BRB No. 91-1743

H. J. JOHNSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
AMERICAN MUTUAL INSURANCE COMPANY, IN LIQUIDATION (By and through the MISSISSIPPI INSURANCE GUARANTY ASSOCIATION)	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

H. J. Johnson, Moss Point, Mississippi, *pro se*.

Ruth Bennett Whitfield (Franke, Rainey & Salloum), Gulfport, Mississippi, for employer/carrier.

Before: DOLDER, Acting Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order - Denying Benefits (89-LHC-2948) of Administrative Law Judge James W. Kerr, 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). In reviewing this *pro se* appeal, the Board must affirm the administrative law judge's findings of fact and conclusions of law 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); 20 C.F.R. §§802.211(e), 802.220.

Claimant worked for employer in the fan department from 1952 through 1971 where he was

exposed to loud noise. On December 8, 1986, an audiometric examination performed by Dr. Wold indicated that claimant had sustained a 17.4 percent binaural hearing impairment. CX-2. Subsequently, claimant underwent five additional audiometric examinations. On August 4, 1987, claimant filed a claim under the Act for a noise-induced hearing loss.

In his Decision and Order, the administrative law judge determined that only claimant's December 8, 1986, and his August 27, 1990, audiometric examinations were valid. Next, after noting his superior credentials, the administrative law judge accepted the opinion of Dr. Graves, who performed claimant's August 27, 1990, examination, that it is "very unlikely" that claimant's loss of hearing resulted from noise exposure; accordingly, the administrative law judge denied claimant's claim for compensation and medical benefits under the Act. Decision and Order at 2-3.

On appeal, claimant, appearing *pro se*, challenges the administrative law judge's denial of his claim. Employer responds, urging affirmance of the administrative law judge's Decision and Order.

Section 20(a) of the Act, 33 U.S.C. §920(a), provides claimant with a presumption that the injury he sustained is causally related to his employment if he establishes a *prima facie* case by showing that he suffered a harm and that employment conditions existed or a work accident occurred which could have caused, aggravated, or accelerated the onset of the injury. *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991). Once claimant has invoked the presumption, the burden shifts to employer to rebut the presumption with substantial countervailing evidence. If the administrative law judge finds that the Section 20(a) presumption is rebutted, he must then weigh all the relevant evidence and resolve the causation issue based on the record as a whole. *Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990).

In the present case, the administrative law judge did not specifically address the Section 20(a) presumption. The administrative law judge did, however, accept the parties' stipulations that claimant was exposed to industrial noise which could have caused his hearing loss. Decision and Order at 2. Claimant thus is entitled to the Section 20(a) presumption. The administrative law judge implicitly found rebuttal of the presumption based on Dr. Graves' opinion that it is "very unlikely" that claimant's hearing loss resulted from noise exposure.[1]

[1]Dr. Graves, after noting that claimant's hearing loss curve was "not typical of noise induced hearing loss," stated that "[it] is possible but very unlikely that [claimant's] loss is from noise exposure." EX-13.

In order to rebut Section 20(a), however, employer must present specific evidence that claimant's hearing loss was not caused by claimant's employment. Moreover, where, as here, claimant's claim is based on his cumulative exposure to noise over a nineteen year period of time, employer bears the burden of coming forward with evidence that claimant's hearing loss was neither caused nor aggravated by his employment over that lengthy period. *See Peterson v. General Dynamics Corp.*, 25 BRBS 71, 78 (1991), *aff'd sub nom. Insurance Company of North America v. U.S. Dept. of Labor*, 969 F.2d 1400, 26 BRBS 14 (CRT)(2d Cir. 1992), *cert. denied*, U.S. , 113 S.Ct. 1253 (1993). Although Dr. Graves opined that it is "very unlikely" that claimant's hearing loss is the result of noise exposure, this opinion at best indicates only that a direct causal relationship is absent; it does not address whether claimant's hearing loss was aggravated by his nineteen year exposure to work-related noise. Thus, this opinion cannot establish that claimant's nineteen year exposure to work-related noise did not aggravate or contribute to his hearing loss. Because the evidence which the administrative law judge relied upon does not establish that claimant's hearing loss was not aggravated by his employment, we reverse his finding of no causation. As employer has submitted no evidence sufficient to rebut the presumption of causation, we hold that causation is established as a matter of law, and we remand the case for consideration of all remaining issues. *See Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988).

Accordingly, the Decision and Order - Denying Benefits of the administrative law judge is reversed, and the case is remanded for consideration of all remaining issues consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge