BRB No. 91-1084

LULA F. WATSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY	)	DATE ISSUED: _____
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

Lee E. Wilder (Rutter & Montagna), Norfolk, Virginia, for claimant.

Shannon T. Mason, Jr. (Mason & Mason), Newport News, Virginia, for self-insured employer.

Before: SMITH, BROWN, and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (88-LHC-3498) of Administrative Law Judge Daniel A. Sarno, Jr., 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 injured her left foot during the course of her employment on October 29, 1979. Employer voluntarily paid claimant temporary total disability compensation for the period of August 4, 1983 to August 14, 1983, 33 U.S.C. §908(b), as well as compensation for a five percent permanent partial disability to her left foot on September 28, 1984, 33 U.S.C. §908(c)(4). Claimant subsequently filed a claim for permanent total disability benefits under the Act.

In his Decision and Order, the administrative law judge determined that employer rebutted the presumption of causation contained in Section 20(a), 33 U.S.C. §920(a). The administrative law judge then concluded, based upon the record as a whole, that claimant failed to establish that her disability is work-related; the claim for benefits was therefore denied.

On appeal, claimant contends that the administrative law judge erred in determining that employer rebutted the Section 20(a) presumption. Employer responds, urging affirmance of the administrative law judge's Decision and Order.

Pursuant to Section 20(a) of the Act, 33 U.S.C. §920(a), it is presumed that claimant's disabling condition is causally related to her employment if she shows that she suffered a harm and that employment conditions existed or an accident occurred which could have caused, aggravated or accelerated the condition. *See Perry v. Carolina Shipping Co.*, 20 BRBS 90 (1987). 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 or aggravated by her employment. *Sam v. Loffland Brothers Co.*, 19 BRBS 228 (1987). It is employer's burden on rebuttal to present specific and comprehensive evidence sufficient to sever the potential 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). The unequivocal testimony 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 determines that the presumption is rebutted, the administrative law judge must weigh all of the evidence and resolve the causation issue on the record as a whole. *See Hite v. Dresser Guiberson Pumping*, 22 BRBS 87 (1989).

In the instant case, claimant contends that the administrative law judge erred in finding the Section 20(a) presumption rebutted. Specifically, claimant alleges that employer failed to set forth medical evidence sufficient to establish that claimant's work-accident did not contribute to or aggravate her pre-existing foot condition. We agree. After setting forth the medical evidence of record, the administrative law judge determined that claimant did not suffer a "crush" injury to her foot, and that the opinions of Drs. Bynum and Hamilton were sufficient to rebut the presumption since neither doctor "attributed [claimant's] disability to the disease but on the contrary commented on the slim possibility of a casual relationship." Decision and Order at 11. Dr. Bynum, however, did not state that claimant's condition is not related to her work injury. Rather, after reviewing claimant's clinic chart, he stated that he could not place a direct relationship between claimant's present tenosynovitis and her 1979 work injury. *See* EX-A-13. Subsequently, Dr. Bynum opined that claimant's foot problems relate back to the first injury in question, *i.e.*, her 1979 work injury. *See* EX-A-14; *see also* CX-1. Thereafter, Dr. Bynum deposed, in response to the question of whether claimant's 1979 work-accident contributed to her disability, that "[s]ince I don't have very accurate records on the injury itself and the--I can't say. Theoretically, it could, but, you know, if the circumstance of no significant recognizable injury at the time pertained, then the likelihood is that it doesn't." EX-V at 10. Similarly, Dr. Hamilton stated that "I do not know nor do I feel absolutely certain that [claimant's] current problems with the left foot are related to the foot contusion of 1979."

EX-A-19(1). Dr. Hamilton thereafter noted that, as he did not treat claimant prior to 1982, it is ignorance on his part that makes it difficult, if not impossible, for him to render an opinion as to the correlation between claimant's present foot condition and her 1979 foot injury. *See* EX-A-20. Thus, neither Dr. Bynum nor Dr. Hamilton affirmatively stated that claimant's foot problems are unrelated to her work injury. The fact that neither could directly relate the foot condition to her work injury is not relevant under Section 20(a). As these opinions do not establish that claimant's present foot condition is not related to her 1979 injury, they are insufficient to rebut the presumption. *See Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988).

Since the record does not contain any specific and comprehensive medical opinion refuting a causal relationship between claimant's work injury and her present foot condition, employer has failed to rebut the Section 20(a) presumption. We accordingly reverse the administrative law judge's finding of no causation as that finding is not supported by the evidence of record and hold that causation is established as a matter of law. *See Cairns*, 21 BRBS at 256. The case is therefore remanded for the administrative law judge to determine the nature and extent of claimant's disability due to her foot injury.

Accordingly, the administrative law judge's determination that claimant's foot condition was not caused by her employment is reversed, and the case is remanded for consideration of the nature and extent of claimant's disability due to her foot condition.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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JAMES F. BROWN
Administrative Appeals Judge

_____
NANCY S. DOLDER
Administrative Appeals Judge