

BRB No. 97-1218

SLATER B. MATTHEWS, JR.)
)
 Claimant-Petitioner)
)
 v.)
)
 NEWPORT NEWS SHIPBUILDING) DATE ISSUED:
 AND DRY DOCK COMPANY)
)
 Self-Insured)
 Employer-Respondent) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Robert E. Walsh and Matthew H. Kraft (Rutter & Montagna, L.L.P.), Norfolk, Virginia, for claimant.

Benjamin M. Mason (Mason & Mason, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (95-LHC-2504) of Administrative Law Judge Richard K. Malamphy 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 which are rational, supported by substantial evidence, and in accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On September 12, 1994, claimant, a pipefitter at the shipyard, injured his hands while lock wiring in the steel shop, and was later diagnosed with carpal tunnel syndrome. The administrative law judge denied claimant temporary total disability benefits from April 17 through 30, 1995, and from January 16 through August 4,

1996.

Claimant appeals the administrative law judge's denial of temporary total disability benefits for these two time periods. Employer responds in support of the administrative law judge's decision.

Claimant contends that the administrative law judge erred in denying him temporary total disability benefits from April 17 through 30, 1995, as he failed to apply Section 20(a) of the Act, 33 U.S.C. §920(a), to presume that his disability was due to a work-related hand injury.¹ Claimant's contention has merit. Section 20(a) applies to the issue of whether claimant's injury or disability is work-related. *Kubin v. Pro-Football, Inc.*, 29 BRBS 117 (1995). The presumption is invoked if claimant establishes his *prima facie* case, *i.e.*, the existence of a harm and working conditions that could have caused the harm. *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981). Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption with specific and comprehensive evidence sufficient to sever the causal connection between the disability 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). 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 Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990).

In denying claimant temporary total disability benefits from April 17 through 30, 1995, the administrative law judge concluded that Dr. Maxwell's reports are insufficient to establish that claimant's work-related injury kept him from working during this time. Decision and Order at 6. Dr. Maxwell stated that claimant was unable to work April 17 through 30, 1995, and when asked to elaborate by claimant's counsel, supplemented this statement by adding that, "To the best of my knowledge [claimant] experienced pain which kept him from work April 17-30, 1995." Cl. Exs. 1, 2. Although Dr. Maxwell's reports do not specifically state the cause of claimant's pain which kept him off work during this time, the record reflects that Dr. Maxwell was consulted to evaluate claimant for a work-related injury. Dr. Maxwell saw claimant in consultation on March 24, April 18 and 25, 1995, and concluded that claimant has carpal tunnel syndrome. Emp. Ex. 5. Additionally, claimant testified that he was off work during this time because of pain in his fingers, wrist, arm, neck, and shoulders. Tr. at 25-27. Although the administrative law judge discounted Dr. Maxwell's off work slip because it did not relate claimant's inability to work to a work-related injury, Dr. Maxwell's reports, taken as a whole, in

¹The administrative law judge incorrectly noted that the parties stipulated to a work-related injury. Decision and Order at 2; Tr. at 5-6; Employer's Response Br. at 11-14.

conjunction with claimant's testimony, may be sufficient to establish claimant's *prima facie* case. Consequently, as the administrative law judge did not apply the Section 20(a) presumption to the issue of claimant's inability to work from April 17 through 30, 1995, we vacate the administrative law judge's denial of temporary total disability benefits for this period, and remand this case to the administrative law judge for reconsideration. On remand, the administrative law judge must consider the applicability of the Section 20(a) presumption to claimant's claim for temporary total disability benefits during this time period.

Claimant next contends that he was temporarily totally disabled due to a work-related psychological condition from January 16 through August 4, 1996, and that the administrative law judge's failure to apply the Section 20(a) presumption to this claim is error. This contention likewise has merit. A psychological impairment, which is work-related even in part, is compensable under the Act. *Manship v. Norfolk & Western Railway Co.*, 30 BRBS 175 (1996); *Konno v. Young Bros., Ltd.*, 28 BRBS 57 (1994); *Sanders v. Alabama Dry Dock & Shipbuilding Co.*, 22 BRBS 340 (1989)(decision on remand). The Section 20(a) presumption is applicable in psychological injury cases if claimant establishes his *prima facie* case. *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380, 384 n. 2 (1990).

In denying claimant's claim for temporary total disability benefits from January 16 through August 4, 1996, the administrative law judge concluded that Dr. Gingras' records did not establish that claimant's depression and adjustment disorder were attributable to his work-related injury. Decision and Order at 6-7. The administrative law judge acknowledged that Dr. Gingras stated that claimant's stressors included pain from his work-related hand injury and the appropriateness of his treatment, but denied claimant's claim for temporary total disability benefits during this time since Dr. Gingras also identified non-work-related factors as a cause of claimant's disability. Additionally, claimant testified that he sought psychiatric help for problems he was having at work with a new supervisor. Tr. at 32-36. The administrative law judge erred, however, by not considering the applicability of the Section 20(a) presumption to this issue. If the Section 20(a) presumption is invoked, see *Kelaita*, 13 BRBS at 326, it is employer's burden to establish that claimant's psychological condition is not caused or aggravated by his employment. See *Dangerfield v. Todd Pacific Shipyards Corp.*, 22 BRBS 104 (1989). We, therefore, vacate the administrative law judge's finding that a causal relationship is not established with respect to claimant's psychological injury, and we remand this case to the administrative law judge for application of Section 20(a) to claimant's psychological injury.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is vacated, and the case is remanded to the administrative law judge for reconsideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge