

BRB No. 98-1064

JEREMIAH BRUNSON )  
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 Claimant-Petitioner )  
 )  
 v. )  
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 RYAN WALSH STEVEDORING , ) DATE ISSUED: April 22, 1999  
 INCORPORATED )  
 )  
 Self-Insured )  
 Employer ) DECISION and ORDER

Appeal of the Decision and Order and Decision and Order Denying Reconsideration of Edward J. Murty, Jr., Administrative Law Judge, United States Department of Labor.

Edward E. Boshears, Brunswick, Georgia, for claimant.

Shari S. Miltiades (Karsman, Brooks & Callaway, P.C.), Savannah, Georgia, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order and Decision and Order Denying Reconsideration (97-LHC-0411) of Administrative Law Judge Edward J. Murty, 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 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 July 20, 1994, claimant suffered an injury during the course of his employment as a longshoreman with employer; while bending over to straighten a mat on the dock, claimant was struck from behind and knocked down by a forklift truck. Claimant sought medical treatment on the day of his accident at Glynn Immediate Care, complaining of pain in his left shoulder and both knees. Claimant was diagnosed with a sprained left shoulder, for which Naprosyn was prescribed. Claimant's blood pressure was recorded as 200/120, and he was given a prescription for blood pressure medication. Claimant was released to return to work the following day with lifting restrictions.<sup>1</sup> Employer paid for the medical services provided by Glynn Immediate Care, but did not voluntarily pay any compensation benefits. Claimant sought permanent total disability benefits from January 1, 1995, based on back and shoulder injuries and heart problems, which he asserted were related to his July 20, 1994, work injury.

In his initial Decision and Order issued March 5, 1998, the administrative law judge determined that claimant's back and heart problems are unrelated to the July 20, 1994, work accident, and, accordingly, denied the claim for compensation. The administrative law judge denied claimant's motion for reconsideration on April 21, 1998.

On appeal, claimant contends that the administrative law judge erred in failing to accord him the benefit of the Section 20(a), 33 U.S.C. §920(a), presumption. Claimant next contends that the administrative law judge erred by failing to address whether claimant is disabled by his shoulder injury. Claimant further assigns error to the administrative law judge's failure to address whether claimant's work injury aggravated his pre-existing heart condition. Employer responds, urging affirmance.

Initially, we agree with claimant that the administrative law judge erred by failing to 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

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<sup>1</sup>On the day after his injury, claimant returned to work driving cars off ships for another employer, and was involved in a car accident. Claimant was suspended from his union, initially for 90 days and then permanently, because he tested positive in drug testing conducted after both work accidents on July 20, 1994 and July 21, 1994, and again in a subsequent random drug test. He has not worked since July 21, 1994.

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 v. Carolina Shipping Co.*, 20 BRBS 90 (1987). In order to establish his *prima facie* case for invocation of the statutory presumption, 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). 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). 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 specific and comprehensive 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 *Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153 (1985).

In the instant case, it is undisputed that a work accident occurred and that claimant sought immediate medical attention from an immediate care clinic, where a left shoulder sprain was diagnosed and medication for claimant's elevated blood pressure was prescribed. Claimant has a heart condition which pre-existed this accident. Thus, claimant is entitled as a matter of law to invocation of the Section 20(a) presumption that his shoulder and heart conditions are causally related to his employment.<sup>2</sup> See, e.g., *Frye v. Potomac Electric*

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<sup>2</sup>At the hearing, claimant alleged that his back problems also are related to the July 20, 1994, work accident. Although claimant cites as error the administrative law judge's failure to apply the Section 20(a) presumption to claimant's back condition in the introductory list of

*Power Co.*, 21 BRBS 194, 196 (1988).

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the issues on appeal contained in his Brief in Support of Petition for Review, claimant does not present a specific argument in support of this allegation of error. We, therefore, decline to consider the issue of the causation of claimant's back condition. *See generally Shoemaker v. Schiavone and Sons, Inc.*, 20 BRBS 214, 218 (1988).

We further agree with claimant that the administrative law judge erred by failing to address, consistent with the Section 20(a) presumption, the causation of claimant's shoulder condition. Despite the fact that a claim for disability due to a shoulder injury was made in proceedings before the administrative law judge, the administrative law judge failed to make any determination regarding a causal relationship between claimant's shoulder problem and his work accident.<sup>3</sup> Our review of the record reveals multiple references to claimant's shoulder complaints in his medical records. As claimant is entitled to invocation of the Section 20(a) presumption of causation with regard to his shoulder injury, we remand the case for the administrative law judge to consider whether employer has established rebuttal of the presumption with substantial countervailing evidence that claimant's shoulder condition was not caused or aggravated by his employment. *See Bridier*, 29 BRBS at 84.

We also agree with claimant that the administrative law judge's causation findings with respect to claimant's heart condition cannot be affirmed. The administrative law judge based his conclusion that claimant's hypertension and congestive heart failure are not in any way related to his July 20, 1994, work accident on Dr. Martinez's deposition testimony that claimant's disabling heart condition was caused not by trauma, but by other conditions. *See Decision and Order* at 4. As claimant correctly argues, however, employer cannot meet its rebuttal burden merely by establishing that claimant's heart condition was not directly caused by his work accident. Rather, where aggravation of a pre-existing condition is at issue, employer must establish that the work accident did not aggravate or accelerate the pre-existing condition. *See, e.g., Quinones v. H. B. Zachery, Inc.*, 32 BRBS 6 (1998); *Obert v. John T. Clark and Sons of Maryland*, 23 BRBS 157 (1990). On remand, the administrative law judge must reconsider Dr. Martinez's testimony in light of the applicable principles regarding aggravation of an underlying condition, and determine whether the opinion of Dr. Martinez constitutes evidence sufficient to sever the causal connection between claimant's heart condition and his employment. *See Quinones*, 32 BRBS at 6. If, on remand, the administrative law judge finds the presumption rebutted, he must weigh all the evidence and resolve the causation issue based on the record as a whole. *See Devine*, 23 BRBS at 27.

Therefore, we vacate the administrative law judge's conclusion that claimant's heart condition is not causally related to his employment, and we remand for the administrative law judge to consider whether employer has established rebuttal of the Section 20(a)

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<sup>3</sup>The sole reference by the administrative law judge in his initial Decision and Order to claimant's shoulder injury was his remark that claimant complained of shoulder pain at Glynn Immediate Care and that the x-rays taken there show a normal left shoulder. *See Decision and Order* at 4. In his Decision and Order Denying Reconsideration, the administrative law judge found additional medical evidence submitted by claimant, including a report regarding claimant's shoulder, not to be germane to this proceeding.

presumption with regard to claimant's shoulder injury and heart condition. If the administrative law judge finds a causal relationship between either or both of these conditions and claimant's employment, he must then consider the nature and extent of claimant's disability.

Accordingly, the Decision and Order and Decision and Order Denying Reconsideration of the administrative law judge are vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge