BRB Nos. 92-0709
and 94-2687

ERNEST LEE JONES	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	DATE ISSUED:
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits and Decision and Order Denying Petition to Modify Award of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Kenneth R. Watkins, Gulfport, Mississippi, for claimant.

Paul M. Franke, Jr. (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Awarding Benefits and Decision and Order Denying Petition to Modify Award (90-LHC-0376) of Administrative Law Judge C. Richard Avery 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).[1] 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 was injured on March 6, 1987, when he slipped and fell, striking his head and

[1]By Order dated May 31, 1995, the Board granted claimant's request to reinstate his appeal of the administrative law judge's Decision and Order Awarding Benefits, BRB No. 92-0709, and consolidated it, for purposes of appeal, with claimant's appeal of the administrative law judge's Decision and Order Denying Petition to Modify Award. BRB No. 94-2687.

neck. He returned to work without restrictions on April 6, 1987, and continued to work until October 25, 1987; claimant has not worked since that time. Claimant is seeking compensation for alleged physical and/or psychological disabilities arising from the 1987 accident.

In his Decision and Order, the administrative law judge found that claimant suffered no continuing work-related physical impairment as a result of the October 1987 work incident, and that claimant had failed to establish a psychological harm as a result of that incident. The administrative law judge awarded claimant temporary total disability compensation from March 7, 1987, until April 6, 1987, and found employer liable for the medical services provided to claimant by Drs. Enger, McCloskey, Millette, and Williams, as well as an attorney's fee. In his decision addressing claimant's petition for modification, the administrative law judge determined that the additional evidence submitted by claimant did not conflict with the earlier submissions, was unsupportive of any of claimant's allegations, and was insufficient to constitute either a change in condition or a mistake of fact. The administrative law judge therefore denied claimant's petition for modification.

On appeal, claimant challenges the administrative law judge's denial of his claim for compensation. Employer responds, urging affirmance.

Claimant initially contends that the administrative law judge erred in concluding that he sustained no continued impairment subsequent to April 6, 1987. It is well-established that claimant bears the burden of establishing the nature and extent of any disability sustained as a result of a work-related injury. *See Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding and Construction Co.*, 17 BRBS 56 (1985). In the instant case, the administrative law judge, in concluding that claimant did not sustain a compensable impairment subsequent to April 6, 1987, credited the opinions of Drs. Enger and McCloskey, *see* CX 4, as supported by the negative test results of record, over the opinion of Dr. Martin, *see* CX 6, after noting that Dr. Martin did not see claimant until almost a year after the accident and that he lacked the credentials of Drs. Enger and McCloskey. *See* Decision and Order at 8.

We hold that the administrative law judge committed no error in relying upon the opinions of Drs. Enger and McCloskey, rather than that of Dr. Martin. In adjudicating a claim, it is well-established that an administrative law judge is entitled to weigh the medical evidence and draw his own inferences from it, *see Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988), and he is not bound to accept the opinion or theory of any particular witness. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). Thus, as the administrative law judge's credibility determinations are rational and within his authority as factfinder, and as these credited opinions constitute substantial evidence to support the administrative law judge's ultimate findings, we affirm the administrative law judge's determination that claimant sustained no impairment subsequent to April 1987. *See generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).

Claimant next contends that the administrative law judge erred in failing to link his psychological condition to his March 1987 work incident. In his decision, the administrative law

judge declined to link claimant's psychological condition to his employment; specifically, the administrative law judge stated that "[a]lthough it appears that Claimant is suffering from some psychological condition which may be disabling him, without any expert evidence demonstrating a nexus between Claimant's present mental state and the March 6, 1987 accident, I cannot make such a connection." *See* Decision and Order at 9 n. 3. Contrary to this statement, however, the record contains a report from Dr. Pickel, who opines that claimant's chronic pain is due to a work-related injury. Moreover, it is well-settled that a psychological impairment which is work-related is compensable under the Act. *Sanders v. Alabama Dry Dock & Shipbuilding Co.*, 22 BRBS 340 (1989). Furthermore, the Section 20(a), 33 U.S.C. §920(a), presumption is applicable in psychological injury cases. *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380, 384 n.2 (1990). In order to invoke the Section 20(a) presumption, claimant must establish that he has sustained a harm and that an accident occurred or working conditions existed which could have caused the harm. *See Sanders*, 22 BRBS at 340.

We hold that the administrative law judge erred in placing on claimant the burden of establishing a causal connection between his psychological condition and the March 1987 work incident, *see Peterson v. General Dynamics Corp.*, 25 BRBS 71 (1991), *aff'd sub nom. Ins. Co. of N. 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), and in failing to apply Section 20(a). In the instant case, the parties stipulated that an accident occurred on March 6, 1987, and medical evidence of record, specifically the testimony of Dr. Pickel, who described claimant's condition as one of a conversion reaction and schizophrenia, *see* CX 7, establishes the existence of a harm; claimant, thus, has established his *prima facie* case and is entitled to invocation of Section 20(a). We, therefore, vacate the administrative law judge finding on this issue, and remand the case for the administrative law judge to reconsider the issue of causation as it relates to claimant's psychological condition. Specifically, on remand, the administrative law judge must consider whether employer rebutted the presumption with specific and comprehensive evidence that claimant's condition was not related to his employment injury. *See generally Adams v. General Dynamics Corp.*, 17 BRBS 258 (1985). If the presumption is rebutted, the administrative law judge must weigh all the evidence relevant to causation.

Accordingly, the administrative law judge's findings regarding the causal relationship between claimant's psychological condition and his employment are vacated, and the case is remanded for further consideration consistent with this opinion. In all other respects, the administrative law judge's Decision and Order Awarding Benefits and Decision and Order Denying Petition to Modify Award are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge