BRB No. 93-0122

BRENDA WICK	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ARMY/AIR FORCE EXCHANGE	)	DATE ISSUED:
	)	
and	)	
	)	
INA/ESIS	)	
	)	
Employer/Carrier- Respondents	))	DECISION and ORDER

Appeal of the Decision and Order of James J. Butler, Administrative Law Judge, United States Department of Labor.

Dorsey Redland (Dorsey Redland, Inc.), San Francisco, California, for claimant.

Richard C. Kelley (Hanna, Brophy, MacLean, McAleer & Jensen), Oakland, California, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (89-LHC-1310) of Administrative Law Judge James J. Butler 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 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, on July 29, 1983, fell on a slippery floor while in the course of her employment with employer. Claimant was diagnosed with herniated disks and underwent disk excision on February 19, 1991. Claimant also experienced a reactivation of her medication dependence. In his Decision and Order, the administrative law judge, after noting that claimant failed to inform her doctors of pre-injury back conditions, concluded that claimant's back condition and medication dependency are not causally related to her July 29, 1983 work injury. Accordingly, the

administrative law judge denied claimant's compensation claim.

On appeal, claimant challenges the administrative law judge's finding that there is no causal relationship between her conditions and her work injury, contending that, since the parties stipulated to a work-related injury, the administrative law judge's conclusion makes it unclear as to whether claimant was given the benefit of the Section 20(a) presumption. Employer responds, asserting that the administrative law judge gave claimant the benefit of the Section 20(a) presumption and urging affirmance of the administrative law judge's Decision and Order.[1]

In establishing that an injury arises out of her employment, claimant is aided by the Section 20(a), 33 U.S.C. §920(a), presumption which applies to the issue of whether an injury is causally related to her employment activities. *See Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976); *Perry v. Carolina Shipping Co.*, 20 BRBS 90 (1987). Before Section 20(a) is applicable, however, claimant must establish some harm or pain, *Murphy v. SCA/Shayne Brothers*, 7 BRBS 309 1977, *aff'd mem.*, 600 F.2d 280 (D.C. Cir. 1979), and that working conditions existed or an accident occurred which could have caused the harm or pain. *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981). An employment injury need not be the sole cause of a disability; rather, if the employment aggravates, accelerates or combines with an underlying condition, the entire resultant condition is compensable. *See, e.g., Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989). Upon invocation of the presumption, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by her employment. *Sam v. Loffland Brothers Co.*, 19 BRBS 228 (1987). 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 based on the record as a whole. *See Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153 (1985). It is sufficient for purposes of causation if claimant's employment "aggravates the symptoms of the process." *Pittman v. Jeffboat, Inc.*, 18 BRBS 212 (1986).

In the instant case, the record contains evidence, which the administrative law judge acknowledged, that claimant suffered from back pain and subsequently experienced a reactivation of a medication dependance. Furthermore, the parties stipulated to the occurrence of a work-related accident, and employer asserts in its response to claimant's appeal that the Section 20(a) presumption was invoked. Thus, based upon the record before us, claimant has established the two elements of her *prima facie* case. In his Decision and Order, however, the administrative law judge did not apply the Section 20(a) presumption to link claimant's back disorder and medication dependency to her July 29, 1983 work injury, but erroneously placed the burden of establishing a causal relationship on claimant. Once the Section 20(a) presumption is invoked, however, the administrative law judge should have shifted the burden to employer to produce substantial evidence that claimant's July 29, 1983 work-related accident did not cause, aggravate, contribute to or combine with claimant's back problems and medication dependence. *See Adams v. General*

[1]Inasmuch as the Board accepted claimant's petition for review and brief by Order dated June 17, 1993, employer's motion to deny this appeal as being untimely filed is rendered moot.

Dynamics Corp., 17 BRBS 258 (1985). We, therefore, vacate the administrative law judge's finding that there is no causal relationship between claimant's back condition and medication dependency and her work injury, and we remand this case for the administrative law judge to reconsider the medical evidence in light of the Section 20(a) presumption and the aggravation rule. Should the administrative law judge determine that the presumption is not rebutted or that claimant has established a causal connection between her back disorder and her medication dependency problem and the work injury based on the record as a whole, the administrative law judge must then address the nature and extent of claimant's disability and any other remaining issues.

Accordingly, the administrative law judge's determination that claimant is not entitled to compensation benefits is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge