BRB No. 92-0111

THOMAS MARK SMITH	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
NONCOMMISSIONED OFFICERS' OPEN MESS, McCONNELL AIR FORCE BASE, KANSAS	)	DATE ISSUED:
	)	
and	)	
	)	
AIR FORCE INSURANCE FUND	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeal of the Decision and Order of G. Marvin Bober, Administrative Law Judge, United States Department of Labor.

J. Greg Kite, Wichita, Kansas, for claimant.

David J. Christenson (Headquarters AFMWSRA/LAW), Randolph AFB, Texas, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order (91-LHC-904) of Administrative Law Judge G. Marvin Bober awarding 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.*, 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C.§921(b)(3).

Claimant, a chef at employer's Noncommissioned Officers' Club, suffered severe allergic reactions, consisting of severe headaches, rash, blood in the eyes, uncontrollable shaking and a sour taste in his mouth, while at work, or soon after leaving work, on April 27, 28, 29, and May 2, 1990. After each occurrence, claimant was taken to the hospital for immediate treatment; claimant was subsequently advised by hospital doctors not to return to work until he was cleared by Dr. Loeffler, an allergist. After examining claimant, Dr. Loeffler determined that claimant's allergic reactions were caused by employer's use of new cleaning chemicals.

Approximately two weeks after the last incident, claimant developed swelling and pain in his ankles, which spread to his knees and hips; thereafter, claimant developed urethritis and conjunctivitis. In June 1990, Dr. Trego diagnosed claimant as suffering from Reiter's syndrome, a disease evidenced by the triad of arthritis, urethritis and conjunctivitis. Claimant, who has not returned to gainful employment since the development of Reiter's syndrome, subsequently sought benefits under the Act.

In his Decision and Order, the administrative law judge determined that employer failed to rebut the Section 20(a), 33 U.S.C. §920(a), presumption of causation; the administrative law judge thus found that claimant's work-related allergic reactions had resulted in the development of his Reiter's syndrome. After further finding that claimant reached maximum medical improvement on March 28, 1991, that claimant is incapable of performing his usual employment duties with employer, and that employer failed to establish the availability of suitable alternate employment, the administrative law judge awarded claimant temporary total disability compensation from April 27, 1990 to March 27, 1991, and permanent total disability compensation thereafter.[1] 33 U.S.C. §908(a), (b).

On appeal, employer contends that the administrative law judge erred in determining that it had failed to present substantial evidence to rebut the Section 20(a) presumption. Claimant responds, urging affirmance of the administrative law judge's Decision and Order.

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 employment activities. *Perry v. Carolina Shipping Co.*, 20 BRBS 90 (1987). An employment injury need not be the sole cause of a disability; rather, if the employment 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). Upon invocation of the presumption, the burden shifts to employer 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); *Sam v. Loffland Brothers Co.*, 19 BRBS 228 (1987). If the administrative law judge finds that the Section 20(a) presumption is rebutted, he

[1] In a Clarification of Decision and Order, the administrative law judge adjusted claimant's compensation rate to reflect the National Average Weekly Wage for the time period of April 27, 1990 to September 15, 1991.

must weigh all of the evidence and resolve the causation issue based on the record as a whole. *See Avondale Shipyards, Inc. v. Kennel*, 914 F.2d 88, 24 BRBS 46 (CRT)(5th Cir. 1990); *Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153 (1985).

In the instant case, employer alleges that the reports of Drs. Baker, Esther and Hall are sufficient to rebut the Section 20(a) presumption. Although the administrative law judge found that employer failed to produce substantial evidence to sever the connection between claimant's disability and his work environment and, thus, to rebut the Section 20(a) presumption, the reports of Drs. Baker, Esther and Hall set forth their opinions that claimant's Reiter's syndrome was not related to his work-related allergic reactions.[2] Emp. Ex. 1-69, 1-77, 1-79, 1-80. Although the opinions contained in these reports may be sufficient to rebut the Section 20(a) presumption, *see Swinton*, 554 F.2d at 1075, 4 BRBS at 466, any error committed by the administrative law judge in this regard is harmless, as the administrative law judge considered the evidence of record as a whole and based his ultimate finding of causation on the contrary, credited opinions of Drs. Wolfe, Trego, and Reynolds. *See generally Jones v. Genco, Inc.*, 21 BRBS 12 (1988). Specifically, the administrative law judge, after noting that Dr. Wolfe's opinion regarding claimant's condition was sought by employer, gave that physician's report great weight, *see* Decision and Order at 9; Dr. Wolfe, who specifically stated that the results of his examination were entirely in accord with those of Dr. Reynolds, opined that claimant's Reiter's syndrome was related to his allergic exposure. *See* CX-18. Similarly, the administrative law judge accorded more weight to the opinions of Drs. Trego and Reynolds, both of whom examined claimant and opined that claimant's Reiter's syndrome was related to his employment with employer. CX-14, 15, 16. It was within the administrative law judge's discretion to credit the opinions of Drs. Wolfe, Trego, and Reynolds, that claimant's Reiter's syndrome is related to his employment with employer, over the contrary opinions of Drs. Baker, Esther and Hall. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). We, therefore, affirm both the administrative law judge's finding that a casual relationship exists between claimant's Reiter's syndrome and his employment with employer, as that finding is supported by the rationally credited opinions of Drs. Wolfe, Trego and Reynolds, and his consequent award of benefits under the Act. *See Avondale Shipyards*, 914 F.2d at 88, 24 BRBS at 46 (CRT).

[2] Employer also contends that the opinions of Drs. Treweeke and Sifford support rebuttal of the Section 20(a) presumption. However, the notes of these physicians, questioning whether claimant's allergic reactions were work-related, EX 1-15, 1-20, pre-date the diagnosis of Reiter's syndrome, which was made by Dr. Trego in June 1990. CX-3.

Accordingly, the Decision and Order of the administrative law judge awarding benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge