BRB No. 97-524

JAMES SAVINSKY Claimant-Respondent v. OWENSBY AND KRITIKOS, INCORPORATED and LOUISIANA WORKERS' COMPENSATION CORPORATION Employer/Carrier-Petitioners	)	DATE ISSUED: DECISION and ORDER

Appeal of the Decision and Order of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Trevor V. Davis and David K. Johnson (Egan, Johnson, Stiltner & Patterson), Baton Rouge, Louisiana, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order (94-LHC-3052) of Administrative Law Judge C. Richard Avery 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 Outer Continental Shelf Lands Act, as amended, 43 U.S.C. §1331 *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).

On February 21, 1994, claimant experienced chest pains, shortness of breath, and extreme sweating while climbing a 30-foot flight of stairs while working as a visual paint inspector for employer on an offshore oil rig. Claimant, who had previously undergone an angioplasty in 1987, was transported by helicopter to Terrebone General Medical Center

where he was diagnosed as having an acute myocardial infarction. On February 22, 1994, claimant underwent triple bypass surgery, and the following day he suffered a stroke. He died on August 22, 1994, from aspiration pneumonia as a result of complications from the February 1994 stroke. Employer did not make any voluntary payments of disability compensation or medical benefits. Claimant sought permanent total disability benefits under the Act from February 21, 1994 until August 22,1994, and medical benefits, and his widow sought death benefits and funeral expenses.[1]

The administrative law judge found that claimant's myocardial infarction and resultant disability and death were work-related and awarded the compensation claimed based on the stipulated average weekly wage of $406.76. Employer appeals the administrative law judge's finding that claimant's myocardial infarction and resultant death are causally related to his employment. Claimant has not responded to employer's appeal.

Section 20(a) of the Act, 33 U.S.C. §920(a), provides claimant with a presumption that his condition is causally related to his employment if he shows that he suffered a harm and that employment conditions existed or a work accident occurred which could have caused, aggravated, or accelerated the condition. *See Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991); *Gencarelle v. General Dynamics Corp.*, 22 BRBS 170 (1989), *aff'd*, 892 F.2d 173, 23 BRBS 13 (CRT)(2d Cir. 1989). Once claimant has invoked the presumption, the burden shifts to employer to rebut the presumption with substantial countervailing evidence. *Merrill*, 25 BRBS at 144.

In the present case, the administrative law judge properly found that the Section 20(a) presumption was invoked as claimant established a harm, *i.e.,* chest pains, nausea, shortness of breath, and a myocardial infarction, and the medical opinions of Drs. Long and Walker provided evidentiary support for claimant's contention that the harm could have been caused or aggravated by his work activities, in particular his repeated stair climbing on the morning of February 21, 1994. On appeal, employer challenges the administrative law judge's finding that claimant established the working conditions element of his *prima facie* case, arguing that it is based on an overly generous interpretation of the medical opinions of Drs. Long and Walker. While recognizing that in a March 2, 1995, letter written to claimant's counsel Dr. Long opined that job stress may have contributed to

[1]The parties waived a hearing. Prior to the submission of exhibits and depositions, the parties agreed that in the event that claimant's myocardial infarction was found to be work-related, his widow was to receive his *inter vivos* disability compensation and death benefits, because it was undisputed that claimant's disability and death were related to his heart attack.

claimant's myocardial infarction, employer argues that because Dr. Long does not discuss the particulars of claimant's work conditions, his opinion is too speculative to establish claimant's *prima facie* case . Employer further avers that Dr. Walker's opinion also does not provide substantial evidence to support the administrative law judge's determination because, although he testified that a myocardial infarction could result from a spasm or abrupt closure of the blood vessel brought about by stress or dehydration, there is no evidence in the record that claimant was actually dehydrated or that his job activities on the day of his myocardial infarction involved any unusual strenuous physical activity or emotional stress.

We affirm the administrative law judge's finding that claimant met his burden of establishing his *prima facie* case. Contrary to employer's contentions, claimant is not required to show that his working conditions involved either unusual or acute stress to establish the second prong of his *prima facie* case. *Cairns v. Matson Terminals*, Inc., 21 BRBS 252 (1988). Moreover, claimant is also not required to introduce affirmative evidence establishing that his work related activities actually caused the harm alleged in order to invoke Section 20(a); he need only introduce evidence that it could have done so. *See Brown v. I.T.T./Continental Baking Co.*, 921 F.2d 289, 24 BRBS 75 (CRT)(D.C. Cir. 1990); *Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141 (1990); *Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990). In this case, as it is undisputed that claimant was required to climb a thirty foot stairway several times on the day he suffered his heart attack, and Drs. Long and Walker both recognized that a possible connection existed between claimant's work activities and his myocardial infarction, Cl. Ex. 25(a); Emp. Ex. 4 at 32-34, 36, the administrative law judge rationally found that claimant met this burden in the present case. *See generally Wheatley v. Adler*, 407 F.2d 307(D.C. Cir. 1978). His conclusion that Section 20(a) was therefore invoked is affirmed.

We also reject employer's argument that the administrative law judge erred in failing to conclude that Dr. Walker's opinion was sufficient to rebut Section 20(a). As employer avers, Dr. Walker did opine in a letter dated May 20, 1994, that it is "fairly likely" that claimant's myocardial infarction was due to the natural progression of the coronary artery disease for which claimant underwent angioplasty in 1987. Cl. Ex. 32. This opinion, however, is insufficient to establish rebuttal of the Section 20(a) presumption because it does not explicitly rule out claimant's employment as a cause of his myocardial infarction. *See generally Sinclair v. United Food & Commercial Workers*, 23 BRBS 148, 154-155 (1989). Moreover, as Dr. Walker also opined that the exertional stress of claimant's climbing stairs could have precipitated the occurrence of his heart attack, Emp. Ex. 4 at 33-36, the administrative law judge rationally found that Dr. Walker's opinion was too equivocal to establish rebuttal. *See Obert v. John T. Clark and Son of Maryland*, 23 BRBS 157, 160-162 (1990). As claimant established invocation of the Section 20(a) presumption and the administrative law judge properly found that employer did not introduce evidence sufficient to establish rebuttal, the administrative law judge's finding that claimant's myocardial infarction was work-related is affirmed. *See Cairns*, 21 BRBS at 257. As it is undisputed that claimant's disability and death resulted from the myocardial infarction, the award of benefits is affirmed.

Accordingly, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge