BRB No. 01-0846

RICHARD SCUDERI	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
EQUITABLE/HALTER SHIPYARDS	)	DATE ISSUED: July 25, 2002
	)	
and	)	
	)	
RELIANCE NATIONAL INDEMNITY COMPANY	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

J. Paul Demarest and Angela C. Imbornone (Favret, Demarest, Russo & Lutkewitte), New Orleans, Louisiana, for claimant.

David S. Bland and David A. Strauss (King, LeBlanc & Bland), New Orleans, Louisiana, for employer/carrier.

Before: SMITH, HALL and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (99-LHC-3029) of Administrative Law Judge James W. Kerr, Jr., 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 rational, supported by substantial evidence, and 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 an electrician. He began experiencing pain in both wrists, asserting that his bilateral wrist pain progressively worsened and he began icing his wrists at employer's first aid office during his lunch break; he also quit working on Saturdays. Employer's safety director, Kevin Couch, eventually referred claimant for medical treatment. Claimant was initially examined by Dr. Friedrichsen, an industrial medicine specialist, on July 3, 1997. Claimant reported left wrist and right elbow pain, as well as numbness and pain in his fingers and hands. Dr. Friedrichsen diagnosed probable carpal tunnel syndrome and resolving tennis elbow. On September 16, 1997, claimant was examined by Dr. Stokes, who specializes in hand and orthopedic surgery. Dr. Stokes diagnosed Stage II-III Kienbock's disease of the left arm and wrist, possible Stage I Kienbock's disease of the right arm and wrist, and bilateral carpal tunnel syndrome related to Kienbock's disease.[1]

Claimant was discharged by employer on October 6, 1997. On November 18, 1997, claimant underwent a bilateral carpal tunnel release, and on November 25, 1997, he underwent left wrist arthrodesis. Claimant returned to work for employer in February 1998, but he was forced to stop working the following month due to wrist pain. Claimant also has a well-documented history of panic attacks, agoraphobia, and generalized anxiety disorder. Claimant asserted that his pre-existing psychological conditions were aggravated by his work-related wrist injuries and his resulting inability to work. Claimant sought compensation under the Act for permanent total disability due to his physical and psychological injuries. 33 U.S.C. §908(a).

In his decision, the administrative law judge found claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), linking his Kienbock's disease, bilateral carpal tunnel syndrome, and psychological conditions to his employment. The administrative law judge credited the opinions of Drs. Stokes, Williams, Faust, Brent, and Barbee to find rebuttal of the presumption with respect to claimant's physical maladies. The administrative law judge also concluded that claimant's psychological problems are not caused or aggravated by his employment. Accordingly, the administrative law judge denied the claim.

On appeal, claimant challenges the administrative law judge's findings that his physical and psychological conditions are not related to his employment. Employer responds, urging affirmance.

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[1]Kienbock's disease is a condition of the lunate bone, one of the wrist bones. The disease causes the bone to lose its blood supply, and it may consequently fragment and compress.

Where, as in the instant case, claimant has established his *prima facie* case, Section 20(a) of the Act provides him with a presumption that his condition is causally related to his employment; the burden then shifts to employer to rebut the presumption by producing substantial evidence that claimant's condition was neither caused nor aggravated by his employment. *See Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999)*; American Grain Trimmers, Inc. v. Director*, *OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (6th Cir. 1999)(*en banc*), *cert. denied*, 528 U.S. 1187 (2000); *Swinton v. J. Frank Kelley, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). If the administrative law judge finds the Section 20(a) presumption rebutted, it drops from the case. *Universal Maritime Corp. v. Moore*, 126 F.2d. 256, 31 BRBS 119(CRT) (4th Cir. 1997). The administrative law judge then must weigh all the evidence and resolve the issue of causation on the record as a whole with claimant bearing the burden of persuasion. *See Santoro v. Maher Terminals*, 30 BRBS 171 (1996); *see generally Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

We initially address claimant's contention that the administrative law judge erred in finding that claimant's Kienbock's disease and carpal tunnel syndrome are not work-related. The administrative law judge invoked the Section 20(a) presumption, but found the presumption rebutted based on the opinion of Dr. Stokes and Dr. Faust that Kienbock's disease is a developmental disorder of unknown etiology, which, infrequently, may be caused or aggravated by significant trauma. Emp. Exs.18 at 8, 22, 94-97; 30 at 21-22. The administrative law judge found that claimant did not sustain a traumatic wrist injury at work. This finding is supported by substantial evidence, as the administrative law judge credited claimant's testimony that he did not report such injury to a physician or mention a traumatic wrist injury at his two prior depositions. Tr. at 81-82. Mr. Couch, who claimant saw when he would ice his wrists at work, testified that he had no knowledge of a traumatic injury. Cl. Ex. 16 at 20-21, 24-26. Moreover, the administrative law judge credited the reports of Drs. Stokes, Faust, Williams, and Brent, which state that claimant did not report a specific wrist trauma. Emp. Exs. 6 at 10; 7 at 2; 27 at 18; 30 at 12.

In finding rebuttal established, the administrative law judge further credited the opinions of Drs. Stokes and Williams.[2] Dr. Stokes opined that claimant's Kienbock's disease was not caused or aggravated by his employment. Emp. Ex. 18

[2]The administrative law judge also credited Dr. Brent's opinion that claimant's Kienbock's disease pre-existed claimant's employment; however, Dr. Brent went on to opine that claimant's work activated, and thereby aggravated, the Kienbock's disease. Emp. Ex. 27 at 36-37. Thus, Dr. Brent's testimony is not sufficient to rebut the presumption. *See generally Konno v. Young Bros., Ltd.*, 28 BRBS 57 (1994).

at 107-111. Dr. Williams testified that, absent a specific wrist trauma at work, claimant's Kienbock's disease is not related to his employment, and that he knew of no such trauma. Emp. Ex. 23 at 22-23, 43. The administrative law judge also credited Dr. Stokes's opinion linking claimant's carpal tunnel syndrome to Kienbock's disease and his opinion that there is no connection of either condition to claimant's employment. Emp. Ex. 18 at 107-111. The unequivocal opinions of Drs. Stokes and Williams are sufficient to rebut the Section 20(a) presumption, and we therefore affirm the finding that the Section 20(a) presumption is rebutted. *See O'Kelley v. Dept. of the Army/NAF,* 34 BRBS 39 (2000); *Holmes v. Universal Maritime Service Corp.*, 29 BRBS 18 (1995) (Decision on Recon.); *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988). Moreover, the administrative law judge's ultimate conclusion that claimant failed to establish a connection between these conditions and his employment is supported by substantial evidence and is accordingly affirmed.[3] *See Santoro,* 30 BRBS at 173; *see generally Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998).

We next address claimant's contention that the administrative law judge erred by finding, based on the record as a whole, that claimant's psychological condition was not aggravated by his inability to work due to wrist pain from his Kienbock's disease. It is well established that, under the "aggravation rule," where an employment-related injury aggravates, accelerates or combines with an underlying condition, employer is liable for the entire resultant condition. *Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45(CRT) (5th Cir. 1986) (*en banc*). In this case, the administrative law judge credited claimant's testimony that claimant's psychological disorders pre-existed his working for employer, that, as a consequence thereof, claimant left numerous prior jobs, and that claimant's psychological difficulties continued during and after

[3]In his analysis of the evidence addressing claimant's Kienbock's disease and carpal tunnel syndrome, the administrative law judge never formally weighed the conflicting medical evidence based on the record as a whole. Any error in this regard is harmless, as the administrative law judge discussed all the evidence, Decision and Order at 3-24, and the administrative law judge clearly stated which evidence he credited to reach his ultimate conclusion that claimant's wrist conditions are not work-related. *See, e.g., Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988).

his working for employer, Tr. at 91-106; *see also* Emp. Ex. 19. The administrative law judge also credited the testimony of Dr. Friedrichsen that claimant did not report a worsening of his psychological condition due to his physical injuries. Emp. Ex. 22 at 47-48. The administrative law judge next credited the unequivocal opinion of Dr. Culver that claimant's psychological condition has remained constant in degree before, during, and after his working for employer, *i.e.,* his psychological condition was not aggravated by his wrist injuries and his inability to keep working for employer. Emp. Ex. 28 at 52-61.

Contrary to claimant's assertions, the administrative law judge did not err in failing to accord determinative weight to the opinion of Dr. Arshad that claimant's psychological condition was aggravated by his inability to work. It is well-established that an administrative law judge is not bound to accept the opinion or theory of any particular medical examiner but may instead draw his own inferences and conclusions from the evidence. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). Moreover, the administrative law judge's selection among competing inferences must be affirmed if supported by substantial evidence and in accordance with law. *See Mendoza v. Marine Personnel Co., Inc.,* 46 F.3d 498, 29 BRBS 79(CRT) (5th Cir. 1995); *Todd Shipyards Corp.,* 300 F.2d at 742. In this case, the administrative law judge's crediting of the opinion of Dr. Culver over that of Dr. Arshad is rational, and his conclusion that claimant's psychological condition is not related to his employment is therefore affirmed.[4]

[4]The administrative law judge found claimant entitled to the Section 20(a) presumption linking his psychological condition to his employment, but he did not explicitly find that employer rebutted the presumption. However, as the administrative law judge rationally credited the opinion of Dr. Culver that claimant's psychological condition was not caused or aggravated by his employment, over the contrary opinion of Dr. Arshad, any error in the administrative law judge's not explicitly finding that employer rebutted the presumption is harmless as the evidence he credited is sufficient to rebut the Section 20(a) presumption. *See, e.g., Burson v. T. Smith & Son, Inc.*, 22 BRBS 124 (1989); *Bingham v. General Dynamics Corp.*, 20 BRBS 198 (1988).

We agree with claimant's contention, however, that he would be entitled to benefits for any disability due to pain resulting from the combination of his Kienbock's disease and his working conditions.[5] Where a claimant experiences pain or symptoms due to conditions of his employment, he has suffered an injury under the Act. *Volpe v. Northeast Marine Terminals*, 671 F.2d 697, 14 BRBS 538 (2d Cir. 1982); *Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1990). Claimant testified that he was eventually forced to stop work in March 1998 due to wrist pain and that his hands turned purple at work. Tr. at 64. Claimant also testified to pain in his last year of working for employer brought on by drilling and grinding, that employer had to provide him with a helper, that he iced his hands during his lunch break in order to continue working, that he quit working on Saturdays due to pain, and to his inability to perform light-duty in employer's tool room. Tr. at 38-40, 50-54, 59. Claimant's testimony that he experienced pain resulting from the combination of his working conditions as an electrician and his disease would constitute a work-related injury under the Act, as claimant's work allegedly contributed to the onset of symptoms. *See generally Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988).

An aggravation or progression of the claimant's underlying disease is not necessary for an injury to be compensable; an increase in symptoms resulting in disability is sufficient. *Crum v. General Adjustment Bureau*, 738 F.2d 474, 16 BRBS 115(CRT) (D.C. Cir. 1984); *Gardner v. Director, OWCP*, 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981), *aff'g Gardner v. Bath Iron Works Corp.*, 11 BRBS 556 (1979). Thus, the fact that we have affirmed the administrative law judge's findings that claimant's working conditions did not cause or aggravate claimant's underlying Kienbock's disease and carpal tunnel syndrome does not end the inquiry, as claimant is entitled to compensation for any disability due to the symptoms resulting from a combination of his wrist injuries and working conditions. *Id.* Moreover, when a compensable injury consists of disabling symptoms that abate when claimant is removed from the work environment, claimant may nonetheless be entitled to benefits for a permanent disability if the evidence establishes that the condition may continue to recur indefinitely. *See Crum*, 738 F.2d at 480, 16 BRBS at 124(CRT); *Care v. Washington Metropolitan Area Transit Authority*, 21 BRBS 248 (1988). Thus, even where claimant's pain related to his employment abates and his health improves away from the work environment, he may be disabled if the recurrence of symptoms prevents his return to work. *Id.*

In this case, the record contains the opinions of Drs. Stokes, Williams, Brent, and

[5]The administrative law judge did not address claimant's contention that he had to stop working due, in part, to disabling pain brought on by the combination of his Kienbock's disease, carpal tunnel syndrome, and his working conditions as an electrician for employer. Post-Trial Brief at 50-51.

Faust that claimant's working conditions could have temporarily aggravated claimant's pain while he was at work. Dr. Stokes stated that work activity can aggravate the pain caused by Kienbock's disease. Emp. Ex. 18 at 125-133. Dr. Williams testified that heavy work will increase pain and swelling from Kienbock's disease. Emp. Ex. 23 at 23-24, 38-46. Dr. Brent testified that claimant's work caused his Kienbock's disease to become symptomatic. Emp. Ex. 27 at 36-37. Dr. Faust stated that repetitive use of the wrists would aggravate claimant's Kienbock's disease by making his wrists more symptomatic and painful. DX 30 at 39-40.

On remand, the administrative law judge must first consider, consistent with the above case law and Section 20(a), whether claimant has sustained symptoms such as pain as a result of the duties of his employment. If so, the administrative law judge must determine whether claimant is disabled due to these symptoms. In this regard, the administrative law judge must determine whether claimant's symptoms preclude his return to his former work and, if so, whether employer established suitable alternate employment.[6] *See Crum*, 738 F.2d at 479, 16 BRBS at 122-123(CRT). The administrative law judge also must evaluate the medical evidence and determine whether claimant's disability is permanent or temporary, consistent with the decision in *Crum*, and resolve the outstanding medical benefits issues, which the administrative law judge did not address in his initial decision. 33 U.S.C. §907. Should the administrative law judge award claimant compensation for a permanent disability on remand, he then must address employer's request for Section 8(f) relief. 33 U.S.C. §908(f).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed, insofar as the administrative law judge found that claimant's Kienbock's disease, bilateral carpal tunnel syndrome, and psychological condition are not work-related. The denial of benefits is vacated, however, and the case is remanded for the administrative law judge to address whether claimant established a compensable injury due to pain from the combination of his Kienbock's disease and his working conditions.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

[6]Employer introduced evidence regarding alternate work claimant could perform. Emp. Exs. 25, 29, 31.

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge