BRB No. 01-0267

PETER M. REAUX	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
COLUMBIA GULF TRANSMISSION COMPANY	)	DATE ISSUED: Nov. 19, 2001
	)	
and	)	
	)	
TRAVELERS INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

Peter M. Reaux, Abbeville, Louisiana, *pro se*.

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

PER CURIAM:

Claimant, appearing without legal representation, appeals the Decision and Order Denying Benefits (97-LHC-2878) of Administrative Law Judge Clement J. Kennington rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901, as extended by the Outer Continental Shelf Lands Act, 43 U.S.C. §1331 *et seq*. (the Act). In reviewing an appeal where claimant is not represented by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law in order to determine whether they are rational, supported by substantial evidence, and in accordance with law; if they are, they must be affirmed. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant slipped and fell during the course of his employment on September 29,

1994. Claimant was treated at Our Lady of Lourdes Hospital on October 1, 1994, where he was diagnosed with a back and left knee injury. CX 4. Claimant was examined by Dr. Budden, who diagnosed a thoracolumbar strain and released claimant to return to work without restriction on October 19, 1994. CX 2. Employer voluntarily paid medical benefits from the date of injury until October 14, 1994, and compensation for temporary total disability, 33 U.S.C. §908(b), until October 20, 1994. ALJX 1. Claimant never returned to work. On December 16, 1995, claimant was involved in an automobile accident and was transported by ambulance to University Medical Center of Lafayette, where he complained of low back pain and right knee and ankle pain. CX 3. Claimant underwent a psychiatric examination on June 27, 1997, by Dr. Benbow, who diagnosed chronic depression. CX 6. Claimant's neck, back, and left knee were examined by Dr. Kucharchuk on August 5, 1997. Dr. Kucharchuk reported no objective findings supporting claimant's symptomatology except for mild cervical and lumbar osteoarthritic changes. Dr. Kucharchuk opined that claimant is sincere, he is not malingering, and that claimant's complaints of pain arise from a psychological overlay and somatization. CX 9. Dr. Gidman examined claimant on January 30, 1999. He found no objective evidence to explain claimant's reported neck, back, and left knee pain, and he opined there was evidence of psychological factors causing claimant's subjective complaints. EX 6 at 25, 37. At the formal hearing on May 10, 2000, claimant appeared without counsel. After the hearing, the administrative law judge ordered claimant to undergo a psychological evaluation. Decision and Order at 2 n.1. Claimant was examined by Dr. Aurich, who interpreted test results as indicating chronic psychological maladjustment, somatization in conjunction with neurotic or psychotic disorders, severe depression, and severe anxiety. Dr. Aurich opined that claimant's psychological and emotional problems pre-existed the September 29, 1994, work injury, and that it is possible the work injury aggravated claimant's psychological condition, although he could not state that it did with a reasonable degree of medical certainty. EX 10.

In his decision, the administrative law judge found that claimant sustained a thoracolumbar strain due to his work injury, and that, based on the opinion of Dr. Budden, claimant was capable of returning to his usual employment on October 19, 1994. The administrative law judge found that claimant's psychological condition was not caused or aggravated by his employment. The administrative law judge found that claimant chose Drs. Budden and Bernard to treat his back condition and that he is not entitled to additional treatment for his back condition by another physician, as claimant failed to request authorization from employer to change physicians nor does claimant require additional treatment for his back condition. Accordingly, the administrative law judge denied the claim for compensation and medical benefits. On appeal, claimant, without the assistance of counsel, challenges the denial of his claim. Employer has not responded to claimant's appeal.

We initially address the administrative law judge's finding that claimant was able to return to his usual employment on October 19, 1994, with respect to his physical condition.

Claimant bears the burden of establishing that he is unable to perform his usual work due to his work-related injury. *See Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56 (1985). In the instant case, claimant was initially examined at the emergency room of Lourdes Hospital on October 1, 1994. X-rays of claimant's back and left knee were interpreted as normal, and mild degenerative changes were noted. CX 3, 4. Claimant was diagnosed with back pain and released to return to work on October 13, 1994. CX 4 at 4-9. Claimant was examined by Dr. Budden on October 10, 1994, who diagnosed a thoracolumbar strain and prescribed physical therapy. CX 2 at 25-26. Dr. Budden re-examined claimant on October 19, 1994; he reported no objective evidence to substantiate claimant's pain symptomatology and he opined that claimant is able to return to work without restrictions, if a second medical opinion is in agreement. CX 2 at 3-4. Claimant received treatment from Dr. Bernard on October 24, 1994. MRI results obtained on November 17, 1994, were interpreted as showing minimal disc bulging at L4-5 and L5-S1. CX 1. Claimant was last examined by Dr. Bernard on December 19, 1994. Dr. Bernard opined that claimant may have been disabled for one week after his first examination on October 24, 1994. CX 1. The administrative law credited Dr. Budden's diagnosis of a simple thoracolumbar strain and his opinion that claimant was able to return to his usual employment on October 19, 1994. Decision and Order at 13, 15. As the opinion of Dr. Budden, as well as the opinion of Dr. Bernard, supports the administrative law judge's finding that claimant's work injury resolved to the extent that claimant could return to his usual employment after October 19, 1994, we affirm the administrative law judge's finding. *See Gacki v. Sea-Land Services, Inc.*, 33 BRBS 127 (1998); *Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd mem.*, 909 F.2d 1488 (9th Cir. 1990).

We next address the administrative law judge's finding that claimant is not entitled to medical treatment for his back condition after the treatment rendered by Drs. Budden and Bernard. Specifically, claimant sought reimbursement for treatment and testing provided by Dr. Cobb, who initially examined claimant on January 24, 1996, after the car accident, and payment of medical bills for treatment provided after December 19, 1994, by University Medical Center, Lourdes Hospital, and Lafayette Medical Center. Tr. at 26-30. Section 7(a) of the Act, 33 U.S.C. §907(a), states that "[t]he employer shall furnish such medical, surgical and other attendance or treatment . . . medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require." *See Ballesteros v. Willamette Western. Corp.*, 20 BRBS 184 (1988). Section 7(d)(1) requires that a claimant request his employer's authorization for medical services performed by any physician. 33 U.S.C. §907(d)(1); *see Maquire v. Todd Shipyards Corp.*, 25 BRBS 299 (1992). Moreover, in order for a medical expense to be awarded, it must be reasonable and necessary for the treatment of the injury at issue. *See Davison v. Bender Shipbuilding & Repair Co., Inc.*, 30 BRBS 45 (1996); 20 C.F.R. §702.402. It is claimant's burden to prove the elements of his claim for medical benefits. *Schoen v. United States Chamber of Commerce*, 30 BRBS 112 (1996); *see also Ingalls Shipbuilding, Inc., v. Director, OWCP*, 991 F.2d 163, 27 BRBS

14(CRT) (5th Cir. 1993).

In the instant case, after claimant's final examination by Dr. Budden on October 19, 1994, Dr. Bernard treated claimant from October 24 to December 19, 1994. CX 1 at 9-10. The administrative law judge found that claimant did not seek authorization for any subsequent treatment, nor was any necessary for the treatment of claimant's back injury. Decision and Order at 16. At the formal hearing, claimant testified that he was referred by an attorney to Drs. Budden and Bernard. Tr. at 87, 175. Claimant also testified that he sought and paid for medical treatment rendered by Dr. Cobb in January 1996. Tr. at 191. There is no evidence of record that claimant requested authorization from employer for any treatment rendered after claimant's final examination by Dr. Bernard on December 19, 1994. Moreover, we have affirmed the administrative law judge's crediting of Dr. Budden's opinion, as supported by the opinion of Dr. Bernard, that claimant was able to return to his usual employment without restriction on October 19, 1994. Inasmuch as substantial evidence supports the administrative law judge's finding that claimant's September 29, 1994, back injury did not require ongoing medical treatment after December 19, 1994, and there is no evidence that claimant requested authorization from employer for treatment rendered after December 19, 1994, we affirm the administrative law judge's denial of medical benefits for claimant's back injury. *See Schoen*, 34 BRBS at 114.

Finally, we address the administrative law judge's finding that claimant's psychological condition was not caused or aggravated by claimant's work-related back injury. After the formal hearing, the administrative law judge determined that claimant needed to undergo a psychological evaluation. Employer selected five doctors from whom claimant could choose to be examined. Claimant ultimately chose Dr. Aurich. Prior to Dr. Aurich's examination of claimant, employer wrote to the doctor and informed her that the administrative law judge was interested in determining whether claimant has any psychological conditions and the etiology thereof. Dr. Aurich stated that claimant has chronic psychological maladjustment and a somatoform disorder. Dr. Aurich stated there is no clear evidence of malingering, but several of the tests suggest symptom magnification. She stated that the presence of somatic delusions and a more severe psychotic process cannot be ruled out. She stated that claimant's condition is of long duration, and that while it is possible that the work injury aggravated claimant's pre-existing personality and emotional problems, she could not determine that it did within a reasonable degree of medical certainty. EX 10. Based on this opinion, the administrative law judge summarily stated that claimant's psychological condition is not work-related. Decision and Order at 15, 17.

We cannot affirm the administrative law judge's finding that claimant's psychological condition is not work-related. Specifically, the administrative law judge did not determine the work-relatedness of claimant's psychological condition in conjunction with the Section

20(a) presumption, 33 U.S.C. §920(a),[1] or the aggravation rule. Initially, the aggravation rule provides that employer is liable for the totality of the claimant's disability if the work injury aggravates a pre-existing condition. *See Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968). 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 either a work-related accident occurred or that working conditions existed which could have caused or aggravated the harm. *See Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir.1998); *see generally 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, claimant is not required to affirmatively prove that his working conditions in fact caused or aggravated the harm; rather, claimant need only establish that the working conditions could have caused or aggravated the harm alleged. *See Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989). Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut it with substantial evidence that claimant's condition is not caused or aggravated by his employment. *See Conoco , Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); *American Grain Trimmers, Inc. v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999)(*en banc*), *cert. denied*, 528 U.S. 1187 (2000). If the administrative law judge finds that the Section 20(a) presumption is rebutted, it drops from the case. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). The administrative law judge then must weigh all the evidence and resolve the causation issue based on the record as a whole with claimant bearing the burden of persuasion. *See Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996); *see generally Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

In the instant case, the administrative law judge did not apply the Section 20(a) presumption. Rather, citing the report of Dr. Aurich, the administrative law judge summarily concluded that claimant's psychological condition is not related to the work-related back injury. Decision and Order at 15, 17. As this report supports invocation of the presumption based on a psychological harm which could have been aggravated by the work injury, the

[1]It is well-settled that a psychological impairment related to employment is compensable under the Act. *Sanders v. Alabama Dry Dock & Shipbuilding Co.*, 22 BRBS 340 (1989). Furthermore, the Section 20(a), 33 U.S.C. §920(a), presumption is applicable in psychological injury cases. *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380, 384 n.2 (1990).

administrative law judge's conclusion cannot be affirmed. We therefore vacate the administrative law judge's finding on this issue, and remand the case for him to reconsider whether claimant's psychological condition is related to his work injury, applying the Section 20(a) presumption and the aggravation rule and allocating to employer the burden of producing substantial evidence that claimant's condition was not caused or aggravated by his work. *See generally Lennon v. Waterfront Transport*, 20 F.3d 658, 28 BRBS 22(CRT) (5th Cir. 1994). If the administrative law judge finds a causal relationship between claimant's psychological condition and his work injury, he must consider the nature and extent of any disability due to this condition.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is vacated, and the case is remanded for the administrative law judge to reconsider whether claimant's psychological condition is related to the September 29, 1994, back injury and if so, whether it is disabling. In all other respects, the administrative law judge's decision is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge