and neck/shoulder injuries under Section 7 of the Act, 33 U.S.C. §907. Employer's motion for reconsideration was denied.

On appeal, claimant challenges the administrative law judge's findings that her PTSD and back injuries are not work-related, and that she is not entitled to disability benefits with regard to her other work-related injuries. BRB No. 11-0297. In its cross-appeal, employer challenges the administrative law judge's findings that claimant is entitled to medical benefits for work-related injuries to her neck/shoulder and skin condition. BRB No. 11-0297A.

[1]The administrative law judge found that claimant provided timely notice to employer of her neck, shoulder, and PTSD injuries under Section 12, 33 U.S.C. §912, and that the claims for benefits relating to these injuries were timely filed under Section 13, 33 U.S.C. §913. The administrative law judge found, however, that claimant did not provide timely notice of her alleged lower back injury to employer, but he ultimately denied benefits for this injury based on his finding on the merits that claimant did not establish a causal connection between her lower back complaints and her work for employer. The administrative law judge's findings with regard to Sections 12 and 13 of the Act are affirmed as they are unchallenged on appeal. *See Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007); *but see* n.5 *infra.*

Claimant first contends the administrative law judge erred in finding employer submitted substantial evidence to rebut the Section 20(a) presumption with regard to her back injury and PTSD. Once, as here, claimant establishes her *prima facie* case, she is entitled to the Section 20(a) presumption that her injury is causally related to her employment. 33 U.S.C. §920(a); *see Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *see generally U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). The burden then shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by her employment. *See, e.g., Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert. denied*, 540 U.S. 1056 (2003*); Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). When it is alleged that a prior injury is the cause of claimant's current condition, the aggravation rule is implicated. The aggravation rule states that if an employment-related injury contributes to, combines with, or aggravates a pre-existing condition, employer is liable for the entire resulting disability. *See, e.g., Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45(CRT) (5th Cir. 1986) (*en banc).*

The administrative law judge found that employer established rebuttal of the Section 20(a) presumption by showing that claimant's complaints of lower back pain are not credible and that the degenerative changes on claimant's lumbar MRI are properly attributed to a prior laminectomy claimant underwent in 1997. Addressing claimant's statements concerning the truck accident at work, the administrative law judge found that claimant's failure to mention a lower back injury until she saw Mr. MacAuley in March 2006, half a year after the accident, or to seek treatment for such injury until August 23, 2007, after she filed her claim for benefits, detracted from claimant's contention that she sustained a back injury as a result of the September 5, 2005, accident.[2] Furthermore, the administrative law judge found that claimant successfully worked stateside as a truck driver and that her termination from those positions was not due to physical injuries but occurred as a result of her dissatisfaction with those jobs. HT at 100; Decision and Order at 46. The administrative law judge also found that Dr. 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 acknowledged that the motor vehicle accident on September 5, 2005, "may have exacerbated her symptoms of degenerative disease for a short while," EX 6, but, based on the fact that claimant continued to work, including having resumed truck driving subsequent to the accident, Dr. Zand stated that any exacerbation claimant may have suffered to her neck and back in the accident in Iraq would have resolved in 10 to 12

[2]The administrative law judge also found claimant's claim of a work-related back injury contradicted by her representations to subsequent employers that she had not suffered and/or was not currently suffering from musculoskeletal injuries.

weeks. EX 25, Dep. at 19-20, 25. Dr. Zand concluded that, based on a reasonable degree of medical probability, claimant did not suffer any permanent injury as a result of the motor vehicle accident. *Id.* at 25.

It is employer's burden to produce substantial evidence that claimant's present disability is solely attributable to the prior injury or condition and was not caused or aggravated by the work accident in order to rebut the Section 20(a) presumption that claimant's injury is work-related. *See generally See Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009); *Kubin v. Pro-Football, Inc.*, 29 BRBS 117 (1995); *see also* 33 U.S.C. §920(a). In this case, the administrative law judge's finding that Dr. Zand's opinion rebuts the Section 20(a) presumption with respect to claimant's present back condition is affirmed as the finding is rational, supported by substantial evidence, and in accordance with law. *See Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Rainey v. Director, OWCP*, 517 F.3d 632, 42 BRBS 11(CRT) (2d Cir. 2008)(substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a finding); *Director, OWCP v. Vessel Repair, Inc.*, 168 F.3d 190, 33 BRBS 65(CRT) (5th Cir. 1999); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998).

As for claimant's PTSD, the administrative law judge found that Dr. Kelland's opinion persuasively establishes that claimant does not suffer from PTSD and the administrative law judge thus concluded that employer rebutted the Section 20(a) presumption that claimant's psychological problems arose out of her employment in Iraq. In this regard, Dr. Kelland found that the lack of any objective indication of reported psychological symptoms for nearly two years after the reported incident in Iraq, that claimant "enjoys reminiscing with the guys from Iraq and finds talking about this to be helpful and supportive,"[3] that she continued to work in Iraq for over a year after the accident, that she was able to drive trucks for nearly two years after the incident, and that there is no evidence to suggest that she stopped driving trucks because of re-experiencing any traumatic event, minimizes the likelihood of an association between the September 5, 2005, motor vehicle accident and claimant's reported psychological problems. Addressing the lack of a causal connection between claimant's work in Iraq and her suicide attempt, Dr. Kelland stated that she relied on claimant's statements to the social worker at the hospital at the time of her admission, "that she was upset about her work and financial situation," and "could not take it any more." EX 26, Dep. at 27. Dr.

[3]Dr. Kelland observed that claimant has attended reunions with workers she met in Iraq, which suggests that she does not have PTSD, as "there doesn't appear to be any attempt to avoid stimuli that remind her of the reportedly traumatic incident." EX 26, Dep. at 16.

Kelland also found it significant that claimant did not mention at that time that she was overwhelmed by any problems relating to her employment in Iraq, *id.*, and that claimant has a reported history of strained relationships with supervisors and problems on the job. Furthermore, Dr. Kelland observed that the objective testing she performed on claimant indicates the likelihood of malingering with a motive of secondary gain. *Id.* at 9; EX 5. We reject claimant's contention that the administrative law judge erred in finding Dr. Kelland's opinion sufficient to meet employer's burden of producing substantial evidence that claimant's condition was not caused or aggravated by her employment. *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000). We affirm the administrative law judge's finding that employer established rebuttal of the Section 20(a) presumption with regard to claimant's alleged PTSD as it is supported by substantial evidence of record. Decision and Order at 47.

Claimant next argues that, assuming employer established rebuttal, the administrative law judge erred in finding that the record as a whole establishes the lack of a causal connection between claimant's back complaints, PTSD, and her work for employer. Claimant maintains that the opinions of Drs. North and Bielowski relate claimant's lower back pain to the motor vehicle accident on September 5, 2005. As for her PTSD, claimant argues that the administrative law judge's reliance on Dr. Kelland's opinion rendered 30 months after her suicide attempt is erroneous since the preponderance of the credible evidence from independent evaluators and treating mental health professionals supports her claim that she suffered PTSD as a result of her job duties in Iraq.

Where, as here, the administrative law judge finds the Section 20(a) presumption rebutted, it drops from the case. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT). 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 causation by a preponderance of the evidence. *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 did not specifically weigh the evidence as a whole with regard to claimant's lower back injury. Although the administrative law judge observed that Dr. Bielowski noted that claimant tested negative for radicular symptoms, and that Dr. North related the degenerative changes shown on claimant's MRI of her lumbar spine to her previous surgery, he did not specifically address Dr. Bielowski's opinion, dated November 28, 2007, that claimant has had neck and back pain "as a result of a motor vehicle accident," CX 5, or Dr. North's report dated January 14, 2008, wherein the physician states that "my clinical impression is that this patient has had a two year history of low back pain following a motor vehicle accident." CX 22. We,

therefore, vacate the administrative law judge's finding that claimant's lower back condition is not work-related and remand for him to weigh all the relevant evidence and make findings of fact with regard to the work-relatedness of claimant's lower back condition.[4] *Moore*, 126 F.3d 256, 31 BRBS 119(CRT).

In addressing claimant's PTSD, the administrative law judge fully weighed the relevant psychological evidence of record, including the opinions of Mr. Kish, and Drs. Pestrue and Kelland. The administrative law judge permissibly accorded diminished weight to Mr. Kish's opinion because he is not, in contrast to Drs. Pestrue and Kelland, a psychologist or psychiatrist. Additionally, the administrative law judge found Dr. Pestrue's opinion entitled to little weight because "he did not state a foundational basis" for his diagnoses of major depressive episode and PTSD.[5] *S.K. [Kamal] v. ITT Industries, Inc.*, 43 BRBS 78 (2009), *aff'd in part and rev'd in part*, __ F.Supp.2d ___, No. 4:09-MC-348, 2011 WL 798464 (S.D. Tex. Mar. 1, 2011) (an administrative law judge may assess whether physicians' opinions are rationally based on their underlying documentation). The administrative law judge accorded greater weight to Dr. Kelland's opinion, that claimant did not have PTSD but rather suffered from depression attributable to causes unrelated to her work for employer, as it is well-reasoned and better supported by the objective evidence of record.[6] *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). As the administrative law judge discussed the

[4]If necessary, the administrative law judge must determine whether claimant's failure to give employer timely notice of her back injury pursuant to Section 12(a) is excused under either Section 12(d)(1) or 12(d)(2). 33 U.S.C. §912(a), (d); *see* 33 U.S.C. §920(b).

[5]Dr. Pestrue diagnosed claimant with Major Depression, Single Episode and PTSD. While his report acknowledges claimant's statements, in "Complaints and Symptoms" that "I have posttraumatic stress disorder" and "I feel depressed all the time lately," it contains no discussion as to how Dr. Petrue reached his diagnoses. CX 9; EX 17.

[6]The administrative law judge found that in making her assessment, Dr. Kelland administered two separate tests that have established value within the scientific community which are designed to determine claimant's overall psychological presentation and potential for malingering. Additionally, the administrative law judge found that Dr. Kelland was the only doctor of record who pointed out inconsistencies between claimant's presentation as a person suffering from the PTSD and the criteria for a diagnosis of such condition. *See ITT Industries, Inc. v. S.K. [Kamal]*, __ F.Supp.2d ___, No. 4:09-MC-348, 2011 WL 798464 (S.D. Tex. Mar. 1, 2011).

relevant evidence and it is within the administrative law judge's discretion to accord greatest weight to the opinion of Dr. Kelland, we affirm the administrative law judge's finding that claimant's psychological injuries did not arise out of her employment in Iraq and, therefore, are not compensable under the Act, as it is supported by substantial evidence. *Id.*

In its cross-appeal, employer argues that the administrative law judge erred in finding that claimant is entitled to medical benefits for her neck/shoulder condition because, at most, any such condition resolved within 12 weeks. The employee must establish that the claimed medical expenses are for treatment of the compensable injury. *Pardee v. Army & Air Force Exchange Service*, 13 BRBS 1130 (1981); *Suppa v. Lehigh Valley R.R. Co.*, 13 BRBS 374 (1981). Whether a specific condition for which claimant has been treated is work-related is an issue to which the Section 20(a) presumption applies. However, the presumption does not aid claimant in establishing entitlement under Section 7. *See Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112 (1996). Claimant must establish that treatment is reasonable and necessary for her work-related condition. 33 U.S.C. §907; *see, e.g., Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993).

Addressing claimant's neck/shoulder injury, the administrative law judge found that claimant complained of these injuries and received treatment within a matter of weeks after the accident. The administrative law judge found that claimant also was evaluated by several physicians upon her return to the United States with regard to her neck/shoulder condition and that while Mr. MacAuley and Drs. North and Zand stated that claimant had a degenerative disease process, they did not state that claimant's accident had no effect on the progression of the disease. In particular, the administrative law judge noted that Dr. Zand opined that the osteophyte formation on claimant's cervical MRI indicated that the trauma associated with the formation had to have occurred at least one year prior to the MRI, which would not rule out the possibility that the September 5, 2005, accident, which occurred two years prior to the MRI, could have caused it. Moreover, the administrative law judge found that Dr. Bielowski attributed claimant's neck pain to the motor vehicle accident. Decision and Order at 45-46.

We cannot affirm the administrative law judge's finding that employer did not rebut the Section 20(a) presumption with regard to this injury. The administrative law judge did not fully consider Dr. Zand's opinion with regard to claimant's cervical spine; Dr. Zand stated that although it is unlikely that the September 5, 2005, motor vehicle accident caused degenerative disc disease of the cervical spine, "it could have maybe exacerbated the symptom if she complain[ed] at that point," but that any temporary injury claimant may have suffered to her neck as a result of the motor vehicle accident would have resolved in 10 to 12 weeks. EX 25, Dep. at 19-20. Dr. Zand's statement regarding

a temporary exacerbation of claimant's underlying degenerative disc disease may, as the administrative law judge found with regard to claimant's lumbar spine complaints, constitute substantial evidence that claimant's current neck/shoulder condition for which she claims medical benefits is not work-related. *Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT). We therefore vacate the administrative law judge's finding that employer did not rebut the Section 20(a) presumption with regard to claimant's neck/shoulder condition and remand the case for additional findings. If employer presented substantial evidence to rebut the presumption, the administrative law judge must weigh the evidence as a whole to determine if claimant's neck/shoulder complaints are related to the work accident. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT). Claimant is entitled to necessary medical benefits if her neck/shoulder condition is work-related. [7] 33 U.S.C. §907(a).

Claimant contends the administrative law judge erred in failing to find that she cannot perform her usual employment as a truck driver given that the physical requirements of that position, *i.e.*, working at least 12 and sometimes 20 hours a day, 7 days a week, wearing 70 pounds of body armor, and having to sit constantly for hours at a time, exceeded her post-injury restrictions, as stated by Mr. MacAuley on December 7, 2007.

In order to establish a *prima facie* case of total disability, a claimant must demonstrate an inability to return to her usual work as a result of her work injury. *Ledet v. Phillips Petroleum Co.*, 163 F.3d 901, 32 BRBS 212(CRT) (5th Cir. 1998); *SGS Control Services v. Director, OWCP*, 86 F.3d 438, 30 BRBS 57(CRT) (5th Cir. 1996); *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981). At this juncture, only restrictions relating to claimant's neck/shoulder are relevant to claimant's ability to perform her usual work.[8] The administrative law judge found that although claimant stated she is unable to perform her pre-accident employment, her testimony in this regard is not supported by her actions. The administrative law judge found claimant stopped working for employer in Iraq only because her assignment

[7]The administrative law judge observed that "claimant has offered a lot of evidence supporting the collective medical expenses she incurred, although certain exhibits do not contain enough information to determine the claimed injury with which the expense was associated. Upon further proof that the medical expenses were indeed for the course of treatment of claimant's skin condition of cheilitis or neck and shoulder/brachial plexus injury, I find such expenses compensable." Decision and Order at 51.

[8]If, on remand, the administrative law judge finds that claimant has a work-related back injury, the claim for which is not barred by Section 12, he should address whether claimant has any additional restrictions that prevent her from performing her usual work.

ended,[9] she continued to regularly work in similar employment after she returned to the United States,[10] and that she ultimately left the workforce for reasons unrelated to her work injuries.[11] Further, the administrative law judge observed that claimant repeatedly sought to return to work with employer in any capacity.[12] The administrative law judge thus declined to credit claimant's complaints of pain, a finding that is within his discretion. *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 also found that the restrictions placed by Mr. MacAulay, which are not exclusive to claimant's neck/shoulder injury, are not based on a functional capacity evaluation or on the recommendation of any physician and the administrative law judge thus declined to credit them. This finding is rational. *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). As the administrative law judge's finding that claimant did not establish an inability to return to her usual work as a result of her work-related neck/shoulder condition is supported by substantial evidence, the administrative law judge properly concluded that claimant is not disabled. *Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd mem. sub nom. Chong v. Director, OWCP*, 909 F.2d 1488 (9th

---

[9]Claimant's Exit Interview Form with employer, and statements to her post-injury employers, E.L. Hollingsworth and KLB Construction, indicate that she left her employment in Iraq due to the end of her assignment/contract. EX 4; HT at 97-98.

[10]Claimant, in November 2006, underwent a Department of Transportation physical because she wanted a truck driving job. In the accompanying form, claimant certified that she had no "nervous or psychiatric disorders" or "spinal injury or disease" and denied having suffered any "illness or injury in the past five years." EX 8. Claimant, thereafter, obtained work driving trucks with E.L. Hollingsworth and KLB Construction.

[11]In her exit interview with E.L. Hollingsworth, claimant denied "medical reasons" or "personal reasons" as her reason for quitting, citing instead numerous reasons related to her work environment and "dispatch/load planning." EX 15. Claimant also acknowledged that she was able to work full-duty with no restrictions, *i.e.*, 60 hours a week driving and crawling under trucks, until she attempted suicide, which she contemporaneously attributed to an on-the-job work incident with KLB Construction in July 2007 and not as a result of anything that occurred in Iraq. HT at 98-100. The administrative law judge noted that claimant had often asked to work additional hours for these companies.

[12]The record establishes that claimant has applied for over 1,300 jobs since leaving Iraq in October 2006, including applying for 1,000 jobs with employer to go back to Iraq or Afghanistan. HT at 74-75. Claimant also testified that she is still interested in working for employer and would take a job if offered. HT at 76.

Cir. 1990). We, therefore, affirm the administrative law judge's denial of disability benefits. *Id.*

Employer contends the administrative law judge erred in finding claimant entitled to medical benefits for her skin condition. Specifically, employer contends the administrative law judge erred in invoking the Section 20(a) presumption with regard to claimant's skin condition as there is no medical evidence establishing that conditions existed in Iraq which could have caused it. Employer asserts that it was inappropriate for the administrative law judge to apply the "zone of special danger doctrine" to claimant's skin condition because there was no showing that it is an unusual risk associated with foreign areas or that it is the result of "conditions of employment that placed the employee in a foreign setting where [she] is exposed to dangerous conditions."

The administrative law judge stated that "because Iraq falls within the zone of special danger for purposes of the [DBA] and claimant's skin condition of cheilitis arose in April 2006 – while she was in a danger zone – I find that she has invoked the presumption with respect to her skin injury." Decision and Order at 44. Additionally, the administrative law judge found that Mr. MacAuley clarified that claimant's pre-existing skin condition was a type of cellulitis in her neck and ear area which was not subject to recurrent flare-ups and had resolved prior to her employment in Iraq. The administrative law judge found that, in contrast, the cheilitis that claimant contracted while in Iraq is subject to flare-ups, which have occurred since her initial outbreak, and it affects a different area than her prior skin condition, around her mouth and lips. The record, therefore, establishes that claimant has sustained a harm, *i.e.*, a skin condition.

In order to establish the "working conditions" element for purposes of Section 20(a), claimant need establish only that her work for employer could have caused the harm alleged. *See Noble Drilling Co. v. Drake*, 795 F.2d 478, 19 BRBS 6(CRT) (5th Cir. 1986); *see generally U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). In this case, claimant testified that she believes, based on the comments of a physician, that her present skin condition is related to "some kind of contaminant contagion in the dirt" in Iraq. EX 23, Dep. at 76-77. Consequently, in view of claimant's testimony and the zone of special danger doctrine,[13] we reject

[13]The zone of special danger doctrine aids claimant in establishing the course of employment/working conditions element of a *prima facie* case in Defense Base Act cases. *See O'Leary v. Brown-Pacific-Maxon, Inc.*, 340 U.S. 504 (1951); *Kalama Services, Inc. v. Director, OWCP*, 354 F.3d 1085, 37 BRBS 122(CRT) (9th Cir. 2004), *aff'g Ilaszczat v. Kalama Services, Inc.*, 36 BRBS 78 (2002), *cert. denied*, 543 U.S. 809 (2004). Contrary to employer's contention, the doctrine applies here as claimant alleged

employer's contention that claimant is not entitled to the Section 20(a) presumption that her cheilitis is related to her work in Iraq for employer. Moreover, as the administrative law judge found, the record contains no evidence that claimant's cheilitis was not caused by condition in Iraq. Therefore, we affirm the administrative law judge's finding that employer did not rebut the presumed causal connection between claimant's skin condition and her work in Iraq. *See generally Obadiaru v. I.T.T. Corp.*, 45 BRBS 17 (2011). Thus, we affirm the administrative law judge's finding that claimant established a work-related skin condition and his resulting conclusion that she may recover reasonable and necessary medical expenses related to that condition. *See* n.7, *supra*.

Accordingly, the administrative law judge's findings that claimant's lower back condition is not work-related and that employer did not rebut the Section 20(a) presumption that claimant's neck/shoulder condition is related to her work for employer are vacated, and the case is remanded for further consideration consistent with this opinion. In all other regards, the administrative law judge's Decision and Order – Denying in Part and Awarding Benefits in Part and the Reconsideration of Decision and Order are affirmed.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge

her skin condition had its genesis in the conditions in which she was required to live and work in Iraq. *See R.F. [Fear] v. CSA Ltd.* 43 BRBS 139 (2009).