

SCOTT RIDLEY)	
)	
Claimant-Respondent)	
)	
v.)	
)	
MANTECH INTERNATIONAL)	DATE ISSUED: 01/31/2007
CORPORATION)	
)	
and)	
)	
FIDELITY AND CASUALTY)	
COMPANY OF NEW YORK/CNA)	
INTERNATIONAL)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

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

Gregory E. Camden and Charlene Moring (Montagna, Klein, Camden, L.L.P.), Norfolk, Virginia, for claimant.

Michael W. Thomas and Shana L. Prechtl (Laughlin, Falbo, Levy & Moresi, L.L.P.), San Francisco, California, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order (2005-LDA-00070) of Administrative Law Judge Richard E. Huddleston 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 administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33

U.S.C. §921(b)(3); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer, a military contractor, hired claimant to work on its computers, printers and data processing equipment in early 2004. Claimant was assigned to work in Iraq and arrived there in April 2004. Claimant testified that, during his nine months in Iraq, the compound, Camp Anaconda, was subject to indirect mortar attacks and flying shrapnel. When claimant returned to Iraq from a vacation in Hawaii in January 2005, he returned to a backload of work, and he resigned shortly thereafter. In his post-deployment survey, claimant requested help for stress and emotional problems, and he diagnosed himself with Post-Traumatic Stress Disorder (PTSD). Cl. Ex. 8. Claimant sought treatment at the Rock Landing Psychological Group as well as at a Veterans Affairs clinic. The licensed clinical social workers and counselors with whom he treated, and the doctors with whom they consulted, diagnosed claimant as having PTSD.¹ Cl. Exs. 1-4. Claimant filed a claim for benefits under the Defense Base Act.

The administrative law judge found credible claimant’s complaints of suffering from anxiety, hyper-vigilance, and other mental health problems, and, in conjunction with the medical reports, he found that claimant established a harm. The administrative law judge also found credible claimant’s testimony about stressful working conditions, including mortar attacks, a backload of work, and problems with a supervisor, and he determined that claimant established working conditions that could have caused his harm. Therefore, the administrative law judge invoked the Section 20(a), 33 U.S.C. §920(a), presumption. Decision and Order at 21. Although the administrative law judge found that Dr. Cobb, employer’s forensic psychiatry expert, stated at one point that claimant did not suffer from PTSD or from an injury or aggravation of a pre-existing condition as a result of his employment with employer in Iraq, the administrative law judge found that Dr. Cobb’s opinion was “wavering” in that he also stated that the stress claimant endured in Iraq while working for employer could have aggravated claimant’s substance-induced anxiety condition.² Decision and Order at 22. Therefore, the administrative law judge found that Dr. Cobb’s opinion did not rebut the Section 20(a) presumption and that claimant’s psychological condition is compensable. Decision and Order at 22. As he then found that claimant’s condition has not reached maximum medical improvement,

¹Claimant has a long history of substance abuse, dating to his teens, as well as personality disorders and anxiety. He is also a veteran of the Gulf War.

²Following his evaluation of claimant, Dr. Cobb diagnosed claimant with substance-induced anxiety disorder with panic attacks, opiate dependence, alcohol abuse/dependence, and borderline personality disorder. Emp. Exs. 6, 9; Tr. at 72-74, 81, 87, 95-96.

that claimant cannot return to his usual work in Iraq, and that employer did not establish the availability of suitable alternate employment, the administrative law judge awarded claimant temporary total disability benefits. Decision and Order at 23-25.

Employer contends the administrative law judge erred in invoking the Section 20(a) presumption because claimant did not establish a “harm in Iraq” or, alternatively, in finding that it did not rebut the presumption. Claimant responds, urging affirmance. In determining whether an injury is work-related, a claimant is aided by the Section 20(a) presumption, which may be invoked only after he establishes a *prima facie* case. To establish a *prima facie* case, the claimant must show that he sustained a harm or pain and that conditions existed or an accident occurred at his place of employment which could have caused the harm or pain. *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004); *American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 35 BRBS 41(CRT) (2^d Cir. 2001); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982).

In this case, employer concedes that claimant was subjected to working conditions in Iraq that “could have caused a person psychiatric injury.”³ Emp. Brief at 7. Thus, we need only review the administrative law judge’s finding that claimant established a “harm.” To establish a harm, a claimant must show that “something [has gone] wrong within the human frame.” *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968); *Kelaita*, 13 BRBS 326. A claimant’s credible subjective complaints of symptoms or pain can be sufficient to establish the harm. *Welch v. Pennzoil Co.*, 23 BRBS 395 (1990); *Harrison v. Todd Pacific Shipyards Corp.*, 21 BRBS 339 (1988); *Sylvester v. Bethlehem Steel Corp.*, 14 BRBS 234 (1981), *aff’d sub nom. Sylvester v. Director, OWCP*, 681 F.2d 359, 14 BRBS 894 (5th Cir. 1982).

Claimant testified that following his employment with employer in Iraq, he had difficulty sleeping and remembering, and he was interested in receiving help for stress. Claimant also testified to episodes of being anxious, paranoid, and easily startled.

³Claimant testified to the stress he felt during his stay in Iraq. He stated that Camp Anaconda in Balad, Iraq, is an old Iraqi air base, surrounded by bunkers, fence, dust and dirt, and there are guards posted at the perimeters. Claimant testified that there were mortar attacks close enough to send shrapnel onto the compound and that he feared for his life while working there. Claimant stated that, although there was difficulty obtaining it at first, he was given body armor for protection, and he was ordered to wear it many times because of the artillery threats. Tr. at 24-28. Claimant also discussed disputes with his supervisor, difficulty in getting his vacation approved, and the backload of approximately 50 printers to fix after vacation because no one filled in for him. Tr. at 30-33.

Decision and Order at 3-7; Tr. at 36, 50-53. Records from claimant's psychological treatment reveal that the counselors and licensed clinical social workers diagnosed claimant with multiple anxiety symptoms, personality disorder, substance abuse, and PTSD. Decision and Order at 7-10; Cl. Exs. 1-4. Mr. Kelly, a licensed clinical social worker who treated claimant from February to May 2005 over the course of 13 sessions, acknowledged that claimant has long-standing symptoms from pre-existing conditions, but he also stated that claimant displayed clear symptoms of PTSD caused in part by his employment with employer in Iraq. Cl. Ex. 1. The records from the V.A. clinic discussed claimant's treatment of his mental illness and PTSD, Cl. Ex. 2, notes from a licensed counselor in June 2005 reported claimant's history of PTSD and advised referring him for psychiatric treatment, Cl. Ex. 3, and claimant's family doctor recorded chronic PTSD and anxiety conditions in September 2005, Cl. Ex. 4. Dr. Cobb, a forensic psychiatrist hired by employer to evaluate claimant, disagreed with the diagnosis of PTSD, stating that claimant does not exhibit all the criteria for PTSD. Emp. Exs. 6, 9. Although Dr. Cobb disagreed with the PTSD diagnosis, he nonetheless diagnosed claimant with a psychological condition and stated claimant was not malingering or exaggerating. Emp. Exs. 6, 9; Tr. at 72-74, 81, 87, 95-96; *see n.2, supra*.

Employer first argues that claimant did not prove he sustained a "harm in Iraq" and the administrative law judge's finding that Section 20(a) is invoked therefore is inconsistent with the Supreme Court's decision in *U.S. Industries*, 455 U.S. 608, 14 BRBS 631. We agree that under *U.S. Industries* proof of harm alone is not sufficient to invoke Section 20(a); claimant must establish both that he suffered harm and that conditions existed at work which could have caused it. *Kelaita*, 13 BRBS 326. Here, employer has conceded the existence of working conditions in Iraq which could have caused or aggravated the alleged harm, a psychiatric condition. As the administrative law judge's invocation of the Section 20(a) presumption thus does not rest on a finding of harm alone, we reject employer's argument that the administrative law judge's decision is inconsistent with *U.S. Industries*.⁴

⁴Even if claimant were required to show "harm in Iraq," his credible testimony is sufficient to do so. *See* discussion, *infra*. Moreover, to the extent employer argues that claimant bears the greater burden of showing that the harm actually arose from his employment in Iraq, we reject this contention as it would eliminate the benefit of the Section 20(a) presumption. *See Peterson v. General Dynamics Corp.*, 25 BRBS 71 (1991), *aff'd sub nom. INA v. United States Dep't of Labor*, 969 F.2d 1400, 26 BRBS 14(CRT) (2^d Cir. 1992), *cert. denied*, 507 U.S. 909 (1993); *Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141 (1990). Claimant need not establish that the harm actually is work-related in order to invoke Section 20(a). *Gencarelle v. General Dynamics Corp.*, 22 BRBS 170 (1989), *aff'd*, 892 F.2d 173, 23 BRBS 13(CRT) (2^d Cir. 1989).

Next, employer contends claimant's testimony is not credible and cannot support a finding that he suffered a harm. Employer argues that the administrative law judge improperly credited claimant's testimony because claimant lied on his employment application about seeing a mental health counselor within the year before filling out the application and because he wrote in his resignation letter that the reasons for leaving his employment were due to his unhappiness with employer rather than his mental health. The administrative law judge discussed claimant's pre-deployment form and resignation letter, Decision and Order at 3-6, and specifically found that claimant credibly testified as to his mental illness, regardless of whether it actually should be categorized as PTSD. Decision and Order at 21. It is well established that an administrative law judge is entitled to evaluate the credibility of all witnesses and has considerable discretion in evaluating and weighing the evidence of record. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 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 (2^d Cir. 1961); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). As the administrative law judge's decision to credit claimant's testimony is not patently unreasonable or inherently incredible, it must be affirmed. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).

Moreover, in addition to his own testimony, claimant's claim of a "harm" is established through the reports from his mental health care professionals.⁵ In addition, employer's expert, Dr. Cobb, agreed claimant has a psychological condition. Substantial evidence therefore supports the administrative law judge's finding that claimant sustained a psychological harm. Employer's assertion that claimant has not established the harm element necessary to invoke the Section 20(a) presumption is accordingly rejected. *See generally Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 84(CRT) (2^d Cir. 1997) (administrative law judge erroneously discredited uncontradicted doctor's opinion because doctor relied solely on claimant's complaints).

As employer concedes the working conditions element is satisfied, and as claimant has established psychological harm, we affirm the administrative law judge's invocation of the Section 20(a) presumption. *See generally Manship v. Norfolk & Western Ry. Co.*, 30 BRBS 175 (1996). Thus, the burden shifts to employer to rebut the presumption with substantial evidence to the contrary. *See, e.g., Preston*, 380 F.3d 597, 38 BRBS 60(CRT). A doctor's opinion, given to a reasonable degree of medical certainty, that a condition is not work-related is sufficient to rebut the Section 20(a) presumption.

⁵To the extent employer argues that claimant's health care providers are not "covered medical providers" and cannot render an opinion sufficient to establish a harm, Emp. Brief at 6, we reject employer's argument. There is no requirement that a health care provider be a physician in order to give a credible opinion.

O'Kelley v. Dep't of the Army/NAF, 34 BRBS 39 (2000). Where aggravation of a pre-existing condition is at issue, the employer must produce substantial evidence that work events neither directly caused the injury nor aggravated the pre-existing condition to result in injury. *Id.* If a work-related injury contributes to, combines with or aggravates a pre-existing condition, the entire resultant condition is compensable. *Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966).

Employer presented the testimony and records of Dr. Cobb to rebut the Section 20(a) presumption. Dr. Cobb stated that claimant does not suffer from PTSD but does suffer from substance-induced anxiety disorder with panic attacks, which is related to claimant's substance and alcohol abuse and/or dependence, as well as his borderline personality disorder. Tr. at 72, 81-82. He stated that these disorders pre-existed claimant's employment and were not caused, aggravated or precipitated by claimant's work with employer in Iraq, and that, to a reasonable degree of medical certainty, claimant did not suffer an injury as a result of his work with employer. Emp. Exs. 6, 10; Tr. at 84, 92-93.

However, the administrative law judge found that Dr. Cobb made additional statements which conflicted with his above opinion; these statements were also based on a reasonable degree of medical certainty. For example, Dr. Cobb acknowledged that stress resulting from events in Iraq could have played a role in triggering claimant's disorders and panic attacks. Emp. Ex. 9 at 15-16; Tr. at 107-108. Although Dr. Cobb stated that claimant's marital discord and general unhappiness with his employer as a company were the primary stressful factors affecting claimant's condition, when asked whether those stressors, as well as munitions explosions "all played a role" resulting in claimant's current condition, Dr. Cobb stated "yes." Emp. Ex. 9 at 16. At the hearing, Dr. Cobb confirmed this opinion to a reasonable degree of medical certainty. Tr. at 108-109;⁶ *see also* Emp. Ex. 10 at 5.

⁶Q: Would these problems he was having with the company, with the supervisors in Iraq, have aggravated his substance induced anxiety?

A: In general stress will exacerbate any psychiatric condition, so, yes.

Q. So, the backlog of printers, or computers, when he came back from Hawaii was stressful enough that it's going to aggravate the pre-existing substance induced anxiety?

A. Yes, that's possible.

An employer need not “rule out” every conceivable connection between the work and the injury to rebut the Section 20(a) presumption; it must only produce substantial evidence demonstrating that the condition is not work-related. *Preston*, 380 F.3d 597, 38 BRBS 60(CRT); *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert. denied*, 540 U.S. 1056 (2003); *American Grain Trimmers v. Director, OWCP [Janich]*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999), *cert. denied*, 528 U.S. 1187 (2000). Employer argues that, as it need not “rule out” all conceivable connections between claimant’s employment and his injury, Dr. Cobb’s opinion is sufficient to rebut the Section 20(a) presumption pursuant to the Board’s opinion in *O’Kelley*, 34 BRBS 39, as well as the standards applied by the United States Courts of Appeals for the Fourth and Fifth Circuits.⁷ *See Ortco Contractors*, 332 F.3d

Q. And the mortar attack which landed 50 yards, or 50 feet, from his camp, that’s stressful enough to have aggravated these (sic) substance induced anxiety?

A. Yes.

Q. In fact, in your subsequent report of November 15, 2005, the last paragraph, you actually indicate that it’s your opinion with a reasonable degree of medical certainty that while stress plays a role in the exasperation (sic) on borderline personality disorder and [claimant] was under stress during his work with [employer] in Iraq, there were several other contributing factors, correct?

A. Yes.

Q. So, again, the mortars and the events occurring in Iraq were stressors that [exacerbated] the condition, correct?

A. Yes, that’s correct.

Q. That’s within a reasonable degree of medical certainty?

A. Yes, it is.

⁷Contrary to employer’s contention that the case arises with the jurisdiction of the United States Court of Appeals for the Fourth Circuit, under the applicable regulation it is assigned to compensation district 2, which is within the jurisdiction of the United States Court of Appeals for the Second Circuit. 20 C.F.R. §704.101. Regardless, the same standard requiring that employer rebut the presumption with substantial evidence would

283, 37 BRBS 35(CRT); *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). It asserts that in finding that Dr. Cobb's opinion was "wavering" due to his admissions of "possible" work connections, the administrative law judge held it to a stricter standard.

We reject employer's contention of error. Contrary to employer's assertions, Dr. Cobb's opinion is significantly different from the evidence in *O'Kelley*, and it is insufficient to rebut the Section 20(a) presumption under the "substantial evidence" standard. *See generally Jones v. Aluminum Co. of North America*, 35 BRBS 37 (2001). Dr. Cobb did not merely admit "possibilities." He stated both that claimant's condition is not work-related and that stressors at work could have aggravated claimant's pre-existing condition, and in both instances he referenced a reasonable degree of medical certainty. Thus, the administrative law judge rationally described Dr. Cobb's opinion as "wavering" and found it does not constitute substantial evidence to sever the causal link between claimant's condition and his employment. *Burley v. Tidewater Temps, Inc.*, 35 BRBS 185 (2002); *Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84 (1995); *Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141 (1990). Therefore, we affirm the administrative law judge's finding that Dr. Cobb's opinion is insufficient to rebut the Section 20(a) presumption. *See Preston*, 380 F.3d 597, 38 BRBS 60(CRT). As employer has offered no other evidence on rebuttal, we affirm the administrative law judge's finding that claimant's condition is work-related. *Id.*

apply. The Fourth Circuit stated in *Moore*, 126 F.3d at 263, 31 BRBS at 123(CRT), that in order to rebut the Section 20(a) presumption, employer must offer "substantial evidence." In applying the standard in that case, the court stated that the evidence employer presented casting doubt on the causative link between the employee's injury and his employment was sufficient to cause the Section 20(a) presumption to drop from the case.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge