

BRB No. 98-0124

HERBERT R. PITRE)
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 Claimant-Petitioner) DATE ISSUED:
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 v.)
)
 C & D PRODUCTION SPECIALIST)
 COMPANY, INCORPORATED)
)
 and)
)
 LOUISIANA WORKERS')
 COMPENSATION CORPORATION)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Decision and Order of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

Jacque B. Pucheu, Jr. (Pucheu, Pucheu & Robinson, L.L.P.), Eunice, Louisiana, for claimant.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (96-LHC-2147) of Administrative Law Judge Lee J. Romero, Jr., denying benefits 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 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).

On May 5, 1995, claimant, a Class B offshore platform operator, experienced symptoms subsequently diagnosed as Ramsey Hunt syndrome, a viral inflammation of the ear and facial nerves caused by eruption of the zoster oticus virus. Claimant sought compensation under the Act for disability caused by his Ramsey Hunt syndrome on the basis that work-related stress resulted in the eruption of the herpes zoster oticus virus. Claimant unsuccessfully attempted to return to work for employer as a Class B offshore operator on a smaller platform in June 1995; subsequently, claimant worked as a hospital security guard followed by another unsuccessful attempt to work as a Class B operator for another employer. As of the date of the hearing, claimant was employed as a Class C operator for Danos & Curole Company.

In his Decision and Order, the administrative law judge found claimant entitled to invocation of the presumption at Section 20(a), 33 U.S.C. §920(a), linking his present medical condition to his employment. The administrative law judge concluded, however, that the presumption was rebutted by the medical testimony of Drs. Finley and Sobiesk. Based on this evidence, the claim for compensation was denied.

On appeal, claimant contends that the administrative law judge erroneously placed the burden of proof on claimant to establish causation after finding the Section 20(a) presumption invoked; additionally, claimant alleges that the administrative law judge erred in determining that employer produced substantial evidence to rebut the presumption. Employer has not responded to claimant's appeal.

In order to be entitled to the Section 20(a), 33 U.S.C. §920(a), presumption linking claimant's condition to his employment, claimant must establish a *prima facie* case by showing that he sustained a harm and that working conditions existed or an accident occurred which could have caused or aggravated the harm. *See Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990); *Perry v. Carolina Shipping Co.*, 20 BRBS 90 (1987). An employment injury need not be the sole cause of a disability; rather, if the employment injury aggravates, accelerates or combines with an underlying condition, the entire resultant condition is compensable. *See Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966). Thus, claimant's injury need only be due in part to work-related conditions to be compensable under the Act. *See Peterson v. General Dynamics Corp.*, 25 BRBS 78 (1991), *aff'd sub nom. Ins. Co. of North America v. U.S. Dept. of Labor*, OWCP, 969 F.2d 1400, 26 BRBS 14 (CRT)(2d Cir. 1992), *cert. denied*, 507 U.S. 909 (1993). Upon invocation of the Section 20(a) presumption, the burden shifts to employer to rebut it with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). If the presumption is rebutted, the administrative law judge must weigh all of the evidence contained in the record and resolve the causation issue based on the record as a whole. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990); *Director,*

OWCP v. Greenwich Collieries, 512 U.S. 267, 28 BRBS 43 (CRT) (1994).

In the instant case, the administrative law judge properly invoked the Section 20(a) presumption linking claimant's Ramsey Hunt syndrome to his employment with employer on the basis that claimant's Ramsey Hunt syndrome constituted a harm and that claimant's work-related stress could have caused this medical condition. *See, e.g., Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

In addressing claimant's assertions of error, we note that, as correctly argued by claimant, the United States Supreme Court's decision in *Greenwich Collieries*, 512 U.S. at 267, 28 BRBS at 43 (CRT), did not alter the employer's burden of proof with respect to rebuttal of the Section 20(a) presumption. Indeed, the Court in *Greenwich Collieries* explicitly cited Section 20 of the Act as providing a statutory presumption easing claimants' burden of proof. 512 U.S. at 280, 28 BRBS at 47 (CRT). Thus, the court's holding in *Greenwich Collieries* does not change in any way the employer's burden to come forward with substantial countervailing evidence that no relationship exists between an injury and a claimant's employment once claimant established a *prima facie* case and the Section 20(a) presumption is invoked. *See Holmes v. Universal Maritime Service Corp.*, 29 BRBS 18, 21 n.3 (1995).

In the instant case, in concluding that claimant's Ramsey Hunt syndrome is not employment-related, the administrative law judge found rebuttal of the Section 20(a) presumption established based upon the testimony of Drs. Finley and Sobiesk. In order to establish rebuttal, however, a medical opinion must unequivocally state that no relationship exists between claimant's harm and his employment; thus, in order to be sufficient to rebut the Section 20(a) presumption, either the opinion of Dr. Finley or Dr. Sobiesk must establish that claimant's employment did not cause claimant's condition nor aggravate, accelerate, or combine with an underlying condition. *See O'Leary*, 357 F.2d at 812. Our review of the testimony of these two physicians, however, reveals that neither physician's opinion is sufficient to sever the presumed relationship between claimant's medical condition and his employment. Specifically, as recognized by the administrative law judge, neither physician ruled out the possibility that claimant's Ramsey Hunt syndrome was caused, triggered, or aggravated by claimant's work-related stress. *See Decision and Order* at 16-19. Dr. Finley, for example, testified that Ramsey Hunt syndrome tends to occur following stress, although it can occur without a stressor, and that work stress could have been a cause of claimant's Ramsey Hunt syndrome. Dr. Finley further testified that he could neither rule out job stress as a cause of claimant's condition nor say which of the possible causes was the most probable cause of claimant's Ramsey Hunt syndrome. *See CX 17* at 40-46, 60-66. Similarly, Dr. Sobiesk testified that job stress is one of many possible causative or aggravating factors in the development of Ramsey Hunt syndrome, without one factor being more prominent than another. In this regard, Dr. Sobiesk stated that, while he had no idea whether job stress,

in fact, caused claimant's condition, he could not rule it out as a reason for the eruption of the herpes zoster oticus virus; he added that claimant's medical history contains no explanation for eruption of the virus other than work stress. *See* CX 19 at 9, 20-27. Thus, as neither Dr. Finley nor Dr. Sobiesk, at any point, stated that claimant's Ramsey Hunt syndrome was not caused or aggravated by his work-related stress, neither opinion is sufficient, as a matter of law, to support a finding that the Section 20(a) presumption was rebutted. *See Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84, 89-90 (1995). Moreover, as these opinions constitute the only relevant evidence proffered by employer on rebuttal, there is no need to remand this case for reconsideration of the issue of causation. Since employer offered no other evidence, the administrative law judge's finding that Section 20(a) was rebutted is not supported by substantial evidence in the record and is reversed. Consequently, the administrative law judge's conclusion that claimant's Ramsey Hunt syndrome is not work-related is also reversed. The case therefore must be remanded for consideration of the remaining issues.

Accordingly, the administrative law judge's finding that claimant's medical condition is not work-related is reversed, and the case is remanded for consideration of the remaining issues.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge