

ANTHONY REIS)	
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Claimant-Petitioner)	
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v.)	
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P & O PORTS NORTH AMERICA)	DATE ISSUED: 01/25/2005
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Jorden N. Pedersen, Jr. (Baker, Garber, Duffy & Pedersen), Hoboken, New Jersey, for claimant.

Christopher J. Field (Field Womack & Kawczynski, LLC), South Amboy, New Jersey, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2003-LHC-00925) of Administrative Law Judge Ralph A. Romano rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, 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, a heavy equipment operator and instructor for employer, alleges that a work incident occurred on December 10, 2001, which caused his current back and leg conditions. Specifically, claimant testified that, while working in employer's control room on the day in question, he was shoved by a co-worker, Mr. Solerno, and that as a result of this physical contact he hit the edge of a desk, fell to the floor, struck his back, buttocks and head, and lost consciousness. *See* Tr. at 29-31. In contrast to this version of events, Mr. Solerno testified that claimant on his own accord fell to the floor after Mr.

Solerno had walked away from him. *Id.* at 115-119. An employee who witnessed this incident, Mr. Grace, testified that Mr. Salerno pushed claimant across the control room, but that claimant fell after Mr. Salerno turned and stepped away from claimant. *Id.* at 153-162. Following this incident, claimant was transported by ambulance to Trinitas Hospital, where he complained of lower back pain, Clt. Ex. 2; the following day, December 11, 2001, claimant was diagnosed with a head contusion and back pain. Clt. Ex. 3. Employer voluntarily paid claimant temporary total disability benefits from December 11, 2001 to April 30, 2002, May 2, 2002 to August 21, 2002, and September 5, 2002 to September 18, 2002, 33 U.S.C. §908(b), as well as medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907.

In his Decision and Order, the administrative law judge determined that while claimant established that he sustained a harm on December 10, 2001, he failed to establish that working conditions, an accident or the intentional act of a third party caused, aggravated or accelerated this harm. Decision and Order at 7. Specifically, the administrative law judge found that claimant's account of the events leading to his fall on December 10, 2001, could not be credited, and that therefore it was not working conditions, an accident, or the willful act of a third person that caused claimant's harm. *Id.* at 8. Rather, the administrative law judge found himself compelled to conclude that claimant's harm was caused by claimant himself. Accordingly, having found that claimant failed to establish a *prima facie* case sufficient to invoke the Section 20(a), 33 U.S.C. §920(a), presumption, the administrative law judge denied claimant's claim for benefits under the Act.¹

On appeal, claimant challenges the administrative law judge's denial of his claim. Specifically, claimant contends that the administrative law judge erred in determining that claimant did not establish his *prima facie* case, that is, the occurrence of a harm and an accident that could have caused the harm, thus entitling him to invocation of the Section 20(a) presumption. Employer responds, urging affirmance of the administrative law judge's denial of claimant's claim for benefits under the Act.

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.

¹ In view of various inconsistencies in claimant's testimony, the administrative law judge also stated his willingness to certify the facts in the record before him to the appropriate United States District Court should employer pursue a complaint pursuant to Sections 27 and 31 of the Act, 33 U.S.C. §§927, 931.

33 U.S.C. §902(2). Section 3(c) of the Act sets forth the following exclusion from coverage for an employee's disability resulting from an injury arising under the Act:

No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.

33 U.S.C. §903(c)(1994)(formerly 33 U.S.C. §903(b)(1982)). In establishing that an injury arises out of his employment, a claimant is aided by the Section 20(a) presumption, which applies to the issue of whether an injury is causally related to his employment activities. 33 U.S.C. §920(a). *See, e.g., Perry v. Carolina Shipping Co.*, 20 BRBS 90 (1987). In addition, Section 20(d) of the Act affords a claimant the benefit of the presumption "that the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another." 33 U.S.C. §920(d).

The Board has held that the "arising out of . . . the employment" requirement of Section 2(2)² is a separate issue from the Section 3(c) "willful intention to injure" inquiry. Thus, even if an injury has arisen out of and in the course of employment, it is not compensable if it was occasioned by the willful intention of the employee to injure himself. *See O'Connor v. Triple A Machine Shop*, 13 BRBS 473, 476-477 (1981) (Miller, J., concurring in part and dissenting in part); *Kielczweski v. The Washington Post Co.*, 8 BRBS 428, 431 (1978). Therefore, the Section 20(a) presumption applies to the Section 2(2) requirement that the injury arose out of claimant's employment, and the Section 20(d) presumption complements the Section 3(c) inquiry into whether the injury was occasioned by claimant's willful intention to injure himself. *Jackson v. Strachan Shipping Co.*, 32 BRBS 71 (1998)(Smith, J., concurring and dissenting); *Maddon v. Western Asbestos Co.*, 23 BRBS 55, 61 (1989).

In determining whether an employee's injury is work-related, the Section 20(a) presumption is invoked once claimant establishes a *prima facie* case by proving that he suffered a harm and that an accident at work occurred or working conditions existed which could have caused or aggravated that harm. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); *Jones v. Aluminum Co. of America*, 35 BRBS 37 (2001). In the instant case, claimant contends that the administrative law judge erred in denying him the benefit of the Section 20(a) presumption since, he asserts, he has established that he sustained a harm and that his fall

² The term "in the course of employment," as used in Section 2(2), relates to the time, place and circumstances of the accident while the term "arising out of employment" refers to the causal origin of the injury, *i.e.*, whether the injury was caused by the employment. *See Williams v. Healy-Ball-Greenfield*, 14 BRBS 490, 492 n.2 (1983); *Twyman v. Colorado Security*, 14 BRBS 829 (1982).

in employer's control room on December 10, 2001, could have caused that harm.³ We agree. In denying claimant's claim, the administrative law judge initially held claimant to an improper standard when he required claimant to "preponderantly" demonstrate that working conditions, an accident, or the intentional act of a third person caused, aggravated or accelerated the harm which he experienced on December 10, 2001. Decision and Order at 7. Contrary to this statement, however, claimant is not required to prove that an accident or working conditions did, in fact, cause his harm in order to invoke the presumption, but he must show only that the alleged accident could have caused the harm. *See Brown v. I.T.T./Continental Baking Co.*, 912 F.2d 289, 24 BRBS 75(CRT) (D.C. Cir. 1990). Most importantly, there is no dispute here that such an event at work did occur. The testimonies of claimant, Mr. Solerno and Mr. Grace establish that claimant fell to the floor in the office during the course of his employment. Claimant's fall, regardless of its cause, is a work accident.⁴ The fact that the administrative law judge declined to credit claimant's version of the events leading up to his fall is immaterial to the causation inquiry; all parties agree that claimant physically fell to the floor while working in employer's control room. It is also not disputed that claimant received immediate medical assistance and was subsequently diagnosed with a head contusion and back pain. Clt. Exs. 2, 3. Moreover, Dr. Steinway opined that the events of December 10, 2001, aggravated and accelerated claimant's lumbar disc disease and spinal stenosis. Clt. Ex. 8. As the record thus establishes that claimant fell while working for employer, and that this fall could have caused the harm alleged, claimant has established the existence of an accident or working conditions for purposes of invoking the Section 20(a) presumption. *See Everett v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 316 (1989). We therefore reverse the administrative law judge's finding that claimant has failed to establish the working conditions element of his *prima facie* case, and hold that invocation of the Section 20(a) presumption has been established as a matter of law.

³ It is undisputed that claimant was taken to the hospital in an ambulance on December 10, 2001, and that claimant was subsequently diagnosed with a head contusion and back pain. *See* Clt. Ex. 3; Decision and Order at 7; Employer's brief at 11. Thus, the administrative law judge properly found that claimant has established the existence of a harm in the instant case.

⁴ Since the Act imposes strict liability for workplace accidents on employer, claimant sustains a work-related injury if he merely trips and falls; no negligent or intentional acts are required. *See* 33 U.S.C. §904(b). Thus, whether claimant fell of his own volition or was pushed by another is not relevant for purposes of whether his injury arose out of his employment under Section 2(2). In this regard, we do not disturb the administrative law judge's credibility determinations; they are simply not relevant since the occurrence of the key event – a fall at work – is not disputed.

Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut it with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); *Swinton v. J. Frank Kelley, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976); *Rajotte v. General Dynamics Corp.*, 18 BRBS 85 (1986). In the instant case, employer has presented no evidence that claimant's back and leg complaints are not related to his fall at work on December 10, 2001. Employer, therefore, has failed to meet its burden of producing substantial evidence rebutting Section 20(a). Consequently, we hold that claimant's back and leg conditions are work-related as a matter of law.

As employer contends, however, pursuant to Section 3(c) of the Act, 33 U.S.C. §903(c), claimant's claim for benefits may nonetheless be denied if his injury was occasioned by his willful intention to injure himself. *See Jackson*, 32 BRBS at 74. Although the administrative law judge did not explicitly address this subsection in his decision, he did find that he was "compelled to conclude that [claimant's harm] was caused by Claimant himself." Decision and Order at 8. We cannot, however, affirm the administrative law judge's denial of the claim on the basis of this statement, as the proper analysis under Section 3(c) requires findings as to claimant's "willfull intention" to injure himself. In this regard, claimant is afforded a presumption under the Section 20(d), 33 U.S.C. §920(d), that his injury was not occasioned by the willful intention to injure himself. In order to rebut this presumption, employer must present substantial evidence that claimant willfully intended to injure himself. *Id.*; *Del Vecchio v. Bowers*, 296 U.S. 280 (1935). Accordingly, we remand this case for the administrative law judge to address the issue of whether employer has presented sufficient evidence to support a finding that claimant's December 10, 2001 work-related injury was occasioned by his willful intention to injure himself, thus barring his claim for compensation pursuant to Section 3(c) of the Act.

Accordingly, the administrative law judge's finding that claimant's medical conditions are not work-related is reversed, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge