

ARISTOMENIS PSALIDAS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CORE LABORATORIES	)	DATE ISSUED: <u>JUN 30, 2003</u>
	)	
and	)	
	)	
AMERICAN HOME ASSURANCE	)	
COMPANY	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying the Claim of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Aristomenis Psalidas, Flushing, New York, *pro se*.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying the Claim (01-LHC-2965) of Administrative Law Judge Robert D. Kaplan 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). As claimant appeals without representation by counsel, we will review the administrative law judge's findings of fact and conclusions of law to determine whether they are supported by substantial evidence, are rational, and are in accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3); 20 C.F.R. §§802.211(e), 802.220. If they are, they must be affirmed.

Claimant, who was 65 years old at the time of the formal hearing, was

employed by employer as a petroleum inspector from March 1978 until December 8, 1999. In furtherance of his employment duties, claimant traveled to marine terminals where he boarded vessels and barges in order to measure and take samples of the liquids, including petroleum products, stored there. Claimant testified that he first noticed that he was experiencing breathing problems and coughing in 1996. He stayed out of work for several weeks in 1996 due to his breathing difficulties and consulted Dr. Bakoss who prescribed a spray inhaler and medication. The inhaler alleviated his shortness of breath for two to six hours. Claimant's breathing difficulties became progressively worse, and by 1999 he needed to use his prescribed inhaler all of the time and he felt fatigued at work. A co-worker and claimant's field supervisor testified that they noticed that claimant had breathing problems and coughed all of the time; these witnesses further testified that when claimant had trouble performing physical work, others helped him by carrying his tools. Tr. at 12, 17-19, 21-25, 29. Claimant last worked for employer on December 8, 1999, and claimant lists that as the date of the alleged injury.<sup>1</sup> Claimant subsequently filed a claim for benefits under the Act, alleging that he is total disabled as a result of respiratory or pulmonary problems arising from the inhalation of irritants or toxic matter with which he came into contact during his work with employer.

In his Decision and Order,<sup>2</sup> the administrative law judge credited the opinion of Dr. Karetzky that claimant has no pulmonary or respiratory injury, and that therefore the question of whether claimant has a causally-related injury is moot. Consequently, the administrative law judge denied claimant benefits under the Act.

On appeal, claimant, representing himself, appeals the administrative law judge's denial of benefits. Employer has not filed a response brief.

In establishing the work-relatedness of his condition, claimant is aided by the Section 20(a), 33 U.S.C. §920(a), presumption. See *Kubin v. Pro-Football, Inc.*, 29 BRBS 117 (1995). In order to be entitled to the Section 20(a) presumption, claimant must establish a *prima facie* case by showing that he

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<sup>1</sup>The administrative law judge stated that the record contains no evidence whether claimant was last employed with employer in New York or New Jersey.

<sup>2</sup>Claimant was represented by an attorney during the proceedings before the administrative law judge.

suffered a harm and that either a work-related accident occurred or that working conditions existed which could have caused or aggravated the harm. See *U.S. Industries/Federal Sheet Metal, Inc., v. Director*, OWCP, 455 U.S. 608, 14 BRBS 631 (1982); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996). Claimant need not show that he has a specific illness or disease in order to establish that he has suffered an injury under the Act, but need only establish some physical harm, *i.e.*, that something has gone wrong with the human frame. *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968); see *Crawford v. Director, OWCP*, 932 F.2d 152, 24 BRBS 123(CRT) (2<sup>d</sup> Cir. 1991); *Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989). In this regard, a claimant's credible complaints of subjective symptoms can be sufficient to establish the element of physical harm necessary to invoke the presumption. See *Sylvester v. Bethlehem Steel Corp.*, 14 BRBSD 234 (1981), *aff'd*, 681 F.2d 359, 14 BRBS 984 (5<sup>th</sup> Cir. 1982).

In the instant case, although the administrative law judge did not specifically invoke the Section 20(a) presumption, any error in this regard is harmless. It is not disputed that claimant was exposed to various irritants while performing his employment duties as a petroleum tester for employer; thus, claimant has established the existence of working conditions which may have caused or aggravated his alleged harm. Moreover, claimant testified, and the two physicians of record do not dispute, that he has experienced shortness of breath and coughing since at least 1996.

<sup>3</sup> See Tr. at 34, 35; CXs 3, 7, 12 (Deposition of Dr. Bakoss) at 8-9; EX 1

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<sup>3</sup> Dr. Bakoss testified on deposition that he first saw claimant on February 5, 1996, and that claimant presented with tightness and shortness of breath and cough on exertion, and that claimant's history of increased symptoms while at work was consistent with asthmatic bronchitis. CX 12 at 9-14. Dr. Karetzky deposed that claimant's symptoms were continuous and chronic and that at the time he examined claimant, claimant reported that he coughed all the time and always experienced shortness of breath when he walked up stairs. Dr. Karetzky

(Deposition of Dr. Karetzky) at 12, 19, 20-22, 31, 39-41, 57-58. As it is thus undisputed that claimant, since at least 1996, has experienced shortness of breath and coughing, something has gone wrong within claimant's frame, and he is entitled to invocation of the presumption.

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testified that, if so, reversibility of claimant's breathing dysfunction would be lost, but claimant has no airway obstruction to explain his current symptomatology. EX 1 at 20-22, 31, 39-41, 57-58.

Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was neither caused nor aggravated by his employment. See *Conoco v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT)(5<sup>th</sup> Cir. 1999); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5<sup>th</sup> Cir. 1998); *Swinton v. J. Frank Kelley, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976); *Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84 (1995). Thereafter, if the administrative law judge 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. See *O'Kelley v. Dep't of the Army*, 34 BRBS 39 (2000); see also *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT)(1994). In this case, the opinion of Dr. Karetzky, which was credited by the administrative law judge, is substantial evidence to rebut the presumption and establish the absence of a causal nexus between claimant's symptoms and his work exposure on the record as a whole. Dr. Karetzky testified that claimant has no lung disease, no abnormalities on objective testing, no airway obstruction as would be expected with presence of occupational asthma, and that claimant's symptoms were continuous and chronic rather than limited to episodes upon exposure. EX 1 at 15, 16, 21, 23. He therefore concluded that claimant does not have an occupationally induced lung problem. *Id.* 1 at 20-22, 31, 39-41, 57-58. See generally *Holmes v. Universal Maritime Service Corp.*, 29 BRBS 18 (1995). The administrative law judge gave rational reasons for crediting Dr. Karetzky's opinion rather than that of Dr. Bakoss, who diagnosed occupational asthma. As the administrative law judge's decision is supported by substantial evidence, we affirm his conclusion that claimant's present condition is not causally related to his employment.<sup>4</sup>

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<sup>4</sup> In his letter appealing the administrative law judge's Decision and Order to the Board, claimant states that he has acquired significant and relevant new medical evidence regarding the compensability of his claim for benefits under the Act. Should claimant wish for this new evidence to be considered, he may file, pursuant to Section 22 of the Act, 33 U.S.C. §922, a petition for modification with the district director.

Accordingly, the Decision and Order Denying the Claim of the administrative law judge is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge