

GENNARO DEGENNARO	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
HAMILTON TERMINAL,	)	
INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
CIGNA INSURANCE COMPANY	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

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

William H. Yanger, Jr., Tampa, Florida, for claimant.

Betty J. O'Shea, New York, New York, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (91-LHC-1860) of Administrative Law Judge Robert G. Mahony 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 if they are rational, supported by substantial evidence, and in accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On May 21, 1973, claimant injured his left shoulder, hip, knee, and ankle when he was struck by a forklift during the course of his employment. Claimant has not returned to work since this incident. Initially, employer voluntarily paid claimant temporary total disability compensation, 33 U.S.C. §908(b); in 1978, employer paid claimant permanent partial disability compensation for a fifty-five percent impairment of claimant's left arm and leg. 33 U.S.C. §908(c)(1), (2). In 1976,

claimant's left ankle required surgery, and he reported back pain. In 1977, claimant sought treatment for a psychological condition with Dr. Meadows. Dr. Meadows reported severe depressive moods with withdrawn seclusive behavior and violent outbursts, and initially diagnosed psychotic depression with possible schizophrenic illness coexisting with depression that renders claimant unemployable.

In March 1987, claimant sought additional compensation and medical treatment under the Act, alleging that since employer terminated its voluntary payment of compensation on March 20, 1978, his work-related disability has been permanent and total due to his work-related back, left leg and ankle pain as well as a psychological condition. Employer controverted the claim.

In his Decision and Order, the administrative law judge initially rejected employer's contention that the claim had been settled in 1978 when it paid claimant compensation for permanent partial disability of his left arm and leg; specifically, the administrative law judge found that the parties did not execute an approved settlement pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i), and that, additionally, the claim was not barred pursuant to Section 22, 33 U.S.C. §922, because a compensation order was never issued. After reviewing the medical evidence of record, the administrative law judge concluded that claimant is not entitled to compensation or medical expenses under the Act for his present back and psychological conditions, as these conditions are not related to the work injury. He therefore denied the claim for benefits.

On appeal, claimant challenges the administrative law judge's finding that his psychological condition is unrelated to his work injury, and the administrative law judge's consequent denial of medical treatment and compensation under the Act for that condition. Employer responds, urging affirmance.

Claimant bears the burden of proving that he has sustained a harm or pain, and that working conditions existed or an accident occurred which could have caused the harm or pain. *See Sinclair v. United Food and Commercial Workers*, 23 BRBS 148 (1990). Once claimant establishes these two elements of his *prima facie* case, the Section 20(a), 33 U.S.C. §920(a), presumption applies to link the harm or pain with claimant's employment. *See Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990). An employment injury need not be the sole cause of a disability; rather, if the employment injury 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 casual 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). If the administrative law judge finds that the Section 20(a) 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 Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990).

In the instant case, the administrative law judge invoked the Section 20(a) presumption

linking claimant's psychological and back conditions to his work injury, since claimant's psychological and back conditions constitute the existence of a harm and the occurrence of claimant's May 21, 1973, work incident was not disputed. *See Rajotte v. General Dynamics Corp.*, 18 BRBS 85 (1986). The administrative law judge next credited the unequivocal opinion of Dr. Eckhart that claimant's back condition is unrelated to the work injury because there were no complaints of back pain until three years after the work injury.<sup>1</sup> Regarding claimant's psychological condition, the administrative law judge, after summarizing the deposition testimony and voluminous medical records of Dr. Meadows, claimant's treating psychiatrist since 1977, credited claim forms submitted by Dr. Meadows to medicare, which diagnosed schizophrenia with irritability and depression and indicated claimant's condition was not work-related, to find rebuttal of the Section 20(a) presumption. The administrative law judge next evaluated the evidence as a whole and found that claimant's psychological condition is not work-related based on the claim forms. Accordingly, the administrative law judge denied claimant's claim for compensation.

In reviewing claimant's appeal, the relevant evidence of record addressing the cause and subsequent treatment of claimant's psychological condition are the medical records and deposition testimony of Dr. Meadows, who treated claimant between April 1977 and August 1991. In his initial report in April 1977, Dr. Meadows described claimant's 1973 injury and claimant's chronic pain, noting that claimant felt pain in his left shoulder, arm, hip and leg and found claimant suffering from severe depressive moods with withdrawn seclusive behavior and violent outbursts. He stated that claimant was "once an outgoing, athletic, gregarious man," but being disabled for four years has embittered and unbalanced him to the point where he is unstable and cannot control his rage. After further opining that claimant's hostility is fueling his depression, Dr. Meadows rendered a diagnosis of psychotic depression with possible schizophrenic illness coexisting with depression, and concluded that claimant is unemployable. Cl. Ex. 2, Tab 188; EX J.

On December 27, 1983, Dr. Meadows wrote to Dr. Obeso, diagnosing chronic schizophrenic illness with depression, irritability, and other problems. Dr. Meadows further noted claimant's complaints of chronic pain in his back due to his work injury and offered the opinion that while there are many chronic features to claimant's problems, some features might be alleviated if there were closure on his litigation. Cl. Ex. 2, Tab 188, EX K. On June 2, 1987 and June 22, 1987, Dr. Meadows wrote two additional letters, the first diagnosing depression and irritability, and the second containing a similar diagnosis and specifically relating these problems to claimant's work injury. Cl. Ex. 2, Tab 188, EX M.

During the course of his treatment of claimant, Dr. Meadows submitted forms labeled "Request for Medicare Payment" and "Health Insurance Claim Form" to medicare seeking reimbursement for his treatment of claimant; these documents indicate a diagnosis of schizophrenia and depression, and a check mark appears in the "No" box where the forms ask if claimant's problem

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<sup>1</sup>The administrative law judge's findings regarding a lack of a causal relationship between claimant's back condition and his employment are not challenged on appeal.

is related to his work.<sup>2</sup> EX L. Lastly, the record contains numerous office notes detailing claimant's on-going psychiatric treatment between 1977 to 1989; in each instance, no cause is mentioned other than claimant's work injury, claimant's back problems and pending litigation. Cl. Ex. 2, Tab 188. Finally, in his deposition testimony, Dr. Meadows diagnosed claimant's condition as one of chronic pain syndrome and depression which he specifically related to the work injury based on a reasonable degree of medical probability, CX 4 at 26-27; regarding the apparent change in his diagnosis of claimant's condition, Dr. Meadows specifically stated that his prior diagnosis of schizophrenia was mistaken.<sup>3</sup> CX 4 at 37-39.

In concluding that claimant's psychological condition is not work-related, the administrative law judge found rebuttal of the Section 20(a) presumption based on the 1980 through 1984 claim forms completed by Dr. Meadows in which the "No" box was checked in response to a question regarding the causal relationship between claimant's illness and his employment. The administrative law judge then credited these "statements" over Dr. Meadows' reports commencing in 1977 and his deposition testimony. *See* Decision and Order at 14. Noting Dr. Meadows' considerable credentials and thirty-five years of practice, the administrative law judge nonetheless declined to credit Dr. Meadow's ultimate diagnosis of work-related chronic pain syndrome discussed in his deposition, finding it based on claimant's subjective complaints and claimant's assertions to Dr. Meadows of back surgery and a heart attack, which were not supported by the record evidence. The administrative law judge also reasoned that Dr. Meadows was aware of claimant's work injury and pain complaints since he began treating claimant in March 1977. The administrative law judge failed to address Dr. Meadows' testimony that claimant's psychological condition is also due, in part, to depression caused by claimant's inability to work after his injury nor did he address the evidence diagnosing work-related depression throughout claimant's treatment; specifically, Dr. Meadows' opinion in April 1977 that claimant was totally disabled by psychotic depression due in part to his inability to work or his later reports also consistent with a work-related condition. Cl. Ex. 2, Tab 188; EX J.

In considering causation, it is employer's burden to rebut the Section 20(a) presumption with specific and comprehensive evidence. *See, e.g., Swinton, 554 F.2d at 1075, 4 BRBS at 466.* In considering rebuttal here, the administrative law judge was presented with one medical opinion, that of Dr. Meadows. This evidence is contradictory, since the claim forms relied upon by the administrative law judge indicate the absence of a work connection while the remainder of Dr. Meadows' records, some of which the administrative law judge did not discuss, support a conclusion that claimant's condition was work-related. There is no rational basis in this case for crediting check marks on a form rather than the doctor's explanations of his diagnosis going back to his first

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<sup>2</sup>The dates on these forms are not clearly decipherable; however, the administrative law judge found that they were submitted between 1980 and 1984, and this finding is not challenged on appeal. The administrative law judge additionally found that of the 23 requests for payment made by Dr. Meadows, 15 forms had the "No" box checked, while the remaining eight forms were blank. *See* Decision and Order at 14.

<sup>3</sup>Dr. Meadows also testified that, assuming *arguendo*, a diagnosis of schizophrenia, this condition could have been aggravated by the work injury. CX 4 at 44-45.

examination of claimant. The evidence provided by Dr. Meadows thus cannot support of finding of rebuttal of Section 20(a) as a matter of law since the only rational choices in interpreting it are either that it supports claimant's contention that his illness is work-related or that it is so contradictory that it cannot be credited. As Dr. Meadows' opinion is the only relevant evidence on the causation issue, there is no need to remand this case for reconsideration of causation. Since employer offered no other evidence, the administrative law judge's finding that Section 20(a) was rebutted is not supported by substantial evidence in the record and is reversed, and the administrative law judge's conclusion that claimant's condition was not work-related is also reversed, and the case is remanded for consideration of the remaining issues.

Accordingly, the administrative law judge's finding that claimant's psychological condition is not work-related is reversed, and the case is remanded for further proceedings consistent with this opinion. In all other respects, the Decision and Order is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge