

JAMES E. CHAMBERS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
VALOR STEVEDORES	)	DATE ISSUED:
	)	
and	)	
	)	
GRAY & COMPANY,	)	
INCORPORATED	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Ben H. Walley, Administrative Law Judge, United States Department of Labor.

Stephen M. Vaughan (Mandell & Wright), Houston, Texas, for claimant.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand (87-LHC-115) of Administrative Law Judge Ben H. Walley denying 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.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

This case is on appeal to the Board for the second time. Claimant was injured while working for employer on April 18, 1984, when he was struck by a shackle and knocked unconscious. At the time of the injury, Dr. Strug diagnosed a hip contusion and concussion. Claimant complained of left hip pain and dizziness, returned to work on October 29, 1984, and left the same day stating he was dizzy and woozy. Claimant received total disability benefits from April 19, 1984, to October 28, 1984, and from October 31, 1984, to November 29, 1984.

In the original Decision and Order, the administrative law judge found that claimant was capable of performing the duties of a longshoreman after October 29, 1984 and, thus, failed to

establish entitlement to disability benefits beyond October 29, 1984. On appeal, the Board vacated the denial of benefits and remanded the case for the administrative law judge to reconsider the medical evidence pursuant to the presumption at 33 U.S.C. §920(a) and the aggravation rule, to discuss all of the medical evidence relevant to the issue of the nature and extent of claimant's disability, if any, and to provide an adequate rationale for his findings. *Chambers v. Valor Stevedores*, BRB No. 88-2712 (March 30, 1990) (unpub.).

On remand, the administrative law judge found that claimant has no residual disability which is causally related to the work accident of April 18, 1984, and he denied claimant further disability benefits. Claimant appeals, contending that the administrative law judge erred in finding that he is not entitled to benefits after October 29, 1984. Employer has not responded to this appeal.

Claimant contends that the administrative law judge erred in finding the evidence insufficient to establish that his hip condition is related to the work accident and that it caused disability after October 29, 1984. Claimant is entitled to the Section 20(a) presumption that his hip condition is work-related as it is undisputed that claimant has a harm and that a work accident occurred that could have caused this harm. *See, e.g., Kubin v. Pro-Football Inc.*, 29 BRBS 117 (1995). Once the 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. *Sam v. Loffland Bros. Co.*, 19 BRBS 228 (1987). Where an employment injury aggravates, accelerates or combines with a pre-existing condition, the entire resultant disability is compensable. *Uglesich v. Stevedoring Services of America*, 24 BRBS 180 (1991).

In this case, Dr. Strug and Dr. Sassard found that claimant had underlying hip problems, avascular necrosis, which predated the April 18, 1984 injury. Jt. Exs. 7, 7a, 8; Emp. Ex. 1. The administrative law judge characterized both doctors as finding claimant's hip problems are due to progressive degeneration of the hip which is unrelated to the work injury. In fact, neither doctor opined that the injury did not aggravate or contribute to claimant's condition. Dr. Strug diagnosed necrosis of the left femoral head and degenerative joint disease of the left hip, he stated that claimant's injury did not cause the changes in the hip seen on x-ray, but did not address aggravation. Emp. Ex. 1. Dr. Sassard, claimant's treating physician, testified that the 1984 injury was the cause of claimant's necrosis becoming symptomatic, although claimant probably had necrosis of the hip before the injury, and that claimant was permanently disabled due to progressive deterioration of his hip joint. Jt. Ex. 7a at 7-8. On cross-examination Dr. Sassard stated that if claimant's credibility about his symptoms were in doubt he would have to reconsider his opinion as he relied on claimant's statement that he had no hip problems prior to the work accident. *Id.* at 21-23, 29. The administrative law judge found that claimant lacked credibility with regard to his symptoms, Decision and Order at 7, and Dr. Sassard stated that given information about x-rays prior to the work accident he had "an element of doubt" as to whether claimant's current condition is related to the accident. *Id.* at 36-37. Nonetheless, the Board has held that an opinion that is equivocal as to the etiology of a condition is insufficient to support rebuttal of Section 20(a). *See, e.g., Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84 (1995); *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988). Moreover, on redirect examination, based on

the assumption that claimant worked steadily prior to the work accident, Dr. Sassard again stated that the accident caused the onset of claimant's hip pain.<sup>1</sup> *Id.* at 53-54. As no doctor of record unequivocally states that claimant's hip problems are not related to or aggravated by the injury of April 18, 1984, employer failed to rebut the Section 20(a) presumption. We therefore reverse the administrative law judge's finding that claimant's hip condition is not work-related and we hold that it is work-related as a matter of law under the aggravation rule. *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988).

The administrative law judge stated that both Dr. Strug and Dr. Sassard testified that claimant cannot return to his usual longshore work because of his hip condition, and that these findings are uncontested. Decision and Order at 7. In his first decision, the administrative law judge found that claimant's condition reached maximum medical improvement on October 29, 1984. Moreover, employer did not present any evidence of suitable alternate employment. Claimant therefore is entitled to permanent total disability benefits from October 29, 1984 and continuing.<sup>2</sup> *Hite v. Dresser Guiberson Pumping*, 22 BRBS 87 (1989); *Clophus v. Amoco Prod. Co.*, 21 BRBS 261 (1988).

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<sup>1</sup>The basis for counsel's hypothetical question to Dr. Sassard was claimant's ability to steadily earn more than \$900 per week prior to the injury. This assumption is borne out by the administrative law judge's finding regarding claimant's average weekly wage. *See* Decision and Order of July 25, 1988 at 21.

<sup>2</sup>Inasmuch as claimant is entitled to permanent total disability benefits for his work-related hip condition, there is no need to address claimant's contentions regarding his head injury. We note that the administrative law judge awarded claimant continuing medical benefits for this condition. Decision and Order at 13.

Accordingly, the administrative law judge's Decision and Order on Remand denying benefits is reversed. Claimant is entitled to an award of continuing permanent total disability benefits.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge