BRB No. 93-2031

GRADY D. FARMER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	DATE ISSUED:
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Jerry L. Hutcherson, Pascagoula, Mississippi, for claimant.

Traci Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (92-LHC-2214) of Administrative Law Judge Richard D. Mills 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 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 worked for employer as a property accountant from 1967 until 1976, and as government property administrator thereafter until his retirement in May 1991. On August 19, 1991, claimant filed a claim under the Act, seeking occupational hearing loss benefits based on the results of a February 4, 1991, audiogram performed by Marianne Towell, which revealed a 15 percent

binaural hearing loss. CX-1, 2. Employer filed Notices of Controversion on March 1, 1991 and September 19, 1991. EX-2 and 3. A subsequent audiogram, performed on January 8, 1992 by Dr. James McDill for Dr. Donald Muller, revealed a 15.6 percent binaural hearing loss. CX-6. The case was referred to the Office of Administrative Law Judges for a formal hearing on February 4, 1993.

In his Decision and Order, the administrative law judge found that claimant was not entitled to the Section 20(a), 33 U.S.C. §920(a), presumption, inasmuch as he failed to prove that injurious noise levels existed at Ingalls which could have caused his hearing loss. In reaching this determination, the administrative law judge noted that claimant neglected to introduce noise surveys, manufacturing reports, or expert testimony on this issue, and found that claimant's testimony alone was insufficient to establish that his working conditions were injurious. The administrative law judge therefore concluded that he was unable to make a finding that working conditions existed at Ingalls which could have caused or aggravated claimant's hearing loss, and denied the claim accordingly.

Claimant appeals the denial of benefits, asserting that the administrative law judge erred in finding that he had not established a *prima facie* case under Section 20(a), as claimant's testimony and the medical opinions of record are sufficient to entitle him to invocation of the Section 20(a) presumption. Employer responds, requesting affirmance of the decision below.

Claimant's argument has merit. In establishing causation under the Act, claimant is aided by the Section 20(a) presumption. In order to be entitled to the Section 20(a) presumption, claimant bears the burden of establishing that he suffered an injury and that an accident or working conditions existed that could have caused the harm. *See Everett v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 316 (1989). Once claimant establishes these two elements of his *prima facie* case, the Section 20(a) presumption operates to link the harm or pain with claimant's employment. *Brown v. I.T.T./Continental Baking Co.*, 921 F.2d 289, 295-96, 24 BRBS 75, 80 (CRT)(D.C. Cir. 1990).

In the present case, employer stipulated that claimant sustained an injury, a 15.6 percent binaural hearing loss. Moreover, contrary to the administrative law judge's decision, claimant was not required to introduce noise surveys or expert testimony in order to establish the existence of working conditions which *could* have caused the harm. As claimant testified that he was exposed to loud noise from various tools and equipment used in the shipbuilding process, he met this burden. We thus conclude that claimant is entitled to invocation of the Section 20(a) presumption as a matter of law. *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981). Accordingly, we reverse the administrative law judge's finding to the contrary. *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*, 113 S.Ct. 1253 (1993).

Once the Section 20(a) presumption is invoked, employer may rebut it by producing facts to show that claimant's employment did not cause, aggravate, or contribute to his injury. *See Peterson*, 25 BRBS at 78. The only medical evidence relevant to the cause of claimant's hearing loss is the opinion of Dr. Muller. As Dr. Muller opined that claimant's hearing loss is compatible with noise exposure, although other factors such as insulin dependent diabetes could have also contributed to his impairment, CX-6, there is no record evidence sufficient to establish that claimant's employment did not cause, aggravate, or contribute to his hearing loss. *See Bridier v. Alabama Dry Dock &*

Shipbuilding Corp., 29 BRBS 84, 89-90 (1995). Consequently, we hold that claimant has established causation as a matter of law and we remand the case to the administrative law judge for consideration of all remaining issues necessary to the resolution of the claim.

Accordingly, the administrative law judge's determination that claimant failed to establish causation is reversed. His Decision and Order denying benefits is accordingly vacated and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge