BRB No. 10-0688

ARCHIE CRAWFORD	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND OPERATING COMPANY, INCORPORATED	)	DATE ISSUED: 07/08/2011
	)	
and	)	
	)	
LOUISIANA WORKERS' COMPENSATION CORPORATION	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeal of the Decision and Order of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

James H. Domengeaux (Domengeaux Wright Roy & Edwards), Lafayette, Louisiana, for claimant.

David K. Johnson (Johnson, Stiltner & Rahman), Baton Rouge, Louisiana, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order (2009-LHC-00046) of Administrative Law Judge Patrick M. Rosenow 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, 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 if they 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 was employed by employer as a lead operator on an offshore oil production platform. On the morning of Wednesday, March 12, 2008, he was beginning a week-long shift when he fell down some stairs while disembarking a helicopter onto a platform. Claimant filed an accident report that day with his onshore supervisor, Joe Pesche. When claimant got into bed that evening, he had difficulty moving his left leg off the floor. The following morning his left foot and three fingers of his left hand were numb. Claimant testified that he asked Mr. Pesche to send a replacement lead operator to relieve him of work so that he could be examined by a physician, but he was told that a replacement was not available. Tr. at 69-72. Claimant's condition continued to worsen. On Friday, he experienced upper body numbness. *Id*. at 73. He needed assistance getting dressed on Saturday. *Id*. at 75. On Sunday, claimant testified that he was stable, but he could not walk and had trouble talking and filing a report. *Id*. at 78-79. Claimant testified that his repeated requests for a replacement were denied. *Id*. at 74-75, 77-78.

Claimant was replaced by a relief operator on Monday afternoon, and he was transported by helicopter to the mainland; he was immediately taken to Lafayette General Medical Center where he was diagnosed with a stroke. *Id*. at 79-82; CX 3 at 2-3, 5. He has not returned to work. Claimant filed a claim for benefits under the Act, which employer controverted.

In his decision, the administrative law judge found that claimant's stroke was unrelated to his fall from the helicopter because the evidence establishes that claimant was experiencing stroke symptoms before the fall at work occurred and that the stroke was a consequence of his pre-existing non work-related conditions.[1] Decision and Order at 24. However, the administrative law judge held that claimant is entitled to the Section 20(a) presumption that his condition after the onset of the stroke was aggravated by the delay in his receipt of treatment for a number of days during which claimant was unable to leave employer's offshore oil platform. The administrative law judge found that employer offered no evidence to rebut the Section 20(a) presumption in this regard. Therefore, the administrative law judge concluded that claimant's employment on the platform aggravated his condition and that the disability resulting from the stroke is compensable. *Id*. The administrative law judge also found that employer presented no evidence to rebut the presumption that claimant injured his right shoulder in the fall on the platform. The administrative law judge determined that claimant is totally disabled and that his stroke-related condition had reached maximum medical improvement at the time he was discharged from the hospital on April 3, 2008. Accordingly, the administrative law judge awarded claimant compensation for temporary total disability,

[1]Claimant had pre-existing conditions that could have caused or contributed to his stroke: coronary artery disease, diabetes, cardiomyopathy, hyperlipidemia, tobacco use and high blood pressure. CX 3 at 3; EX 3 at 1.

33 U.S.C. §908(b), from March 17 to April 3, 2008, and continuing compensation for permanent total disability, 33 U.S.C. §908(a), thereafter. The administrative law judge also held employer liable for medical benefits for claimant's stroke and shoulder injury. 33 U.S.C. §907.

On appeal, employer challenges the administrative law judge's finding that the delay in claimant's treatment, due to his employment on the offshore platform, contributed to the disability resulting from his stroke. Claimant responds, urging affirmance of the award of benefits.

In support of its contention, employer relies on the deposition testimony of Dr. Karim that the damage from a stroke is permanent and irreversible unless a stroke victim receives intravenous treatment within three hours of the onset of stroke-related symptoms. CX 4 at 43-44, 48-49. Employer contends that since neither it nor claimant was aware of the stroke within this time frame, there is no basis for the administrative law judge's finding that claimant's continued stay on the platform could have worsened the permanent disability caused by the stroke. Employer's Brief at 15-16. Thus, employer contends the administrative law judge erred in applying Section 20(a) to this claim.[2]

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*). Pursuant to Section 20(a) of the Act, it is presumed, in the absence of substantial evidence to the contrary, that claimant's disabling injury is work-related. *See U.S. Industries/Federal Sheet Metal, Inc., v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). In order to establish his *prima facie* case, and thus, his entitlement to invocation of the Section 20(a) presumption, claimant is not required to introduce affirmative medical evidence that his employment in fact contributed to or accelerated his

[2]Employer argues that this case is similar to *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert. denied*, 540 U.S. 1056 (2003) (holding that an employee's heart attack was not work-related because it began prior to his arrival at work). That case, however, did not address invocation of the Section 20(a) presumption, but whether employer established rebuttal of the presumption; the court held that employer did rebut the Section 20(a) presumption. In contrast, this case concerns whether claimant adduced sufficient facts to bring the claim within the scope of Section 20(a). *See, e.g., Quinones v. H.B. Zachery, Inc.*, 32 BRBS 6 (1998), *aff'd in pert. part and rev'd on other grounds*, 206 F.3d 474, 34 BRBS 23(CRT) (5th Cir. 2007). Consequently, although the initial facts of the two cases are similar, their legal posture is different and *Ortco Contractors* does not compel the result employer seeks.

stroke-related symptomatology; claimant need show only the existence of working conditions which could have contributed or accelerated his disability. *See Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); *see also Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004). Claimant need not establish at this juncture that the delay in treatment actually aggravated his stroke-related condition; rather, claimant need only produce evidence that his aggravation theory "is not a mere fancy." *See Wheatley v. Adler*, 407 F.2d 307, 313 (D.C. Cir. 1968); *see also Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990).

In his decision, the administrative law judge found that "Dr. Karim's testimony was clear that it would have been better for claimant to have been treated more quickly." Decision and Order at 24. Based on this testimony, the administrative law judge found claimant entitled to the Section 20(a) presumption that his continued stay on the platform exacerbated his stroke-related condition. *Id*. In his deposition, Dr. Karim was asked whether it is better to get immediate treatment for a stroke or to wait four days; he replied, "the sooner the better." CX 4 at 44. Dr. Karim then testified as to the bases for this statement. As noted by employer on appeal, Dr. Karim explained that the effects of a stroke can be reversed in some cases if the patient receives an injection of a strong blood thinner within three hours of the stroke's onset. *Id*. at 43-44. Dr. Karim also testified, "[T]he other aspect is to get physical therapy involved … to control the blood pressure" within two days of the stroke and to get "diabetes under control, get him in smoking rehab … or give him patches. So the sooner is the better." *Id*. at 44-45.

Dr. Karim's deposition testimony that the disability caused by a stroke is permanent and irreversible unless treatment is received within three hours does not, *per se*, negate the administrative law judge's finding that claimant was entitled to the benefit of the Section 20(a) presumption that the six days he was on the oil production platform after the stroke commenced aggravated or contributed to his stroke-related permanent disability. Although Dr. Karim did not testify that this delay in fact had an effect on the extent of claimant's permanent disability, the administrative law judge rationally inferred that it could have had an effect from Dr. Karim's statement that it is best to commence post-stroke treatment as soon as possible. CX 4 at 44. Dr. Karim provided three reasons for this statement in addition to the possibility of reversing the permanent damage caused by the stroke: to begin physical therapy, to control blood pressure and diabetes, and to stop claimant from using tobacco.

A claimant's aggravating injury need not be the primary factor in any resulting disability; the relative contributions of the pre-existing condition and the work injury are not weighed. *Lopez v. Southern Stevedores*, 23 BRBS 295 (1990). Moreover, the United

States Court of Appeals for the Fifth Circuit, within whose jurisdiction this case arises, has rejected a *de minimis* test to limit the scope of the aggravation rule. *Fulks v. Avondale Shipyards, Inc.*, 637 F.2d 1008, 12 BRBS 975 (5th Cir.), *cert. denied*, 454 U.S. 1080 (1981). The Board must accept the administrative law judge's rational inferences and his findings of fact that are supported by the record. *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991). Dr. Karim's testimony constitutes substantial evidence supporting the administrative law judge's rational inference that the extent of disability resulting from the stroke could have been minimized had claimant received treatment closer in time to the onset of the stroke. Accordingly, the claim that the six-day delay in receiving treatment for the stroke could have caused additional permanent disability is not "mere fancy." Therefore, we affirm the administrative law judge's finding that claimant was entitled to the benefit of the Section 20(a) presumption that his stroke was aggravated and/or contributed to by his employment. *See generally O'Kelley v. Department of the Army/NAF*, 34 BRBS 39 (2000); *Leone v. Sealand Terminal Corp.*, 19 BRBS 100 (1986).

Employer does not challenge the administrative law judge's finding that it did not present any evidence to rebut the Section 20(a) presumption. Accordingly, we affirm the administrative law judge's finding that claimant's disabling stroke is related to his work for employer as it is rational, supported by substantial evidence and in accordance with law. *See generally Louisiana Ins. Guar. Ass'n v. Bunol*, 211 F.3d 294, 34 BRBS 29(CRT) (5th Cir. 2000).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge