BRB No. 99-1135

VICTOR MARINELLI	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
AMERICAN STEVEDORING, LIMITED	)	DATE ISSUED: Aug. 1, 2000
	)	
Self-Insured Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Interim Decision and Order on Jurisdiction and the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Philip J. Rooney (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

Lawrence P. Postol (Seyfarth, Shaw, Fairweather & Geraldson), Washington, D.C., for self-insured employer.

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

PER CURIAM:

Employer appeals the Interim Decision and Order on Jurisdiction and the Decision and Order (97-LHC-2580) of Administrative Law Judge Ralph A. Romano 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).

Claimant worked as a shop steward at employer's facility where he mediated labor-management disputes, and received his wages from employer pursuant to the collective bargaining agreement between employer and the union. After engaging in a dispute with some of the workers, claimant, on March 16, 1997, experienced chest pain and passed out after taking nitroglycerin tablets, striking his head. Claimant was taken to a hospital and underwent a cardiac catherization. He was discharged on March 18, 1997, and thereafter treated with medication. It is undisputed that claimant, who has not returned to work since this incident, suffered from pre-existing coronary artery disease, previously underwent a coronary bypass procedure in 1989, and had been suffering from chest pain for three years before the incident occurred. Subsequent to March 16, 1997, claimant began treatment for psychological symptoms. Claimant filed a claim for permanent total disability compensation, contending that stressful conditions at his employment aggravated his underlying heart and psychological conditions.

In his Interim Decision and Order on Jurisdiction, the administrative law judge found that as employer is required to pay claimant's wages pursuant to the collective bargaining agreement, an employer-employee relationship existed between claimant and employer. The administrative law judge further found that claimant's job duties as a shop steward were an integral part of employer's stevedoring business, and therefore claimant was a covered maritime employee under Section 2(3) of the Act, 33 U.S.C. §902(3). In his Decision and Order on the merits, the administrative law judge first found that claimant was entitled to invocation of the presumption at Section 20(a) of the Act, 33 U.S.C. §920(a), and that employer established rebuttal of the presumption based on the opinion of Dr. Israel. The administrative law judge thereafter credited the opinions of Drs. Konka, Lomazow and Mannucci, over the contrary opinions of Drs. Israel and Head, to find that claimant's work stress aggravated his underlying cardiac condition and caused adverse psychiatric consequences. After finding that claimant is unable to return to his usual employment, the administrative law judge awarded claimant permanent total disability compensation under the Act, 33 U.S.C. §908(a), and medical benefits, 33 U.S.C. §907.[1]

On appeal, employer challenges the administrative law judge's award of benefits. Specifically, employer contends that the administrative law judge erred in finding that it, and not claimant's union, was claimant's employer, and in finding that claimant satisfied the

[1]The administrative law judge further found that employer is entitled to relief under Section 8(f) of the Act, 33 U.S.C. §908(f).

status requirement for coverage under the Act. Employer further challenges the administrative law judge's findings regarding causation and the nature and extent of claimant's disability, contending that claimant's symptoms were not caused or aggravated by his employment, but rather, were due to his underlying heart condition, and that claimant is not permanently and totally disabled. Employer further contends that the administrative law judge's analysis does not comply with the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A). Claimant responds, urging affirmance of the administrative law judge's decisions, and requesting an attorney's fee for work performed before the Board in the instant appeal. Employer replies, reiterating its arguments on appeal, and objecting to the fee petition as it fails to state who performed the work and his qualifications.

The threshold issue presented by the instant appeal is whether the administrative law judge erred in finding that claimant was an employee of employer on March 16, 1997. In the instant case, claimant worked for many years on the waterfront as a safety man before being appointed shop steward by the union in 1986 or 1987. He was later elected to this position by the union members. *See* April 23, 1998 Tr. at 20; January 29, 1999 Tr. at 91. It is undisputed that, pursuant to the collective bargaining agreement between employer and the union, employer paid claimant's wages. *See* April 23, 1998 Tr. at 112. Claimant testified that his chief duty as shop steward was to mediate labor disputes between management and the workers, which often concerned work safety issues and staffing shortages. *Id.* at 21-33. He had an office on employer's premises and would be present on the pier and on board vessels to talk to workers and management, but he was paid as long as a ship was being worked regardless of his presence at employer's facility. *Id.* at 32-33, 112, 116. He would often go to Frank Jordan, the assistant terminal manager or to Sabato Catucci, employer's owner, to voice the workers' complaints, specifically when work crews were not fully manned. Claimant testified, however, that in some disputes he sided with management regarding the enforcement of work rules. *Id.* at 41, 66-67, 76. Mr. Catucci testified that he had no control over when claimant arrived and left the work site, nor did he have control over claimant's work activities. *Id.* at 110.

In rendering his determination in the instant case, the administrative law judge reasoned that the most significant factor in his analysis of whether an employer-employee relationship existed between employer and claimant was that employer was required to pay claimant's salary in accordance with the existing collective bargaining agreement. The administrative law judge further found that employer, a stevedoring company, was a statutory employer under Section 2(4) of the Act, 33 U.S.C. §902(4),[2] and that whether claimant's job

[2]Section 2(4) of the Act states:

> The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or

duties as a shop steward were under the control of the union has no bearing on the analysis, as he was engaged in maritime employment and therefore was a covered maritime employee. *See* 33 U.S.C. §902(3) and discussion, *infra*. Thus, the administrative law judge found that claimant was an employee of employer by reason of its contract with the union. *See* Interim Decision and Order on Jurisdiction at 4. On appeal, employer asserts that since it had no control over claimant's job duties, it is not claimant's employer and thus is not liable for any compensation liability.

Section 2(2) of the Act defines the term "injury" as follows:

> The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

> in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

33 U.S.C. §902(4).

33 U.S.C. §902(2). Thus, for a claim to be compensable under the Act, the injury must arise out of and in the course of employment; therefore, an employer-employee relationship between the employer and claimant necessarily must exist at the time of the injury. *See Clauss v. Washington Post Co.*, 13 BRBS 525 (1981), *aff'd mem.*, 684 F.2d 1032 (D.C. Cir. 1982). Generally, the Board has applied three tests to determine whether an employer-employee relationship exists within the meaning of the Act: (1) the relative nature of the work, (2) the right to control details of the work, and (3) those listed in the Restatement (Second) of Agency, Section 220, subsection 2, which encompasses factors set forth in each of the other two tests.[3] The administrative law judge should apply whichever test is best

[3]The Restatement (Second) of Agency §220 (1958), subsection 2 provides that in determining whether one is considered an employee or an independent contractor, the following factors must be considered:

> (a) the extent of control which, by the agreement, the master may exercise over the details of the work;
>
> (b) whether or not the one employed is engaged in a distinct occupation or business;
>
> (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
>
> (d) the skill required in the particular occupation;
>
> (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;
>
> (f) the length of time for which the person is employed;
>
> (g) the method of payment, whether by the time or by the job;
>
> (h) whether or not the work is a part of the regular business of the employer;
>
> (i) whether or not the parties believe they are creating the relation of master and servant; and
>
> (j) whether the principal is or is not in business.

suited to the facts of the particular case. *See Herold v. Stevedoring Services of America*, 31 BRBS 127 (1997); *Reilly v. Washington Metropolitan Area Transit Authority*, 20 BRBS 8 (1987); *Tanis v. Rainbow Skylights*, 19 BRBS 153 (1986). Where the administrative law judge's application of one test is affirmable, the Board need not address the administrative law judge's application of the other tests. *See Holmes v. Seafood Specialist Boat Works*, 14 BRBS 141 (1981).

After consideration of employer's contentions on appeal, we affirm the administrative law judge's finding that employer was claimant's employer at the time of the injury, as it is supported by substantial evidence. Contrary to employer's argument, the instant case does not concern the borrowed employee doctrine, *see Total Marine Services, Inc. v. Director, OWCP*, 87 F.3d 774, 30 BRBS 62 (CRT)(5th Cir. 1996), *reh'g en banc denied*, 99 F.3d 1137 (5th Cir. 1996); *Ricks v. Temporary Employment Services, Inc.*, 33 BRBS 81 (1999), or whether claimant is an independent contractor.[4] *See* Restatement (Second) of Agency, §220(2)(a). In these situations, the issue of control over the details of the work may be of paramount concern. By contrast, the issue here concerns whether claimant was an employee of the stevedoring company or his union. In his analysis, the administrative law judge applied neither the "right to control the details of the work" test nor the "relative nature of the work" test. Rather, the administrative law judge considered two factors listed in the Restatement of Agency, the method of payment and the extent of control over the details of work, and determined that the fact that claimant received his wages from employer pursuant to a collective bargaining agreement under which employer was bound outweighed any consideration of which entity, employer or the union, controlled the details of claimant's work. As the administrative law judge acted within his discretion in finding that the method of claimant's payment of wages indicated that employer was his employer, we affirm the administrative law judge's finding that employer, not claimant's union, was claimant's employer at the time of the injury based on the administrative law judge's application of relevant factors listed in the Restatement of Agency. *See, e.g., Herold*, 31 BRBS at 129.

We next consider employer's contention that the administrative law judge erred in finding that claimant satisfied the status element for coverage under the Act. To be covered under the Act, a claimant must satisfy the "status" requirement of Section 2(3) , and the "situs" requirement of Section 3(a). *See Northeast Marine Terminal Co., Inc. v. Caputo,* 432 U.S. 249, 6 BRBS 150 (1977). Section 2(3) defines an "employee" for purposes of coverage under the Act as "any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship

[4]In this regard, the administrative law judge properly distinguished *Total Marine Services, Inc.*, 87 F.3d at 774, 30 BRBS at 62 (CRT), and *Herold*, 31 BRBS at 127, as these cases concerned the issue of which of several entities was the employer responsible for benefits.

repairman, shipbuilder and ship-breaker . . . ." 33 U.S.C. §902(3). An employee is engaged in maritime employment as long as some portion of his job activities constitutes covered employment. *Caputo*, 432 U.S. at 275-276, 6 BRBS at 166. While maritime employment is not limited to the occupations specifically enumerated in Section 2(3), claimant's employment must bear an integral relationship to the loading, unloading, building or repairing of a vessel. *See generally Chesapeake & Ohio Ry. Co. v. Schwalb*, 493 U.S. 40, 23 BRBS 96 (CRT)(1989). In *Schwalb*, the United States Supreme Court held that employees who are injured while maintaining or repairing equipment essential to the loading or unloading process are covered under the Act, as their work is an integral part of and essential to those overall processes. *Id.*

On appeal, employer contends that claimant's job as a shop steward, which involved mediating labor-management disputes, did not have any nexus to the loading and unloading process. Thus, employer asserts that the status requirement for coverage under Section 2(3) of the Act was not met. We reject employer's contention. In determining that claimant satisfied the status requirement for coverage under the Act, the administrative law judge credited claimant's testimony, as supported by the testimony of Frank Jordan and Sabato Catucci, that although claimant often took the side of the workers in a dispute, he would also at times support management's position when there was misconduct by a worker, and other times directed employees to return to work when a work stoppage was threatened. *See* April 23, 1998 Tr. at 40-42, 69-70, 80, 126-127. The administrative law judge found that claimant's performance of his duties as shop steward facilitated the day-to-day loading and unloading process by removing interpersonal obstacles that might otherwise obstruct such ongoing operations.[5] Thus, the administrative law judge determined that claimant's job was

[5]In cases concerning whether an injury occurred during the course of employment, state courts have increasingly found injuries to shop stewards and union officials compensable by employers, finding that they act in the interest of employers as well as

an integral part of and essential to employer's stevedoring business, and thus constituted covered maritime employment under Section 2(3) of the Act. *See* Interim Decision and Order on Jurisdiction at 5.

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unions, as the negotiation and implementation of collective bargaining agreements prevents unrest and promotes the uninterrupted operation of an enterprise. *See, e.g., New England Tel. Co. v. Ames*, 124 N.H. 661, 474 A.2d 571 (1984); *see also Ackley-Bell v. Seattle Sch. Dist.*, 87 Wash. App. 158, 940 P.2d 685 (1997); *Jones v. Hartford Accident & Indem. Co.*, 811 S.W.2d 516 (Tenn. 1991); *D'Alessio v. State*, 509 A.2d 986 (R.I. 1986); *Caterpillar Tractor Co. v. Shook*, 313 N.W.2d 503 (Iowa 1981); *Repco Products Corp. v. Workmen's Comp. App. Bd.*, 32 Pa. Cmwth. 554, 379 A.2d 1089 (1977); *Nallan v. Motion Picture Studio Mechanics Union, Local #52*, 49 A.D.2d 365, 375 N.Y.Supp.2d 164 (1975), *rev'd on other grounds*, 40 N.Y.2d 1042, 391 N.Y.Supp.2d 853 (1976).

Contrary to employer's contention, the instant case is not controlled by the Board's decision in *Sanders v. Alabama Dry Dock & Shipbuilding Co.*, 20 BRBS 104 (1987)(Brown, J., dissenting), *rev'd*, 841 F.2d 1085, 21 BRBS 18 (CRT)(11th Cir. 1988), inasmuch as the Board's decision was reversed on appeal. In *Sanders*, a case similar to the instant case, the United States Court of Appeals for the Eleventh Circuit held that the claimant's job as a labor relations assistant, the function of which was to keep the shipyard work uninterrupted by labor disputes or misconduct of the workers, was significantly related to and directly furthered the employer's shipbuilding and ship repair operations. Therefore, the court concluded that the claimant was a covered maritime employee under Section 2(3) of the Act. As *Sanders* was decided prior to *Schwalb*, the court did not specifically determine whether the claimant's functions were "integral to" the employer's maritime operations.[6] *See Atlantic Container Service, Inc. v. Coleman*, 904 F.2d 611, 23 BRBS 101(CRT)(11th Cir. 1990)(court questioned validity of legal test for coverage used in *Sanders* in light of *Schwalb*). Nevertheless, *Sanders* is supportive of the administrative law judge's finding of coverage in the instant case, inasmuch as the administrative law judge applied the *Schwalb* test to claimant's duties. Like the claimant in *Sanders*, claimant herein performed many of his duties as shop steward on the dock, where, in addition to mediating labor disputes, he attempted to ensure compliance with safety codes and that work crews were fully manned. *Sanders*, 841 F.2d at 1088, 21 BRBS at 21 (CRT). The administrative law judge fully considered claimant's job functions and found that his employment was integral to the loading and unloading process as he removed interpersonal obstacles that might otherwise hinder employer's day-to-day operations. This finding is supported by the testimony concerning claimant's job duties. *See* April 23, 1998 Tr. at 40-42, 69-70, 80, 126-127; *see also Sanders*, 841 F.2d at 1088, 21 BRBS at 21 (CRT); *Jannuzzelli v. Maersk Container Service Co.*, 25 BRBS 66 (1991) (Board held that a timekeeper who checked in men for payroll purposes and ensured work crews were fully manned was covered under the Act). *Cf. Sette v. Maher Terminals Inc.*, 27 BRBS 224 (1993)(claimant who performed only clerical duties not covered under the Act). The administrative law judge applied the proper legal standard in this case, and his conclusion that claimant's functions as shop steward were integral to the loading and unloading process is supported by substantial evidence.

[6]In *Sea-Land Service, Inc. v. Rock*, 953 F.2d 56, 25 BRBS 112 (CRT)(3d Cir. 1992), *rev'g* 21 BRBS 187 (1988), the United States Court of Appeals for the Third Circuit held that a courtesy-van driver was not covered under the Act as his function of transporting maritime personnel, though helpful to the employer, was not integral to the loading and unloading process. Similarly, in *Coloma v. Director, OWCP*, 897 F.2d 394, 23 BRBS 136 (CRT)(9th Cir.), *cert. denied*, 498 U.S. 818 (1990), the United States Court of Appeals for the Ninth Circuit affirmed the Board's determination that a messman/cook was not covered under the Act as his duties were not essential to the loading and unloading process. *See also Gonzalez v. Merchants Bldg. Maintenance*, 33 BRBS 146 (1999).

Accordingly, the administrative law judge's finding that claimant is a covered maritime employee under Section 2(3) of the Act is affirmed.

We next address employer's challenge to the administrative law judge's findings regarding causation and the nature and extent of claimant's disability. In order to be entitled to the Section 20(a) presumption that claimant's condition is causally related to this employment, claimant must establish a *prima facie* case by establishing the existence of a harm and that an accident occurred or working conditions existed that could have caused the harm. *See Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); *see also Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1990). A psychological impairment which is work-related is compensable under the Act. *American National Red Cross v. Hagen*, 327 F.2d 559 (7th Cir. 1964); *Manship v. Norfolk & Western Ry. Co.*, 30 BRBS 175 (1996); *Konno v. Young Bros., Ltd.*, 28 BRBS 57 (1994). Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused, contributed to or aggravated by his employment. *Peterson v. General Dynamics Corp.*, 25 BRBS 71, 78 (1991), *aff'd sub nom. Ins. Co. of North America v. U.S. Dep't of Labor*, 969 F.2d 1400, 26 BRBS 14 (CRT)(2d Cir. 1992), *cert. denied*, 507 U.S. 909 (1993); *Davison v. Bender Shipbuilding & Repair Co., Inc.*, 30 BRBS 45, 46-47 (1996). If the administrative law judge finds that the Section 20(a) presumption is rebutted, then all relevant evidence must be weighed to determine if a causal relationship has been established, with claimant bearing the burden of persuasion. *See Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT)(1994); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996).

In his Decision and Order, the administrative law judge credited claimant's testimony that his job was abundantly stressful due to constant disputes and tension between the workers and management. The administrative law judge found the testimony of Sabato Catucci that he preferred a shop steward who was "blind and deaf" supported claimant's account of disputes and stress. *See* April 23, 1998 Tr. at 132. The administrative law judge further noted that William Molligar, the terminal hiring agent, corroborated claimant's view that staffing shortages occurred after employer took over the terminal, which was a major source of tension between the workers and management. *See* March 16, 1999 Tr. at 136; Decision and Order at 5 n.4. Finding that claimant's work-place stress could have precipitated the cardiac incident on March 16, 1997, the administrative law judge found that claimant established invocation of the Section 20(a) presumption. On appeal, employer contends that the administrative law judge erred in crediting claimant's testimony regarding the March 16, 1997, incident, and further asserts that the administrative law judge erred in not considering the testimony of other witnesses that claimant's job was not stressful. Employer also argues that claimant did not suffer from work-related angina.

We reject employer's contentions of error. Initially, we hold that the administrative

law judge acted within his discretion in crediting claimant's testimony concerning his stressful working conditions, as corroborated by Sabato Catucci and William Molligar.[7] *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 470 U.S. 911 (1979); *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968); *Cairns v. Mason Terminals, Inc.*, 21 BRBS 252 (1988). Moreover, it is undisputed that claimant did in fact pass out during work on March 16, 1997, requiring that he be rushed to the hospital. The administrative law judge credited the opinion of Dr. Konka that claimant suffered angina on March 16, 1997, and found that the opinions of Drs. Israel, Lomazow, Mannucci and Head established that stress may cause such a cardiac incident. *See* Emp. Ex. 66 at 17; January 12, 1999 Tr. at 39-40, 199; Cl. Ex. 5. As this evidence is sufficient to entitle claimant to the benefit of the Section 20(a) presumption, we affirm the administrative law judge's finding in this regard. *See Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989); *Cairns*, 21 BRBS at 252.

[7]The administrative law judge rationally determined that claimant's inconsistent testimony regarding his ownership of a home was inconsequential. *See* Decision and Order at 6.

The administrative law judge found that employer established rebuttal of the presumption based on the opinion of Dr. Israel, who stated that claimant did not suffer from angina on March 16, 1997, and that stressful working conditions cannot promote or worsen coronary artery disease. Considering the evidence as a whole, the administrative law judge found that the observations of claimant's treating physicians, Drs. Konka and Lomazow, supported claimant's perception of intolerable work-place stress, which had both cardiac and psychological consequences. Dr. Lomazow found that work stress caused claimant's chest pain which necessitated the taking of nitroglycerin and resulted in claimant's passing out.[8] *See* Emp. Ex. 30; Cl. Ex. 1. In this regard, employer's contention that it was the taking of nitroglycerin that caused claimant to pass out, and not work stress, does not support its contention that the March 16, 1997, incident was not work-related, as claimant took the nitroglycerin while at work in response to chest pain. Moreover, the administrative law judge accepted the view of Dr. Konka, claimant's cardiologist who performed the post-incident catherization, that claimant suffered angina on March 16, 1997, due to work-related stress. *See* Emp. Ex. 31; Cl. Ex. 2. The administrative law judge further credited claimant's treating psychiatrist, Dr. Mannucci, who opined that claimant suffers from adjustment disorder with anxiety and depression, and that his psychiatric symptoms and cardiac dysfunction are directly related to the amount of stress he was subjected to in his job. *See* Emp. Ex. 65; Cl. Ex. 5. Dr. Head, a neurologist and psychiatrist, opined that job stress could not have caused claimant's depression and anxiety because claimant continued to suffer from these symptoms after he left his job, *see* January 12, 1999 Tr. at 217-218, but the administrative law judge rejected this opinion as Dr. Head failed to recognize additional stressors that entered claimant's life after he left his employment, such as anxiety due to the inability to work and a loss of income. The administrative law judge considered Dr. Israel's opinion that claimant's pain on March 16, 1997 was non-anginal because the catherization indicated insufficient coronary blockage to cause chest pain. *See* Emp. Ex. 66 at 28, 56-57. However, the administrative law judge rejected this opinion as Dr. Israel did not indicate the degree of blockage that may result in angina, and found that Dr. Israel's opinion was outweighed by the contrary opinion of Dr. Konka, who performed the catherization. The administrative law judge further rejected as speculation Dr. Israel's opinion that claimant suffered from either chest wall pain due to the previous surgery or esophageal pain, in light of the absence of these types of pain in claimant's prior history. Ultimately, the administrative law judge found that the March 16, 1997, incident brought to a head claimant's coronary and psychological conditions as a result of work-place stress. As the administrative law judge acted within his discretion in crediting the opinions of Drs. Konka, Lomazow and Mannucci over those of Drs. Israel and Head, we affirm the administrative law

[8]Dr. Lomazow, a neurologist, opined that claimant struck his head on March 16, 1997, after passing out and suffered a concussion and cervical radiculopathy as a result of his fall. *See* Emp. Ex. 30; Cl. Ex. 1.

judge's determination that claimant's current coronary and psychological conditions are causally related to his employment. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961).

With regard to the above holdings, we reject employer's contention that the administrative law judge's analysis does not comport with the APA.[9] Having set forth the evidence, the administrative law judge weighed the evidence with regard to each of his findings and provided reasons for his findings based on the evidence. Contrary to employer's assertion, the administrative law judge did consider the opinions of Drs. Scarpa and Seldon in invoking the Section 20(a) presumption, finding that these opinions agreed that claimant suffered from angina on March 16, 1997, and that Dr. Seldon reversed his prior implication of a finding of angina upon employer's counsel's urging.[10] *See* Decision and Order at 6. As

[9]The Administrative Procedure Act requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record." 5 U.S.C. §557(c)(3)(A). An administrative law judge must independently analyze and discuss the evidence, and must adequately detail the rationale behind his decision and specify the evidence upon which he relied. *Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988); *Williams v. Newport News Shipbuilding & Dry Dock Co.*, 17 BRBS 61 (1985).

[10]Dr. Scarpa concluded in his January 9, 1998, letter that claimant's angina attack was unrelated to his work activities on March 16, 1997, but provided no rationale for this conclusion. *See* Emp. Ex. 45. Dr. Seldon, in his January 22, 1999, report, agreed with Dr. Israel that claimant's chest pain was not consistent with angina, based on the results of the catherization. *See* Emp. Ex. 67A.

employer has not established reversible error in the administrative law judge's weighing of conflicting evidence, we reject employer's contention that the administrative law judge's decision does not comport with the APA.

With regard to the nature and extent of claimant's disability, employer challenges the administrative law judge's finding that claimant is permanently and totally disabled, essentially asking the Board to reverse the administrative law judge's weighing of the evidence. We decline to do so. Claimant has the burden of establishing the nature and extent of his disability. *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56, 59 (1980). In order to establish a *prima facie* case of total disability, claimant must prove that he is unable to perform his usual work due to the injury. *See, e.g., Delay v. Jones Washington Stevedoring Co.*, 31 BRBS 197 (1998). In the instant case, the administrative law judge, relying on the opinion of Drs. Mannucci and Konka, found that claimant is unable to perform his usual employment.[11] Dr. Mannucci, in his May 5, 1997, report, opined that claimant's severe adjustment disorder with anxiety and depression, related to his impaired cardiovascular status, incapacitates claimant from work on a permanent basis. *See* Cl. Ex. 3. Dr. Konka agreed with the opinion that claimant is unable to do his usual work on a permanent basis, due to angina on minimal exertion and depression.[12] *See* Emp. Ex. 31. As the administrative law judge acted within his discretion in crediting the opinions of Drs. Mannucci and Konka, over the contrary opinions of Drs. Israel and Head, we affirm the administrative law judge's finding that claimant is unable to perform his usual employment. *See Calbeck*, 306 F.2d at 693; *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). As employer presented no evidence of suitable alternate employment, the

[11]In addition, the administrative law judge determined that the medical evidence supported claimant's fearful perception that a return to his usual work would result in further coronary and psychological impairment. *See* Decision and Order at 8.

[12]The administrative law judge found that the opinions of Drs. Mannucci and Konka were supported by Dr. Head's testimony that claimant's heart condition will cause chest pain, and that this pain will cause claimant to try to get out of work. *See* January 12, 1999 Tr. at 208-210.

administrative law judge's award of permanent total disability compensation is affirmed. *See generally Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 84 (CRT)(2d Cir. 1997).

Lastly, we consider claimant's counsel's request for an attorney's fee for services performed before the Board in connection with his defense of employer's appeal to the Board. Counsel for claimant has submitted a petition for an attorney's fee seeking $2,843, representing 16.25 hours of services performed at an hourly rate of $175. Employer objects to the fee request, on the grounds that the fee petition does not specify who performed the work or the qualifications of such attorney. Based on our review of counsel's fee petition, we disagree that the fee petition is inadequate. In the instant case, counsel's fee petition was signed by lead counsel who filed the brief before the Board and who solely litigated the case before the administrative law judge, and we note that this attorney has litigated numerous cases before the Board. It is apparent that this attorney performed the work listed in the fee petition, which included reviewing employer's brief on appeal and drafting claimant's response brief. As counsel successfully defended claimant's award against employer's appeal, and as the entries and hourly rate requested are reasonable, we grant counsel the requested fee. *See Lewis v. Todd Shipyards Corp.*, 30 BRBS 154, 159 (1996); *Smith v. Alter Barge Line, Inc.*, 30 BRBS 87, 89 (1996); 33 U.S.C. §928; 20 C.F.R. §802.203.

Accordingly, the Interim Decision and Order on Jurisdiction and the Decision and Order of the administrative law judge are affirmed. Claimant's counsel is entitled to an attorney's fee for 16.25 hours for work performed before the Board at an hourly rate of $175, for a total fee of $2,843, payable directly to counsel by employer.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge