BRB No. 97-931

JOHN L. ZEA	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
WEST STATE, INCORPORATED	)	
	)	
and	)	
	)	
FIREMAN'S FUND INSURANCE COMPANY	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Alfred Lindeman, Administrative Law Judge, United States Department of Labor.

Floyd H. Shebley, Oregon City, Oregon, for claimant.

Karen O'Kasey and Darien S. Loiselle (Schwabe, Williamson & Wyatt), Portland, Oregon, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order-Denying Benefits (94-LHC-2633, 96-LHC-1623/1624/1625) of Administrative Law Judge Alfred Lindeman 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 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, a 41-year old painter and sandblaster, sustained multiple injuries to his back and knees while working for various employers. His first back injury documented by the record in this case occurred on October 10, 1984, and a CT scan in 1985 indicated disc lesions at L4-5 and L5-S1. Pertinent to the present claim, on February 24, 1988, while working for West State, Incorporated (employer), claimant was involved in an accident which he alleged resulted in an injury to his back.[1] He was diagnosed with a muscle strain and returned to work after four days. He worked one day and was then laid off for reasons unrelated to his injury. Claimant testified that when he returned to work after a three-week layoff, he felt better but still experienced pain in his back and legs, limited motion in his low back, and frequent muscle spasms. Tr. at 66-67, 71-71. On August 21, 1990, while working for Cascade General in covered employment, claimant injured his right knee. Thereafter, he underwent three arthroscopic surgeries. In March 1991, claimant's right knee collapsed, causing him to unexpectedly fall down some stairs at home. CX 13. Claimant testified that after this injury, his back pain increased initially, but within a few days it returned to baseline, and he returned to work as a painter and sandblaster. On September 17, 1991, while engaged in employment with the Port of Portland, which was not covered by the Act, claimant experienced low back pain after hauling roof tar but was found fit to return to work without restrictions as of September 30, 1991. CXs 17, 23.[2] While on layoff in December 1992, claimant reinjured his knee while playing in the snow with his children. On February 17, 1993, he had his third and final knee operation. In May 1993, he experienced increased back pain while undergoing physical therapy for his knee. An MRI performed on June 10, 1993, revealed disc lesions at L4-5 and L5-S1. CX 32. Claimant underwent lumbar disc surgery on June 15, 1993, and has not worked since his

[1]At that time, employer was insured by Fireman's Fund Insurance Company.

[2]Claimant filed a state workers' compensation claim for this injury. The Oregon Workers' Compensation Board denied the claim on October 19, 1993, finding that claimant's back problems were due to the 1988 work injury at issue here. CX 53 at 84.

surgery.[3] Claimant subsequently developed psychological problems, which he alleged resulted from his inability to work due to his injuries and the financial problems which ensued for him and his family.

[3] The last covered employer prior to the back surgery was also West State, but at that time, insurance coverage was provided by Eagle Pacific.

Claimant filed claims against several maritime employers under the Act on August 12, 1993. The current appeal involves claimant's claim against employer West State for the disability due to his 1993 surgery, which claimant asserts is the result of his February 1988 work accident.[4] Claimant seeks temporary total disability and medical benefits for his 1988 back injury commencing as of the time of the June 1993 surgery, and for his depression, which he asserts is related to his back injury.

With regard to claimant's back injury, the administrative law judge found that although claimant was entitled to invocation of the presumption in Section 20(a) of the Act, 33 U.S.C. §920(a), based on the opinions of Drs. Frank and Long, the presumption was rebutted because the weight of the evidence established that the effects of the claimant's 1988 injury were permanently aggravated and worsened by his subsequent 1990 knee injury and surgery as well as the heavy work he performed as a sandblaster painter and pot tender after 1988. With regard to claimant's psychological injury, the administrative law judge found that claimant did not establish a *prima facie* case sufficient to entitle him to the benefit of the Section 20(a) presumption. He therefore concluded that employer was relieved of liability for

[4]Initially, the administrative law judge denied West State/Eagle Pacific's Motion to Dismiss, but later claimant stipulated to a dismissal of both the employer/carrier and Cascade General for the claim relating to low back and emotional stress, on condition that the dismissal was without prejudice and that the dismissed parties could not raise any timeliness defense if claimant did not prevail in the present claim. Claimant therefore deferred his claim against those employers until this matter was resolved. In a Decision and Order issued August 4, 1994, in a separate proceeding, Administrative Law Judge Karst awarded claimant temporary total disability benefits, scheduled permanent partial disability benefits, and medical benefits for claimant's 1990 knee injury and resulting surgeries against Cascade General and its insurer, SAIF Corporation.

the claimed disability compensation and medical benefits.

On appeal, claimant contends that the administrative law judge erred in finding that his post-June 1993 back disability was related to his subsequent heavy employment and 1990 knee injury rather than to the natural progression of the 1988 work injury, and in determining accordingly that employer was relieved of liability. Claimant also asserts that the administrative law judge erred in finding employer was not liable for the disabling effects of his emotional condition and its treatment since June 1993. Employer responds, urging affirmance.

In the present case, it is undisputed that claimant is entitled to invocation of the Section 20(a) presumption to link his back condition to the employment injury. Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut it with substantial evidence sufficient to sever the causal connection between the injury and the employment. *See Swinton v. J. Frank Kelly, 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 is rebutted, he must weigh all the evidence and resolve the causation issue based on the record as a whole. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990).

If claimant sustains a subsequent injury, an employer can establish rebuttal of the Section 20(a) presumption by producing substantial evidence that claimant's condition was caused by the subsequent event; in such a case, employer must additionally establish that the first work-related injury did not cause the second injury. *See, e.g., Kelaita v. Director, OWCP*, 799 F.2d 1308, 1310-1311 (9th Cir. 1986). In a case involving which of two employers under the Act is responsible for disability where claimant sustains successive traumatic injuries, the United States Court of Appeals for the Ninth Circuit, within whose jurisdiction the instant case arises, has stated:

> If the disability resulted from the natural progression of a prior injury and would have occurred notwithstanding the subsequent injury, then the prior injury is compensable and accordingly, the prior employer is responsible. If, on the other hand, the subsequent injury aggravated, accelerated or combined with claimant's prior injury, thus resulting in claimant's disability, then the subsequent injury is the compensable injury, and the subsequent employer is responsible.

Foundation Constructors, Inc. v. Director, OWCP, 950 F.2d 621, 624, 25 BRBS 71, 75 (CRT)(9th Cir. 1991), *quoting Kelaita*, 799 F.2d at 1311. Thus, in order to escape liability, employer in this case must produce substantial evidence that claimant’s

surgery and resulting disability are not the result of the 1988 injury but rather are due to subsequent injuries or permanent aggravations. *See General Ship Service v. Director, OWCP,* 938 F.2d 960, 25 BRBS 22 (CRT)(9th Cir. 1991). *See also Avondale Industries, Inc. v. Director, OWCP,* 977 F.2d 186, 26 BRBS 222 (CRT)(5th Cir. 1992); *Susoeff v. The San Francisco Stevedoring Co.,* 19 BRBS 149 (1986).[5] In this regard, a subsequent injury which results in only a temporary aggravation will not affect the compensation liability of the prior employer if the temporary aggravation has ceased prior to the period of the claimed disability. *See generally Gardner v. Director, OWCP*, 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981).

We reverse the administrative law judge's finding that claimant's surgery and disability were not due to the effects of the 1988 injury but to an aggravation resulting from his post-injury work and 1990 knee injury. Although the administrative law judge properly stated that the burden of proof was on employer to prove that the disabling condition was not caused by the 1988 injury or that a subsequent event resulted in a permanent aggravation of that injury, he then reviewed the record for evidence affirmatively establishing a connection between the disability and the 1988 injury, stating there were "several reasons why the opinions of Drs. Franks and Long do not support a finding that claimant's low back condition in June 1993 was legally attributable to a 'natural progression' of the February 1988 injury as opposed to the subsequent events." Decision and Order at 10. However, as the Section 20(a) presumption was invoked, claimant was not required to affirmatively establish that his condition arose from the 1988 injury. Rather, the

[5]These cases involved the responsible employer rule established in *Travelers Ins. Co. v. Cardillo*, 225 F.2d 137 (2d Cir.), *cert. denied*, 350 U.S. 913 (1955), in occupational disease cases. In *Susoeff,* the Board thus held that employer may rebut Section 20(a) by proving claimant's injury is not work-related and may also escape liability by proving it is not the last employer to expose claimant to injurious stimuli. The Fifth and Ninth Circuits subsequently agreed with this allocation of the burden of proof. While the present case involves the rules for allocation liability in a case involving successive traumatic injuries, similar burdens are applicable because, as the court observed in *Foundation Constructors,* the "two-injury rule" is a branch of *Cardillo.* Moreover, whether this case is characterized as involving the issue of causation or that of determining the responsible employer, employer's burden is the same, as it must prove claimant's injury was the result of subsequent events rather than the 1988 injury. *See generally Buchanan v. International Transport Services,* 31 BRBS 81 (1997)(once the compensability of claimant's claim is established, Section 20(a) does not apply to aid one employer over another, but each bears burden of proving it is not the responsible employer).

burden was on employer to establish that claimant sustained a subsequent injury or aggravation which is the cause of his disability. Thus, the administrative law judge's finding that this evidence is insufficient to establish that claimant's back disability was due to the natural progression of the February 1988 injury does not address the relevant inquiry, as employer was required to produce substantial evidence that claimant's back surgery and disability were due to a subsequent event and not the natural and unavoidable result of his February 1988 work injury. *See Foundation Constructors, Inc.*, 950 F.2d at 621, 25 BRBS at 71 (CRT). In this regard, moreover, the opinions of Drs. Frank and Long are not sufficient to meet employer's burden or support the administrative law judge's conclusion, as neither unequivocally opined that claimant's back disability was permanently aggravated by the heavy work he performed as a sandblaster subsequent to 1988 and by his 1990 knee injury and surgery therefor.

The administrative law judge first addressed the opinion of Dr. Franks, the neurologist who performed claimant's June 1993 back surgery. In an October 19, 1993, report, Dr. Franks characterized the effect of claimant's returning to heavy work and his subsequent injuries as "clinical stresses making the pain to a variable degree more symptomatically manifest." CX 51. However, he also stated that it was his overall opinion that the 1988 incident was the cause of claimant's persistent back problems and ultimately his need for surgery. *Id.* In a letter written the same day in response to an inquiry from a claims examiner for Helsman Northwest, Dr. Franks stated that claimant had low back pain since 1988,[6] that the September 17, 1991, incident at the Port of Portland was a temporary exacerbation of an already abnormal lumbar spine with disc problems dating back to 1988, and that he was unaware of any significant outside factors that would have been a major contributing cause to his current condition. CX 50.

In discussing Dr. Franks, the administrative law judge noted that Dr. Franks did not treat claimant in 1988 and relied upon claimant's history in reaching his conclusion, whereas Drs. Rosenbaum and Long found him to be a poor historian. He further found that claimant told Dr. Franks he had persistent and progressive pain in his low back since the February 24, 1988, injury, whereas the medical records do not reflect any ongoing low back difficulties between 1988 and 1990. Finally, he

[6]We note that the 1991 incident was not relied upon by the administrative law judge as a cause of claimant's disability. In any event, the relevant state authority found his condition at that time related to the 1988 injury, *see* n.2, *supra. See Bath Iron Works Corp. v. Director, OWCP,* 125 F.3d 18, 31 BRBS 109 (CRT) (1st. Cir. 1997).

stated that Dr. Franks reported that the diagnostic studies he examined demonstrated "normal" lumbar spine films in 1991, compared to abnormal findings in 1993. While all of these findings are subject to challenge,[7] they provide at best a rationale for discounting the opinion of Dr. Franks, in which case his opinion cannot aid employer in meeting its burden of proof. In any event, as Dr. Franks related claimant's condition to the 1988 injury, his opinion cannot establish that claimant's disability is due to a subsequent cause.

Similarly, Dr. Long also specifically related claimant's back surgery and disability thereafter to his 1988 injury. In a report dated February 9, 1995, after examining claimant and reviewing various medical reports, he stated that it was clear in retrospect that claimant had significant discogenic pain in 1985 when he first saw him and that there is fairly good documentation suggesting that the flexion strain that occurred in association with the February 24, 1988, injury caused recurrent discogenic lumbar pain and that this injury was not simply a muscular strain but involved lumbar disc injury. CX 59. In addition, after reviewing claimant's medical records from before and after the 1988 industrial injury, Dr. Long deposed that it was his opinion to a reasonable degree of medical certainty, that claimant developed an L4-5 and L5-S1 disc injury in 1984 and that the work injury of February 24, 1988, caused a major worsening of his disc injuries and that the 1988 injury has been the major contributing cause of his lumbar disc and lower extremity radiculopathy and

[7]In fact, while Dr. Rosenbaum did find claimant to be a poor historian, Dr. Long specifically disagreed with his conclusion, deposing that while claimant was not the best, he was a "credible historian." CX 74 at 179. Moreover, while claimant did not seek treatment between 1988 and 1990, he did recount ongoing back pain. Finally, Dr. Franks did state that the x-ray films from 1991 were normal. However, Dr. Long testified that x-rays do not reveal disc lesions. *Id*. at 220. Moreover, the implication that claimant's back was normal in 1991 and abnormal in 1993 is not supported by the record, as a 1985 CT scan demonstrated lesions at L4-5 and L5-S1, consistent with the 1993 MRI results. *Id.* at 214-215; *see* EXs 10, 39.

condition since that time. CX 74 at 181.

On cross-examination, Dr. Long acknowledged that claimant performed heavy labor after his 1988 injury and that with his longstanding degenerative disc disease, it was medically probable that the work he did as a sandblaster between 1988 and 1992 contributed to his ongoing disc disease. *Id.* at 213. He also stated it was possible that claimant's physical therapy for his knee contributed to his condition, *id.* at 214, but on redirect, he stated that in his opinion the knee surgeries are unrelated to claimant's back condition. *Id.* at 218. Finally, he reiterated that the major cause of claimant's surgery was the 1988 injury, and he stated that even if claimant had an office job in the intervening years, he still would have needed the surgery in 1993. *Id.* at 222-223. On a final question from employer's counsel, he answered in the affirmative when asked if claimant's heavy work from 1988 to 1992 increased the probability claimant would need the 1993 surgery. *Id*. at 224.

It is apparent that Dr. Long's opinion cannot rebut Section 20(a) and meet employer's burden of proof. He related claimant's condition to the 1988 injury to a reasonable degree of medical certainty, although he also acknowledged that it was probable that claimant's heavy labor, and possible that his therapy for his knee, contributed to his condition. These admissions can only serve to make his opinion equivocal; they do not transform it into evidence establishing a causal nexus with events after the 1988 injury. Moreover, the administrative law judge's discussion of Dr. Long further undermines the probative value of the doctor's opinion. The administrative law judge found that Dr. Long relied upon claimant's history, in particular that he had a "major worsening" of his condition following the February 1988 injury, but stated he could not identify a worsening of the disc lesions during that time interval.[8] The administrative law judge found that this lack was consistent with claimant's having no neurological findings, missing no work, and receiving no additional treatment after his emergency room visit in February 1988. The administrative law judge also noted that Dr. Long discounted claimant's 1991 injury at the Port of Portland on the ground that a two to three day increase in symptoms did not indicate a natural progression of the disc lesion and that the same scenario is evidenced by the record following the 1988 injury. As with Dr. Franks, the administrative law judge's findings regarding Dr. Long do not support the conclusion that his opinion rebuts Section 20(a).

Finally, the administrative law judge relied on the fact that claimant performed

[8]Actually, Dr. Long testified that comparison of the 1985 and 1993 reports were indicative of a worsening of the L4-5 disc lesion. CX 74 at 215.

heavy work and that lay witnesses noted that his low back pain increased over time. He concluded that from a legal standpoint, it is clear that claimant's heavy work after 1988 and the subsequent knee injury and surgery therefor, contributed to the permanent aggravation and worsening of his underlying back condition. In support, the administrative law judge cited the testimony of claimant and his wife that his back problems were aggravated while undergoing physical therapy on his knee. This lay evidence alone is not sufficient to establish an aggravation, particularly in view of Dr. Long's opinion. The administrative law judge also cited statements from claimant's treating physicians, Drs. Long and Franks, which he found acknowledged the contribution made by claimant's subsequent employment, relying on Dr. Franks's statement that claimant had further clinical stresses which made his pain more symptomatically manifest, CX 51, and Dr. Long's testimony that it was medically probable that heavy labor would contribute to claimant's longstanding disc disease and increase the likelihood claimant would need surgery. As we have previously discussed, however, these statements alone are insufficient to rebut Section 20(a) in view of the fact that the doctors' opinions also related claimant's surgery to the progression of his disc disease and the 1988 injury. Neither doctor affirmatively opined that claimant's employment subsequent to 1988 permanently aggravated his disc disease to result in claimant's back surgery and disability.

The only other medical opinion of record which addresses the cause of claimant's back disability is that of Dr. Rosenbaum. In a report dated August 30, 1993, Dr. Rosenbaum opined that although he could not affix with any degree of certainty the etiology of claimant's L4-5 herniation for which he had undergone surgery, the September 1991 work injury did not appear to be implicated. Moreover, Dr. Rosenbaum stated that it was his best assessment that the herniation on the basis of degenerative disc disease occurred spontaneously, and that the "straw that broke the camel's back" must have occurred sometime in early 1993, although there was no historical reference to support this conclusion by either the patient or the medical records. EX 48 at 5. Although the administrative law judge set forth this opinion in his recitation of the relevant evidence, he did not explicitly consider it in assessing the cause of claimant's June 1993 back disability. We conclude, however, that any error he may have made in this regard is harmless; as Dr. Rosenbaum could not give an opinion as to the cause of the disc herniation with any degree of certainty, his opinion cannot sever the presumed connection between claimant's disability and his 1988 work injury. *See Kubin v. Pro-Football, Inc.*, 29 BRBS 117, 120 (1995); *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

As the administrative law judge's finding that employer rebutted the Section 20(a) presumption by establishing that claimant sustained a subsequent permanently aggravating injury which is the cause of his June 1993 disability is not supported by substantial evidence, it is reversed. The administrative law judge's Decision and Order is therefore modified to provide that employer is liable for benefits for claimant's back injury. The case is remanded for consideration of all remaining issues relating to claimant's back injury.[9]

[9]Claimant argues on appeal that his low back claim against employer is timely under Sections 12 and 13, 33 U.S.C. §§912, 913. Inasmuch as the administrative law judge found that employer was not responsible for claimant's back injury because it had rebutted the Section 20(a) presumption, he found that this issue was moot. Decision and Order at 13 n.6.

With regard to claimant's depressive disorder, we agree with claimant that the administrative law judge erred in determining that claimant was not entitled to invocation of the Section 20(a) presumption and in finding therefore that employer was not liable for claimant's emotional problems as of June 1993. In so concluding, the administrative law judge found that Dr. Maletzky, claimant's treating psychiatrist in 1995, opined that claimant's depression was caused by his multiple injuries and various other problems and that he would not be in need of psychiatric care had the back and knee injuries not occurred. Moreover, he found that Dr. Newton, a psychiatrist who treated claimant briefly in 1994, identified chronic pain secondary to knee and back injuries post-surgery as the cause of claimant's depression. The administrative law judge also reasoned that Dr. Maletzky relied on an inaccurate history in relating claimant's psychological problem to the 1988 work injury in that he mistakenly believed that claimant had received treatment for his low back strain during 1988 and 1989, whereas there is no record of orthopedic evaluation during this time period. In addition, he found that although Dr. Maletzky was unable to identify any psychiatric disorder prior to 1988, claimant's medical records show that as early as September 6, 1985, Dr. Colbach identified several personality traits consistent with a personality disorder, and he noted that claimant had received counseling and had trouble with the juvenile authorities as a teenager. Decision and Order at 12 n.4.[10] Finally, he noted that the most important factor in his determination that employer was not liable for the claimed psychological disability and medical benefits was the fact that claimant's depressive symptoms did not become manifest until 1993, long after his 1988 work injury and his supervening 1990 knee injury with Cascade General and continued employment with West State/Eagle Pacific between May and December 1992, which was the last covered employment prior to his surgery.

These findings are insufficient to support the conclusion that Section 20(a) was not invoked. The administrative law judge improperly placed the burden of proof on the claimant to affirmatively establish that employer was liable for his

[10]Although the administrative law judge found that Dr. Maletzky relied on an inaccurate history regarding claimant's past psychological record, in that he did not have the benefit of the medical records as of the time he issued his January 27,1995 report, the record reflects that by the time of his deposition in September 1996, Dr. Maletzky had reviewed the relevant medical records and specifically disagreed with Dr. Colbach's 1985 opinion that claimant had a personality disorder, reasoning that if claimant had had a disorder in 1985, it would still exist, yet he found no such disorder. Dr. Maletzky was also apparently familiar at the time of the deposition with the opinion of Dr. Klecan discussed *infra. See* Dr. Maletzky depo. at 15-16.

psychiatric condition. In order to be entitled to the Section 20(a) presumption, claimant must establish a *prima facie* case by showing that he suffered a harm and that an accident occurred or working conditions existed which could have caused the injury or harm. *See Konno v. Young Bros., Ltd.,* 28 BRBS 57 (1994). Contrary to the analysis employed by the administrative law judge, however, claimant need not prove that the work accident in fact caused the harm claimed to establish his *prima facie* case. *See Hampton v. Bethlehem Steel Corp.,* 24 BRBS 141 (1990). Rather, claimant need only show the occurrence of an accident or the existence of working conditions which could have caused the harm alleged. *See Sinclair v. United Food & Commercial Workers,* 23 BRBS 148 (1989). Once claimant has demonstrated his *prima facie* case, Section 20(a) applies and employer can rebut it by establishing that claimant's disabling condition was not caused or aggravated by his employment. *See generally Manship v. Norfolk & Western Railway Co.*, 30 BRBS 175,179 (1996). Employer may also escape liability in a case involving multiple traumatic injuries by showing that it is not the responsible employer because claimant sustained a subsequent injury in covered employment which aggravated, accelerated, or combined with claimant's prior injury to result in claimant's disability. *See, e.g., Kelaita*, 799 F.2d at 1308.

In the present case, as it is undisputed that claimant suffers from psychological problems and the occurrence of the 1988 work injury is not in dispute, claimant is entitled to the benefit of the Section 20(a) presumption as a matter of law. Inasmuch as claimant is entitled to the Section 20(a) presumption, the relevant inquiry is whether employer rebutted the presumption by introducing specific and comprehensive evidence sufficient to sever the causal connection between the injury and the employment. *See Swinton,* 554 F.2d at 1075, 4 BRBS at 466.

The administrative law judge's failure to apply the Section 20(a) presumption may be viewed as harmless error if he considered all of the relevant evidence and relied upon substantial evidence sufficient to rebut the presumption. *See generally Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988). In the present case, however, the evidence relied upon by the administrative law judge is insufficient to establish rebuttal of Section 20(a) presumption as a matter of law. Neither the medical opinion of Dr. Maletzky nor that of Dr. Newton can properly rebut Section 20(a), as both doctors attributed claimant's depressive condition in part to his work injury. *See Caudill v. Sea Tac Alaska Shipbuilding*, 25 BRBS 92 (1991), *aff'd mem. sub nom. Sea Tac Alaska Shipbuilding v. Director, OWCP*, 8 F.3d 29 (9th Cir. 1993). Moreover, the fact that claimant may have suffered pre-existing psychological problems also does not serve to relieve employer of liability; under the aggravation rule, if the employment injury aggravates, accelerates, or combines with an underlying condition, the entire resultant condition is compensable. *See*

Independent Stevedore Co. v. O'Leary, 357 F.2d 812 (9th Cir. 1966); *Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989). Finally, while the administrative law judge also relied on the fact that claimant's psychological problems did not became manifest until 1993 in concluding that employer was not liable for claimant's emotional condition or its treatment as of June 1993, this is not evidence which, standing alone, is sufficiently specific and comprehensive to rebut the presumption afforded to claimant pursuant to Section 20(a). *See generally Swinton*, 554 F.2d at 1075, 4 BRBS at 466.

Although the evidence relied upon by the administrative law judge is insufficient to rebut the Section 20(a) presumption, we note that the record contains a psychiatric opinion from Dr. Eugene Klecan, which the administrative law judge did not discuss and which could, if properly credited, establish rebuttal of the Section 20(a) presumption and the absence of a causal nexus in the record as a whole. In his February 9, 1995, report, Dr. Klecan opined that claimant is not depressed, but has a personality disorder unrelated to his work injuries. EX 61. Inasmuch as the Administrative Procedure Act, 5 U.S.C. §557(c)(3) (A), requires that the administrative law judge consider, analyze, and discuss all of the relevant evidence in resolving the issues before him, we vacate his denial of benefits for claimant's psychological condition, and remand for him to reconsider the issue of causation issue independently from the responsible employer issue in light of all of the relevant evidence. *See Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380 (1990). If, on remand, he finds that the Section 20(a) presumption is rebutted, he must weigh all of the evidence and resolve the causation issue based on the record as a whole.

If the administrative law judge determines on remand that claimant's June 1993 psychological condition is work-related, he should then consider whether employer introduced evidence sufficient to establish that claimant sustained a subsequent aggravating injury with another covered employer so as to relieve employer of liability as the responsible employer. In determining that employer was not liable as the responsible employer, the administrative law judge essentially found that claimant did not introduce convincing evidence sufficient to relate claimant's June 1993 psychological condition to the 1988 work injury. In so concluding, the administrative law judge improperly placed the burden of proof on claimant; it is employer who bears the burden of proving that it is not the employer liable for benefits.[11] *See General Ship,* 938 F.2d at 960, 25 BRBS at 22 (CRT);

[11]In addressing this issue, in order to avoid piecemeal resolution of the claim, the administrative law judge may wish to reconsider his decision to defer consideration of the liability of the other named employers. If, for example, the

Susoeff, 19 BRBS at 151-152. Accordingly, the administrative law judge's denial of benefits for claimant's psychological condition is also vacated, and the case is remanded for reconsideration.

Accordingly, the administrative law judge's finding that employer is not liable for claimant's back surgery and disability is reversed, and the case is remanded for consideration of all remaining issues relating to the back injury. The administrative law judge's denial of benefits for claimant's 1993 psychiatric condition is vacated, and the case is remanded for reconsideration of the issues of causation and the responsible employer consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

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administrative law judge concludes that claimant's psychological condition was aggravated by the knee injury, such a finding would prejudice the employer at that time, and allowing it to produce additional evidence in a separate proceeding would involve relitigation of these issues.