

CLAIR MAYNARD FIELDS)
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 Claimant-Petitioner)
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 v.)
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 BATH IRON WORKS CORPORATION) DATE ISSUED: 12/14/2006
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 Self-Insured)
 Employer-Respondent) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Daniel F. Sutton,
Administrative Law Judge, United States Department of Labor.

Marcia J. Cleveland, Topsham, Maine, for claimant.

Stephen Hessert (Norman, Hanson & Detroy, LLC), Portland, Maine, for
self-insured employer.

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

SMITH, Administrative Appeals Judge:

Claimant appeals the Decision and Order Denying Benefits (2005-LHC-0850) of
Administrative Law Judge Daniel F. Sutton 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 slipped on ice at work on April 26, 2002. He experienced back pain but
continued working until June 17, 2002, when increasing back pain forced him to stop
working. Claimant suffers from chronic degenerative disc disease, extensive
osteoarthritis of the low back area with significant hypertrophy of the facet joint at level
L4-L5 and L5-S1, and excessive formation of bony spurs. Claimant filed a claim for
total disability benefits, alleging that his back condition was caused or aggravated by the

fall on April 26, 2002, or by claimant's work activities between April 27 and June 17, 2002.

In his Decision and Order, the administrative law judge found claimant entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption that his back condition is work-related, but that employer rebutted this presumption. Upon weighing the evidence as a whole, the administrative law judge found that claimant's current back condition and disability were not caused or aggravated by the fall at work or by claimant's working conditions. Accordingly, he denied benefits.

Claimant appeals, arguing that the administrative law judge erred in finding that employer rebutted the Section 20(a) presumption and in finding, based on the weight of the evidence, that his back injury is not work-related. Employer responds, urging affirmance of the denial of benefits.

The administrative law judge found that claimant advanced two theories of recovery: (1) the fall at work on April 26, 2002 caused a herniated disk; and/or (2) the requirements of claimant's job between April 27, 2002 and June 17, 2002 aggravated the underlying back condition and resulted in disabling radicular symptoms in claimant's left leg. The administrative law judge invoked the Section 20(a) presumption on both theories. Decision and Order at 10. Once, as here, the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused, aggravated, or rendered symptomatic by his employment. *See generally Bath Iron Works Corp. v. Director, OWCP*, 109 F.3d 53, 31 BRBS 19(CRT) (1st Cir. 1997). In this regard, the aggravation rule provides that where an injury at work aggravates, accelerates or combines with, a prior condition, the entire resultant disability is compensable. *See, e.g., Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966). This rule applies not only where the underlying condition itself is affected but also where the work causes claimant's underlying condition to become symptomatic. *Gardner v. Director, OWCP*, 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981); *Pittman v. Jeffboat, Inc.*, 18 BRBS 212 (1986). If the administrative law judge finds that the Section 20(a) presumption is rebutted, he must then weigh all of the evidence and resolve the issue of causation based on the record as a whole with claimant bearing the burden of persuasion. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

The administrative law judge found that employer established rebuttal of the Section 20(a) presumption based upon the opinions of Drs. Desai and Ciembroniewicz. We agree with claimant that these opinions do not constitute substantial evidence that

claimant's back condition was not aggravated by his employment between April and June 2002, resulting in disability.¹

In finding the Section 20(a) presumption rebutted, the administrative law judge specifically relied on Dr. Ciembroniewicz's opinion that claimant's work as a pipe fitter between April and June 2002 did not play any significant contributing role in the development of claimant's osteoarthritis. Decision and Order at 11; Dep. at 17, (emphasis added). This opinion does not state that claimant's pre-existing back condition was not aggravated by his work. It addresses only the cause of claimant's osteoarthritis. In fact, in invoking the Section 20(a) presumption, the administrative law judge cited to Dr. Ciembroniewicz's opinion that "over doing" it with physical activity could cause the type of symptoms claimant suffered. Decision and Order at 10; Dep. at 16-17. Although Dr. Ciembroniewicz stated that the fall and working conditions were not significant factors in the development of claimant's osteoarthritis, he stated that either could have produced a "transient aggravation of claimant's condition." EX 17 at 13. In addition, he stated that someone with degenerative changes in the spine, such as claimant exhibited, could become symptomatic in response to physical activity or as the result of a traumatic injury. *Id.* at 16-17. Similarly, although Dr. Desai stated his opinion that claimant's fall did not cause his back herniation because there was no immediate symptomology, CX 14 at 11, Dr. Desai also stated that the working conditions described by claimant could be a contributing factor to the progression of claimant's back condition. *Id.* at 8.

We hold that neither Dr. Desai's nor Dr. Ciembroniewicz's opinion is legally sufficient to rebut the Section 20(a) presumption because neither states that claimant's working conditions did not aggravate claimant's back condition or render his pain symptomatic. See *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004); *Burley v. Tidewater Temps*, 35 BRBS 185 (2002). Both physicians opined that strenuous work conditions such as those described by claimant could contribute to or render symptomatic claimant's underlying condition. If claimant's work caused his underlying condition to become symptomatic or otherwise worsened his symptoms, claimant has sustained a work-related injury. See *Gardner*, 640 F.2d 1385, 13 BRBS 101; *Pittman*, 18 BRBS 212. If a physician states that claimant's condition is due in part to his work, his opinion does not constitute substantial evidence sufficient to rebut the Section 20(a) presumption. See, e.g., *Preston*, 380 F.3d 597, 38 BRBS 60(CRT); *Bridier v. Alabama Dry Dock & Shipbuilding Co.*, 29 BRBS 84 (1995); see also *Director, OWCP v. Vessel Repair, Inc.*, 168 F.3d 190, 33 BRBS 65(CRT) (5th Cir. 1999).

¹ Therefore, we need not address claimant's contention that the opinions also are insufficient to rebut the Section 20(a) presumption with respect to claimant's claim that the fall at work caused his back condition.

As both physicians stated that claimant's work between April and June 2002 could have contributed to claimant's back condition, the administrative law judge erred in finding that employer established rebuttal of the Section 20(a) presumption. *Id.* As employer presented no other evidence that claimant's back condition was not aggravated by his work, claimant's condition is work-related as a matter of law. *Jones v. Aluminum Co. of North America*, 35 BRBS 37 (2001); *Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1990). Consequently, the administrative law judge's denial of benefits is vacated. The case is remanded for the administrative law judge to address any other issues raised by the parties.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is vacated. The case is remanded for the administrative law judge to address any remaining issues raised by the parties and to enter a compensation order if appropriate.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

I concur:

BETTY JEAN HALL
Administrative Appeals Judge

McGRANERY, Administrative Appeals Judge:

I agree with my colleagues that the administrative law judge erred in finding that employer rebutted the presumption that claimant's injury was work-related. 33 U.S.C. §920(a).

Claimant quit work on June 7, 2002, when a pain which radiated from his back down his leg (radiculopathy) became so severe he could not work. The uncontradicted evidence is that claimant's radiculopathy results from a combination of his herniated disk and osteoarthritis, both of which are conditions of the general population, in people who are asymptomatic. Claimant's back condition ceased to be asymptomatic about two weeks before he quit work and he is now totally disabled as a result of a combination of his radiculopathy, morbid obesity and multiple medical problems.

Claimant's theory of the case, at issue here, is that working conditions aggravated his pre-existing disease, rendering him symptomatic, and therefore, totally disabled. The

administrative law judge held that employer rebutted the presumption of work-relatedness based upon Dr. Ciembroniewicz's emphatic testimony that claimant's "disease would be . . . at the same level now even if he hadn't worked as a pipe fitter . . ." Dr. Ciembroniewicz's Deposition at 14. However, that statement addresses only the disease process, not whether the condition would have become symptomatic if claimant had not been bending over or kneeling on the concrete floor to sort scrap metal. The only evidence relevant to the issue of whether working conditions brought on claimant's radiculopathy consisted of medical testimony that overdoing physical activity can render a degenerative condition symptomatic, *id.* at 17, in fact, "almost any activity, in theory could initiate symptoms if there's a disk herniation there." Dr. Desai's Deposition at 7. Because there was no evidence that claimant's work did not aggravate his condition, rendering it symptomatic and rendering him disabled, employer has failed to rebut the presumption that claimant's injury is work-related. The statement of the United States Court of Appeals for the First Circuit in *Gardner v. Director, OWCP*, 640 F.2d 1385, 1389 (1st Cir. 1981) is applicable to the case at bar:

Whether circumstances of his employment combined with his disease so to induce an attack of symptoms severe enough to incapacitate him or whether they actually altered the underlying disease process is not significant. In either event his disability would result from the aggravation of his preexisting condition. *See Nardella v. Campbell Machine, Inc.*, 525 F.2d 46 (9th Cir. 1975).

Hence, I concur in my colleagues' decision to vacate the administrative law judge's decision and remand the case for consideration of any remaining issues.

REGINA C. McGRANERY
Administrative Appeals Judge