BRB No. 99-0788

EMANUEL BROWN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DELAWARE RIVER STEVEDORES	)	DATE ISSUED:
	)	
and	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits and the Order Denying Claimant's Petition for Reconsideration of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Aloysius J. Staud (Fine & Staud), Philadelphia, Pennsylvania, for claimant.

John E. Kawczynski (Weber, Goldstein, Greenberg & Gallagher), Philadelphia, Pennsylvania, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits and Order Denying Claimant's Petition for Reconsideration (98-LHC-2201) of Administrative Law Judge Ainsworth H. Brown 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). 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).

On October 12, 1996, claimant suffered an injury during the course of his employment

as a longshoreman with employer when he was struck by a container lock and knocked down. Claimant was initially diagnosed with lumbosacral, left hip and left knee contusions. Employer provided claimant with medical treatment by Dr. Frieman for his knee injury and voluntarily paid claimant temporary total disability compensation from October 13, 1996 to February 18, 1997, and from April 10, 1997 to July 31, 1997. 33 U.S.C. §§907, 908(b). Although conceding that claimant sustained a work-related left knee injury, employer disputed that claimant sustained injuries to his back or left hip as a result of the October 12, 1996, work accident. Claimant returned to his regular employment duties on March 21, 1998. He sought temporary total disability compensation for the periods of February 19, 1997 to April 9, 1997 and August 1, 1997 to March 21, 1998, as well as additional medical benefits.

In his Decision and Order Denying Benefits issued February 24, 1999, the administrative law judge found, first, that claimant's work-related knee injury had resolved, causing no disability after February 19, 1997. Next, the administrative law judge found that claimant failed to provide medical evidence to support a causal link between his work accident and his back and left hip conditions. The administrative law judge further determined that claimant provided no evidence that he sought approval for Dr. Lefkoe's services and, thus, he determined that employer was not liable for the services rendered by that physician. Lastly, the administrative law judge found that because claimant was not disabled after February 19, 1997, he was not entitled to the compensation voluntarily paid by employer for the period of April 10, 1997 to July 31, 1997, and that employer is entitled to a credit for the compensation paid for that period. The administrative law judge summarily denied claimant's motion for reconsideration on March 24, 1999.

On appeal, claimant contends that the administrative law judge erred in failing to consider evidence regarding the casual relationship between his back and hip conditions and his work accident, and his medical treatment by Dr. Lefkoe. Employer responds, urging affirmance.[1]

In considering claimant's entitlement to additional temporary total disability benefits, the administrative law judge first addressed the evidence regarding claimant's left knee condition, and concluded that claimant's knee condition no longer resulted in a disability

[1]We reject employer's threshold contention that claimant's appeal should be rejected on the ground that it was inadequately briefed. The arguments made in claimant's Petition for Review and brief are sufficient for the Board's consideration. *See* 20 C.F.R. §802.211.

after February 19, 1997, when Dr. Frieman released claimant to return to work. Claimant, whose arguments on appeal focus on his back and left hip conditions rather than his knee injury, identifies no specific error with respect to the administrative law judge's conclusion that, as of February 19, 1997, claimant's knee condition did not preclude his return to work. As the administrative law judge's evaluation of the record evidence concerning claimant's knee condition is reasonable, and his ultimate finding that claimant's knee condition was not disabling after February 19, 1997 is supported by substantial evidence, we affirm that finding. *See generally Todd Shipyards Corp. v. Donovan,* 300 F.2d 741 (5th Cir. 1962).

We are unable to affirm, however, the administrative law judge's subsequent determination that claimant failed to establish a causal relationship between his back and hip conditions and his October 12, 1996, work accident, as the administrative law judge erroneously imposed upon claimant the initial burden of coming forth with medical evidence that these conditions are work-related. *See Hargrove v. Strachan Shipping Co.,* 32 BRBS 11, 15, *aff'd on recon.,* 32 BRBS 224, 227 (1998). It is well-established that, in establishing that an injury arises out of his employment, a claimant is aided by the Section 20(a), 33 U.S.C. §920(a), presumption linking his condition to his employment. *See Perry v. Carolina Shipping Co.,* 20 BRBS 90 (1987). In the instant case, however, the administrative law judge did not consider whether claimant was entitled to invocation of the Section 20(a) presumption of causation. 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 Stevens v. Tacoma Boatbuilding Co.,* 23 BRBS 191 (1990); *Perry,* 20 BRBS at 90. In order to establish his *prima facie* case, claimant is not required to prove that his working conditions in fact caused the harm; under Section 20(a), it is presumed in the absence of substantial evidence to the contrary that the harm demonstrated is related to the proven work events. *See Sinclair v. United Food and 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 Bridier v. Alabama Dry Dock & Shipbuilding Corp.,* 29 BRBS 84 (1995); *Sam v. Loffland Bros.,* 19 BRBS 288 (1987). It is employer's burden on rebuttal to present substantial evidence sufficient to sever the causal connection between the injury and the 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); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990). 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 Director, OWCP v. Greenwich Collieries,* 512 U.S. 267, 28 BRBS 43 (CRT) (1994); *Hughes v. Bethlehem Steel Corp.,* 17 BRBS 153 (1985).

As the administrative law judge did not consider Section 20(a) in addressing this issue, we vacate the administrative law judge's summary conclusion that claimant's back and

left hip conditions are not causally related to his employment. The case is remanded for the administrative law judge to consider whether the Section 20(a) presumption is invoked with regard to these conditions,[2] and if so, whether employer produced evidence rebutting it. If the administrative law judge finds a causal relationship between claimant's back and left hip conditions and his employment, he must then consider the nature and extent of claimant's disability.

Lastly, claimant on appeal challenges the administrative law judge's finding that employer is not liable for the medical treatment provided by Dr. Lefkoe. Section 7(a) of the Act, 33 U.S.C. §907(a), states that "[t]he employer shall furnish medical, surgical, and other attendance or treatment for such period as the nature of the injury or the process of recovery may require." Section 7(d) of the Act, 33 U.S.C. §907(d), sets forth the prerequisites for an employer's liability for payment or reimbursement of medical expenses incurred by claimant. The Board has held that Section 7(d) requires that a claimant request his employer's authorization for medical services performed by any physician, including the claimant's initial choice. *See Maguire v. Todd Shipyards Corp.,* 25 BRBS 299 (1992); *Shahady v. Atlas Tile & Marble,* 13 BRBS 1007 (1981)(Miller, J., dissenting), *rev'd on other grounds,* 682 F.2d 968 (D.C. Cir. 1982), *cert. denied*, 459 U.S. 1146 (1983). Where a claimant's request for authorization is refused by the employer, claimant is released from the obligation of continuing to seek approval for his subsequent treatment and thereafter need only establish that the treatment he subsequently procured on his own initiative was necessary for his injury in order to be entitled to such treatment at employer's expense. *See Schoen v. U.S. Chamber of Commerce,* 30 BRBS 112 (1996); *Anderson v. Todd Shipyards Corp.,* 22 BRBS 20 (1989). The Board has held that a treating physician's discharge of a claimant from his care or a physician's release of a claimant to return to work with no indication that further medical services would be provided may be construed as a refusal by the employer to provide treatment. *See Ezell v. Direct Labor, Inc.*, 33 BRBS 19, 28-29 (1999); *James v. Pate Stevedoring Co.,* 22 BRBS 271, 275 (1989).

[2]We note, in this regard, that Dr. Yankelevich's October 14, 1996 office note setting forth claimant's account of his October 12, 1996 work injury and diagnosing lumbosacral, left hip and left knee contusions, CX 14, is relevant evidence that must be considered on remand in addressing the issue of whether claimant has established a *prima facia* case.

The administrative law judge in the instant case did not make complete findings as required by Section 7(d). Rather, the administrative law judge summarily denied Section 7 medical benefits on the basis of his determination that claimant provided no evidence that he sought approval from employer or the district director for Dr. Lefkoe's medical care. The administrative law judge, in basing the denial of medical benefits on this finding, did not consider the evidence relevant to the requisite determination as to whether employer refused to continue to provide claimant with necessary medical treatment. We must, therefore, vacate the administrative law judge's denial of additional medical benefits and remand the case for the administrative law judge to make complete findings with regard to this issue. Specifically, on remand, the administrative law judge must consider whether Dr. Frieman's release of claimant to return to work constitutes a constructive refusal by employer to provide treatment. *See Ezell*, 33 BRBS at 28-29; *James*, 22 BRBS at 275.[3] If, on remand, the administrative law judge finds that employer refused further treatment to claimant, he must then determine whether the medical care that claimant procured on his own initiative was reasonable and necessary. *See Schoen,* 30 BRBS at 113-115; *Anderson,* 22 BRBS at 23-24.

Accordingly, the administrative law judge's finding that claimant's knee condition caused no disability after February 19, 1997, is affirmed. The administrative law judge's findings with respect to a causal relationship between claimant's back and left hip conditions and his employment, and to claimant's entitlement to self-procured medical care are vacated, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

[3]Claimant's testimony that his release by Dr. Frieman was prompted by employer's medical nurse manager who oversaw claimant's treatment, if credited by the administrative law judge on remand, is relevant to the inquiry as to whether employer constructively refused to provide treatment. *See Ezell,* 33 BRBS at 28-29; *James,* 22 BRBS at 275; *Anderson,* 22 BRBS at 23.

MALCOLM D. NELSON, Acting
Administrative Appeals Judge