

PETER CONSTANOS)	
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Claimant-Petitioner)	
)	
v.)	
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DEPARTMENT OF THE ARMY/NAF)	DATE ISSUED: <u>Dec. 20, 2000</u>
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Thomas R. Uliase (Uliase & Uliase, P.C.), Haddon Heights, New Jersey, for claimant.

David M. Schoenfeld (Ward & Klein), Gaithersburg, Maryland, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (1999-LHC-01204) 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.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *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 April 20, 1998, claimant, who as a result of a childhood injury has a forty-five degree medial angulation of his left ankle, fell into a hole and sustained a fracture of his left medial malleolus while in the course of his employment with employer. Employer voluntarily paid claimant medical benefits as well as temporary total disability compensation from April 21, 1998, through February 11, 1999. 33 U.S.C. §§908(b), 907. Thereafter, claimant sought continuing benefits under the Act.

In his Decision and Order, the administrative law judge determined that claimant had achieved a complete recovery from his April 20, 1998, work-related injury as of February 11, 1999. Accordingly, the administrative law judge denied claimant's request for continued compensation and medical benefits.

On appeal, claimant alleges that the administrative law judge erred in denying his request for continuing compensation and medical benefits. Employer responds, urging affirmance of the administrative law judge's decision in its entirety.

Claimant avers that the administrative law judge erred by failing to render dispositive findings as to whether his April 20, 1998 work-injury aggravated his pre-existing left ankle condition, whether that work-incident resulted in injuries in addition to the left medial malleolus fracture, and whether employer is liable for medical expenses related to his current ankle condition. We agree. In establishing the work-relatedness of his condition, claimant is aided by the Section 20(a), 33 U.S.C. §920(a), presumption, which applies generally to the issue of whether claimant's condition arises out of his employment. *See Kubin v. Pro-Football, Inc.*, 29 BRBS 117 (1995). 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 or pain and that either a work-related accident occurred or that working conditions existed which could have caused that harm or pain. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996). 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 neither caused or aggravated by his employment. *See Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59 (CRT) (5th Cir. 1998); *Swinton v. J. Frank Kelley, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976); *Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84 (1995). Accordingly, employer must produce substantial evidence that

¹The medial malleolus is the rounded protuberance on the medial surface of the ankle joint. *Dorland's Medical Dictionary* (25th ed.).

claimant's condition was neither caused by his working conditions nor aggravated, accelerated, or rendered symptomatic by them. *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187 (CRT) (5th Cir. 1999); *American Grain Trimmers v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71 (CRT) (7th Cir. 1999), *cert. denied*, 120 S.Ct. 1239 (2000); *O'Kelley v. Dept. of the Army/NAF*, 34 BRBS 39 (2000). 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); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT)(1994).

In the instant case, claimant is entitled to invocation of the Section 20(a) presumption since it is uncontested that he sustained both a fracture of his medial malleolus and subsequent pain in his left ankle, and that an accident at work occurred which could have caused these conditions. However, the administrative law judge, after acknowledging that one of the issues presented for adjudication involved whether claimant's work-injury aggravated his pre-existing ankle deformity, did not cite to, discuss, or otherwise consider the Section 20(a) presumption. The administrative law judge also did not discuss the aggravation rule, which provides that where an injury aggravates, accelerates, or combines with a prior injury, the entire resulting condition is compensable. *See Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45(CRT) (5th Cir. 1986) (*en banc*); *Newport News Shipbuilding & Dry Dock Co. v. Fishel*, 694 F.2d 327, 15 BRBS 52(CRT) (4th Cir. 1982); *Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966). Similarly, the administrative law judge did not consider whether claimant sustained any additional trauma to his left ankle in addition to the fracture to his medial malleolus. Rather, the administrative law judge, without citing to relevant case law, focused his consideration of the evidence of record on whether claimant's work-related injury resulted in disability. In this regard, the administrative law judge acknowledged that the physicians involved in this case disagree over whether claimant's April 1998 injury "changed the status of the childhood injury," Decision and Order at 7, noting that Dr. Dennis explained that the work-related injury resolved without *significant* sequelae or aggravation of claimant's pre-existing ankle deformity. The administrative law judge found this opinion bolstered by Dr. Seslowe's statement, stating that it "demonstrates clearly the delineation between the two injuries to the left ankle." *Id.*

Pursuant to the aggravation rule, however, claimant is entitled to benefits for the

²In this regard, Dr. Bade opined that, in addition to the fractured medial malleolus, claimant suffered a severe aggravation of his pre-existing ankle condition, as well as additional trauma to his left ankle.

combined effects of the two injuries. *See Strachan Shipping Co.*, 782 F.2d at 513, 18 BRBS at 45(CRT). The fact that the evidence delineates between work-related and non work-related causes does not affect application of the rule. *Id.*; *see also Fishel*, 694 F.2d at 327, 15 BRBS at 52(CRT). The aggravation rule applies where a work injury increases claimant's symptomatology due to the prior condition even if the underlying condition itself was not permanently worsened. *See Pittman v. Jeffboat, Inc.*, 18 BRBS 212 (1986).

In the instant case, although the administrative law judge could rationally credit the opinions of Drs. Dennis and Seslowe, *see generally O'Keeffe*, 380 U.S. at 359, the administrative law judge did not address those opinions in light of the aggravation rule or employer's burden under Section 20(a). *See, e.g., Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615, 33 BRBS 1 (CRT) (9th Cir. 1999). For these reasons, we vacate the administrative law judge's denial of disability and medical benefits, and remand the case for consideration of whether claimant's present ankle condition, including his ongoing complaints of pain, is work-related consistent with the Section 20(a) presumption. On remand, the administrative law judge must address whether the opinions of Drs. Dennis and Seslowe are sufficient to establish that claimant's pre-existing ankle condition was not aggravated by his April 1998 work-injury and thus rebut the Section 20(a) presumption. If the administrative finds a causal link between claimant's present ankle complaints and his employment, the administrative law judge must then consider the nature and extent of claimant's disability arising as a result of the totality of his current ankle condition.

Moreover, under the Act, claimant is entitled to reimbursement for all reasonable and necessary medical treatment related to his work injury. *See* 33 U.S.C. §907(a); *Kelley v. Bureau of National Affairs*, 20 BRBS 169 (1988). Claimant is entitled to medical benefits for his work-related injury, including those due to any aggravation of symptoms due to his prior condition, regardless of whether his injury is economically disabling so long as the treatment is necessary. *See Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989). Accordingly, on remand, should the administrative law judge determine that a causal relationship exists between claimant's employment and his present ankle condition, he must rule on the issue of claimant's entitlement to medical benefits. *See, e.g., Hoodye v. Empire/United Stevedores*, 23 BRBS 341 (1990).

Accordingly, the administrative law judge's denial of benefits is vacated, and the case is remanded for further consideration in accordance 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