BRB No. 98-1057

CLARENCE L. LAWSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NORTH AMERICAN SHIPYARD	)	DATE ISSUED: April 27, 1999
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LTD.	)	
	)	
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.

Arthur J. Brewster, Metairie, Louisiana, for claimant.

Robert P. McCleskey and Maurice E. Bostick (Phelps Dunbar, L.L.P.), New Orleans, Louisiana, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (97-LHC-2040) 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 *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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, who worked as a tacker for employer, suffered an injury to his elbow

on January 23, 1997, when, while walking across a scaffolding board, he fell and hit his right elbow on an angle iron. He was taken to employer's medic, Don Cheramie, who placed claimant's right arm in a sling and sent him to St. Anne Hospital. The emergency room examination revealed a contusion and a pre-existing fracture of the right olecranon. Claimant was asked to provide a urine sample at the hospital for purposes of drug testing. After it was determined that an accurate reading could not be obtained from the initial sample, claimant was asked to provide a second sample, which tested positive for marijuana and cocaine use. Claimant was released for light duty work by Dr. Hoppens, the emergency room physician. That same evening, claimant was treated by Dr. Morris, an orthopedist, who found no effusion, swelling or crepitance, noted that claimant had the ability to flex and extend his elbow, and thus found no evidence of a recent or acute fracture. Mr. Cheramie testified that he contacted claimant the following day by phone and offered claimant a light duty position with employer, which claimant refused. Subsequently, claimant sought treatment from Drs. Haydel and Maki, both of whom recommended surgery for his elbow fracture. After employer twice denied authorization for the procedure, claimant, on February 21, 1997, underwent surgery at the Veteran Administration Medical Center in New Orleans. Claimant, who has not sought full-time employment since the accident, subsequently filed a claim under the Act seeking temporary total disability benefits.

In his Decision and Order, the administrative law judge initially considered whether claimant's claim was barred by Section 3(c) of the Act, 33 U.S.C. §903(c), 33 U.S.C. §920(c). Having found that claimant was heavily under the influence of cocaine at the time of his January 23, 1997, work-related accident, and that claimant could not offer any credible explanation as to how the accident occurred, the administrative law judge determined that employer established that cocaine intoxication was the sole cause of the accident and denied the claim pursuant to Section 3(c) of the Act. The administrative law judge next determined that even had claimant's claim not been barred under Section 3(c), claimant suffered only a minor contusion of his right elbow as a result of the January 23, 1997 accident, and employer, by offering claimant a light duty position, established the availability of suitable alternate employment. As the administrative law judge previously determined that claimant's claim was barred by Section 3(c), he declined to consider whether claimant suffered a loss in post-injury wage-earning capacity. Lastly, the administrative law judge denied all medical expenses under Section 7 of the Act, 33 U.S.C. §907, with respect to claimant's elbow surgery, as he found that this procedure was not related to claimant's January 23, 1997 work accident.

On appeal, claimant challenges the administrative law judge's determination that claimant's claim was barred by Section 3(c) of the Act. Specifically, claimant

contends that as Dr. George did not testify that claimant's cocaine intoxication was the sole cause of his January 23, 1997 accident and employer failed to produce evidence regarding claimant's actions at the time of the accident, employer failed to carry its burden of establishing rebuttal of the presumption under Section 20(c) of the Act, and therefore, claimant's claim for benefits should not have been barred pursuant to Section 3(c) of the Act. Claimant further challenges the administrative law judge's finding that, assuming the Section 3(c) bar does not apply, claimant is nonetheless not entitled to temporary total disability compensation while recovering from his elbow surgery and permanent partial disability compensation under the schedule thereafter. Lastly, claimant contends that the administrative law judge erred in denying claimant reimbursement for medical expenses under Section 7 of the Act. Employer responds, urging affirmance of the administrative law judge's decision.

I. *Section 3(c)*

We agree with claimant that the administrative law judge's finding that claimant's intoxication bars his claim cannot be affirmed. Section 3(c) of the Act, 33 U.S.C. §903(c), provides that "[n]o compensation shall be payable if the injury was occasioned *solely* by the intoxication of the employee . . . "[1] (emphasis added). This provision must be applied in conjunction with Section 20(c), which provides that, in the absence of substantial evidence to the contrary, it shall be presumed that the injury was not occasioned solely by the intoxication of the injured employee. 33 U.S.C. §920(c). In light of the express statutory requirement that claimant's injury must be "solely" due to intoxication, employer bears the burden of proving that no other cause contributed to the injury; thus, the intoxication defense will defeat a claim when the evidence and reasonable inferences flowing therefrom allow for no other rational conclusion than that the intoxication was the sole cause of an injury. *See Sheridon v. Petro-Drive, Inc.*, 18 BRBS 57 (1986). Where employer proffers substantial rebuttal evidence, the presumption falls from the case. *See Walker v. Universal Terminal & Stevedoring Corp.*, 645 F.2d 170, 173, 13 BRBS 257, 262 (3d Cir. 1981). At this point, Section 3(c) may apply to bar recovery if the administrative law judge, based on the record as a whole, finds that the intoxication defense is proven. *See Birdwell v. Western Tug & Barge*, 16 BRBS 321 (1984).

[1]The provision contained in current Section 3(c) had been contained in Section 3(b) prior to the 1984 Amendments.

In addressing the Section 3(c) issue, the administrative law judge credited and relied the SmithKline Beecham laboratory report, *see* Emp. Exs. 2, 6, and the testimony of Dr. George in finding that claimant was intoxicated at the time of the injury. At the hearing, Dr. George, an expert in toxicology and pharmacology, testified that claimant's urine test, taken shortly after the work accident, revealed 60,789 nanograms of cocaine per milliliter of urine, an amount approximately 400 times that needed for a positive cocaine test result. *See* Tr. at 249, 252; *see also* Emp. Ex. 6. Based on the timing of the test in relation to the work accident, Dr. George opined that claimant was intoxicated at the time of the accident. *See* Tr. at 252-253. Dr. George stated that cocaine intoxication causes symptoms such as initial excitement followed by depression, insomnia and difficulty in concentrating. *Id.* at 249-251. Lastly, Dr. George testified that he could not say that cocaine intoxication was the sole cause of claimant's accident because he was not aware of what else may have occurred that day, but stated it was his opinion that the amount of cocaine in claimant's body "was a very significant contributing event in this accident . . . ."[2] *Id.* at 259. In crediting this testimony, the administrative law judge found that to require a physician to attribute an accident "solely" to intoxication would be an unobtainable standard to reach under Section 20(c).

The administrative law judge further discredited claimant's explanation for the initial unusable urine specimen, *i.e.,* that he overran the specimen bottle and washed it off, *see* Tr. at 62, and found that claimant attempted to falsify the specimen. While claimant testified that his fall was caused when one end of the scaffolding board upon which he was walking at the time of the accident gave way from the angle iron, *see* Tr. at 58-59, and that it was witnessed by co-worker Fred Matthews, *see* Tr. 102-103; Cl. Ex. 1, the administrative law judge discredited claimant's testimony, noting that claimant admitted he was a drug user and had lied about that fact that on a number of occasions, including on his employment application with employer. *Id*. at 81-82. Lastly, the administrative law judge credited Don Cheramie's testimony that on the day of the accident claimant behaved in a loud and boisterous manner even though there were no visible signs of injury, *see* Tr. at 119, behavior the administrative law judge found consistent with an individual's being under the influence of cocaine. Thus, the administrative law judge determined that claimant was heavily under the influence of cocaine at the time of his work-related accident. Further, the administrative law judge noted that claimant and other co-workers had walked across the scaffolding board numerous times during the week preceding

[2]Specifically, Dr. George stated: "Well, I thing the cocaine use was a very significant contributing event in this accident, but to say it's the sole cause, I think that's – you know, I don't know what else may have gone on that day. I mean, you know, maybe somebody hit him with a broom. I don't think I can say that on the basis of this test." Tr. at 259.

the accident without incident, there was no evidence of any hazard present on or near the walkway, and that claimant could not explain how the accident occurred. Thus based upon Dr. George's opinion, claimant's lack of credibility and the lack of evidence of any other reasonable explanation for claimant's fall, the administrative law judge found that employer established that cocaine intoxication was the sole cause of claimant's January 23, 1997, work accident, and barred compensation pursuant to Section 3(c). *See* Decision and Order 16-17. In so finding, the administrative law judge distinguished the Board's holdings in *Birdwell* and *Sheridon*, finding that in each of those cases, unlike the instant case, there was evidence which suggested causes other than intoxication for the subject work accidents.

Contrary to the administrative law judge's conclusion, we hold that *Birdwell* and *Sheridon* cannot be distinguished from the instant case and are controlling, as employer failed to demonstrate that claimant fell "solely" because he was intoxicated. In *Sheridon*, 18 BRBS at 57, the Board reversed the administrative law judge's denial of benefits, holding that proof of an employee's intoxication alone is insufficient to rebut the Section 20(c) presumption, even if intoxication is the primary cause of the employee's accident. "The employer must additionally proffer evidence that claimant fell owing to his intoxication, and rule out all other causes. Although the employer need not negate every hypothetical cause . . . it must present evidence that permits no other rational conclusion but that claimant's intoxication was the sole cause of injury." *Sheridon*, 18 BRBS at 60. While acknowledging that the claimant did not remember the circumstances of the accident, the Board held that where there are substantial doubts as to what actually happened and no direct proof of claimant's actions which caused him to fall, the administrative law judge must give the claimant the benefit of the presumption. *Id.*

In *Birdwell*, 16 BRBS at 321, the employee, a watchman of the employer's tugs and barges, was found dead in the water the morning after he had been drinking while performing his duties. In awarding benefits, the administrative law judge determined that the medical opinion addressing the effect of claimant's intoxication was based on speculation and was therefore less than credible. Moreover, the administrative law judge noted that walking on a mooring line, a task the employee was required to perform, was risky in any condition, and that bruises on the employee's forehead and chest suggested a reason other than drunkenness for his failure to swim to shore. The Board affirmed the administrative law judge's determination that rebuttal under Section 20(c) was not established, as the relevant medical opinion stating that intoxication was the *primary* cause of death did not establish intoxication as the *sole* cause of death. *Birdwell*, 16 BRBS at 323-324.

Initially, we affirm the administrative law judge's finding that claimant was intoxicated at the time of injury, as it is supported by substantial evidence. However, we cannot affirm the administrative law judge's conclusion that claimant's injury was solely due to intoxication, as it is not based on an analysis of the evidence under Section 20(c), which requires that employer prove intoxication was the only rational explanation for claimant's

fall. In finding that there was no other reasonable explanation for claimant's fall, the administrative law judge relied in part on the fact that claimant was performing a simple, routine activity at the time of the accident, and required essentially that claimant prove hazardous conditions as an alternative to intoxication as the cause of his fall. In essence, the administrative law judge discredited claimant and then used the absence of evidence to create a presumption in favor of employer. Contrary to the administrative law judge's analysis, it is not claimant's burden under Section 20(c) to show that unusual circumstances caused his accident, or that there was a reasonable explanation for his fall other than intoxication. Rather, employer bore the burden of proving that the facts surrounding the fall demonstrate it occurred only because claimant was intoxicated; since employees can fall or suffer other accidents in the absence of hazardous conditions intoxication cannot be presumed to be the sole cause simply because working conditions were "routine."

In the instant case, employer offered no evidence of the circumstances surrounding the fall. Employer presented no employees who witnessed either the accident, such as Fred Matthews, or claimant's conduct prior to the accident. In fact, employer's witness, Don Cheramie, whom the administrative law judge credited, testified that his interview of Fred Matthews confirmed claimant's account of the accident, and that neither claimant's co-worker nor his supervisor reported any unusual behavior by claimant prior to the accident. *See* Tr. at 102, 119. Thus, employer presented no evidence of circumstances at the time of the accident which could show that claimant's intoxication was its sole cause.

Moreover, in finding that Dr. George's opinion was sufficient to establish rebuttal of the Section 20(c) presumption, the administrative law judge determined that to hold an employer liable where an expert goes as far as rationally possible in attributing an accident to intoxication, without eliminating every obscure possibility, could not have been the intent of Congress with respect to Section 3(c). While the administrative law judge is correct to the extent that an employer need not negate every hypothetical cause of an accident, it must, under Section 20(c), shoulder the burden of presenting evidence that permits no other rational conclusion for the accident but intoxication. *See Sheridon*, 18 BRBS at 60. In the instant case, Dr. George stated that claimant's intoxication was a "very significant contributing event," but specifically refused to opine that intoxication was the *sole* cause of the accident. *See* Tr. at 259. Thus, Dr. George's opinion is insufficient on its face to rebut the Section 20(c) presumption. By contrast, in *Walker v. Universal Terminal & Stevedoring Corp.*, 645 F.2d 170, 13 BRBS 257 (3d Cir. 1981), employer presented medical evidence which eliminated a rational basis for attributing the employee's death due to asphyxiation to anything except intoxication. In *Walker*, there were only two plausible theories as to what triggered the employee's vomiting and asphyxiation: trauma or intoxication. The United States Court of Appeals for the Third Circuit affirmed the administrative law judge's finding of rebuttal of the Section 20(c) presumption based on a medical opinion interpreting autopsy reports

as showing no evidence of trauma. Since the administrative law judge, in weighing the evidence, rationally credited the medical evidence that intoxication was the cause of the vomiting, and rejected the medical opinion suggesting trauma, the court affirmed the administrative law judge's conclusion that the employee's death was occasioned solely by intoxication. *See Walker*, 645 F.2d at 176-177, 13 BRBS at 266-268.

In the instant case, there is no doubt that claimant was injured by a fall at work, and in the absence of evidence of the circumstances of the fall, other than claimant's testimony, employer has not established that the accident was due *solely* to intoxication. In light of the administrative law judge's failure to properly apply the Section 20(c) presumption, and as there is no evidence in the record sufficient to rebut it, the presumption controls the outcome. *Walker,* 645 F.2d at ____, 13 BRBS at 262. Accordingly, the administrative law judge's finding that claimant's claim is barred by Section 3(c) is reversed.

II. *Causation and Disability*

Claimant next contends that the administrative law judge erred in finding that claimant's surgery and current elbow condition are not related to his January 23, 1997, work accident. We disagree. In the instant case, the administrative law judge invoked the Section 20(a), 33 U.S.C. §920(a), presumption to link claimant's elbow fracture to his work accident, as he found that claimant suffered a harm and an accident occurred which could have caused that harm. *See generally Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991). Upon invocation of the presumption, the burden shifts to employer to present specific and comprehensive evidence sufficient to sever the causal connection between the injury and the employment, and therefore, to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment. *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). The opinion of a physician that no relationship exists between an injury and a claimant's employment is sufficient to rebut the presumption. *See Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984). If the administrative law judge finds that the Section 20(a) 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 Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT)(1994).

In finding that employer rebutted the presumption, the administrative law judge relied upon the opinions of Drs. Hoppens and Morris, each of whom opined that

claimant's elbow fracture pre-existed his work injury and that the fall did not aggravate this condition. *See Phillips v. Newport News Shipbuilding and Dry Dock Co.*, 22 BRBS 94 (1988). The conclusion that these opinions rebut Section 20(a) is affirmed. The presumption therefore dropped out of the case, and claimant bears the burden of proving that his elbow fracture was work-related.

In this regard, weighing the evidence as a whole, the administrative law judge credited the opinions of Drs. Hoppens, Morris and Maki. Dr. Hoppens, the emergency room physician at St. Anne Hospital who treated claimant on January 23, 1997, opined that claimant suffered from an pre-existing fracture, that x-rays revealed no new fracture, and that the pre-existing fracture was not aggravated by claimant's work injury. Emp. Ex. 13 at 8-9. Dr. Hoppens diagnosed claimant with a contusion of the right elbow and released claimant to light duty work on January 23, 1997; he testified at his deposition that he did not believe surgery was necessary. Emp. Ex. 13 at 9. Dr. Morris, an orthopedic surgeon, also treated claimant at St. Anne Hospital on the day of claimant's work accident, and confirmed that claimant suffered a soft tissue injury in the right elbow which was unrelated to a pre-existing fracture of the right olecranon. Emp. Exs. 2; 12 at 29 . Dr. Morris noted that there was no effusion, swelling, or crepitus, symptoms that would normally be seen in a patient with an acute elbow fracture, and also noted that claimant was able to extend his elbow. Emp. Ex. 12 at 9-10, 17-18. Dr. Morris discharged claimant from the hospital on January 23, 1997, with the opinion that the work-related injury did not require surgery; he testified that he would not have released claimant to light duty work at that time, but also stated that there was no objective reason to explain why he couldn't go back to work, and he would have tried to get claimant back to light duty work as soon as possible. *Id*. at 33-37.

Claimant was examined by Dr. Maki, an orthopedic surgeon, on January 31, 1997. He concurred that claimant's fracture was pre-existing and not the result of the work accident, and further stated claimant could have performed light duty work at the time he examined him.[3] Emp. Ex. 11 at 11-12, 17. Dr. Maki opined that the type of fracture claimant had usually heals within three months after surgery, and assuming that post-surgery claimant would have between a residual and moderate

[3]Drs. Morris and Maki testified that the x-rays showed that since the fracture site was rounded and not jagged, this was an indication that the fracture was pre-existing. Emp. Exs. 11 at 25; 12 at 26. Dr. Haydel, who examined claimant the day after the work accident, testified that it was hard to tell how old the fracture was, but agreed that the fracture site showed rounding of the bony edges which would be indicative of an old fracture. Cl. Ex. 8 at 7.

degree of limited motion, he would rate claimant's impairment of the arm between a 10 and 15 percent. *Id*. at 14, 19. Moreover, Dr. Robertson, who performed claimant's surgery in February 1997, opined that claimant's fracture was at least one month to six weeks old, and further, that claimant would be able to return to his former employment three to four months after the surgery. Cl. Ex. 7 at 10, 13-14. Lastly, the administrative law judge gave little weight to Dr. Haydel's opinion that claimant's fracture may have been acute, as this opinion was based on the history given to him by claimant, whom the administrative law judge discredited, and Dr. Haydel further stated that the objective evidence indicated that the fracture was pre-existing. *See* Cl. Ex. 8 at 7. Based on his weighing of the evidence, the administrative law judge found that the January 23, 1997 accident caused a contusion of claimant's right elbow, which did not aggravate claimant's pre-existing fracture, and thus the surgery which claimant underwent and subsequent disability were not related to the work accident.

In adjudicating a claim, it is well-established that an administrative law judge is entitled to evaluate the credibility of witnesses, including doctors, and is not bound to accept the opinion or theory of any particular medical examiner; rather, the administrative law judge may draw his own inferences and conclusions from the evidence. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). In the instant case, as the administrative law judge's decision to credit the opinions of Drs. Hoppens, Morris and Maki is within his authority as fact finder, we affirm the administrative law judge's determination, based on the record as a whole, that claimant's surgery and current elbow condition are not causally related to his January 23, 1997, work accident. *See, e.g., Rochester v. George Washington University*, 30 BRBS 233 (1997).

We note, however, that no party challenges the administrative law judge's determination that claimant sustained a contusion as a result of his fall on January 23, 1997. Thus, the only compensable disability is that, if any, resulting from the contusion. On appeal, claimant asserts that he is entitled to temporary total disability compensation, relying on the fact that he spent time recovering from the surgery performed in February 1997 and contending his elbow has not yet fully healed. These contentions are rejected in view of the administrative law judge's findings regarding the elbow fracture, which we have affirmed. Claimant also asserts that employer never offered him a light duty position, and that assuming employer had done so, he nonetheless has a loss in earning capacity as he would not have earned his regular pay after the first week of light duty. Claimant argues he is entitled to temporary partial disability compensation based on a loss in wage earning capacity

and to permanent partial disability compensation under the schedule.

Where a claimant establishes that he is unable to perform his usual employment duties due to a work-related injury, the burden shifts to employer to demonstrate the availability of specific jobs within the geographic area which claimant resides which he is, by virtue of his age, education, work experience, and physical restrictions, capable of performing and for which he can compete and reasonably secure. *See New Orleans (Gulfwide) Stevedores, Inc. v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981); *see also Roger's Terminal & Shipping Corp. v. Director, OWCP*, 784 F.2d 687, 18 BRBS 79 (CRT)(5th Cir. 1986). Employer may meet this burden by offering claimant a job in its facility. *See Darby v. Ingalls Shipbuilding & Dry Dock Co.*, 99 F.3d 685, 30 BRBS 93 (CRT)(5th Cir. 1996); *Peele v. Newport News Shipbuilding & Dry Dock Co.*, 20 BRBS 133 (1987); *Darden v. Newport News Shipbuilding & Dry Dock Co.*, 18 BRBS 224 (1986). In order for such a job to constitute suitable alternate employment, however, the job must be actually available to claimant. *See Wilson v. Dravo Corp.*, 22 BRBS 463 (1989); *Mendez v. National Steel & Shipbuilding Co.*, 21 BRBS 22 (1988).

In the instant case, the administrative law judge's determination that claimant established a *prima facie* case of total disability is not challenged on appeal. Since Drs. Hoppens and Maki, as well as Dr. Haydel, released claimant for light duty work subsequent to the work accident, and the administrative law judge credited Don Cheramie's testimony that employer offered claimant a light duty position, the administrative law judge implicitly found that employer established the availability of suitable alternate employment. The administrative law judge did not consider, however, whether claimant suffered a loss in post-injury wage earning capacity, inasmuch as he had previously determined that claimant's claim was barred pursuant to Section 3(c).

We cannot affirm the administrative law judge's determination that employer established suitable alternate employment. While the administrative law judge credited Don Cheramie's testimony that employer offered claimant a light duty position, *see* Tr. at 144-145, the administrative law judge did not consider whether the physical requirements of this position were within any light duty limitations due to the contusion which he sustained on January 23, 1997, nor did the administrative law judge make any findings specifically stating claimant's restrictions. Thus, the administrative law judge did not fully address whether employer established suitable alternate employment by virtue of its light duty employment. *See generally Buckland v. Dep't of the Army/NAF/CPO*, 32 BRBS 99 (1997). Accordingly, we must vacate the administrative law judge's determination that employer established the availability of suitable alternate employment, and remand the case to the

administrative law judge for reconsideration. On remand, the administrative law judge must determine claimant's restrictions due to his work-related injury and the duration of these limitations. If he finds that employer's light duty position was suitable for claimant, he must then determine whether claimant suffered any economic loss. If so, claimant would be entitled to an award of temporary partial disability compensation during the period his contusion restricted his employment. *See* 33 U.S.C. §908(e).[4]

III. *Medical Benefits*

Lastly, claimant challenges the administrative law judge's denial of reimbursement for medical expenses incurred as a result of his elbow surgery. We reject claimant's contention. Entitlement to medical benefits is contingent upon a finding of a causal relationship between the condition necessitating treatment and claimant's employment. *See Brooks v. Newport News Shipbuilding Co.*, 26 BRBS 1 (1992), *aff'd sub nom. Brooks v. Director, OWCP*, 2 F.3d 64, 27 BRBS 100 (CRT)(4th Cir. 1993)*; see generally Wendler v. American National Red Cross*, 23 BRBS 408 (1990)(McGranery, J., dissenting on other grounds). In light of our affirmance of the administrative law judge's finding that no causal relationship exists between claimant's employment and his surgery and current elbow condition, we affirm the administrative law judge's finding that employer is not liable for medical benefits related to claimant's elbow surgery.

Accordingly, the administrative law judge's finding that claimant's claim for benefits is barred by Section 3(c) of the Act is reversed. The administrative law judge's findings that claimant's surgery and current elbow condition are unrelated to his January 23, 1997 work accident, and that employer is not liable for medical benefits related to claimant's elbow surgery, are affirmed. However, the administrative law judge's finding that employer established the availability of

[4]We reject claimant's contention that he is entitled to permanent partial disability compensation under the schedule. As the only impairment rating of record, that of Dr. Maki, is based on claimant's non-work-related elbow fracture and surgery, claimant has not established entitlement to an award under the schedule for his contusion.

suitable alternate employment is vacated, and the case is remanded for reconsideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge