BRB No. 93-0137

STANLEY HLYNSKY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
STEVEDORING SERVICES OF AMERICA	)	DATE ISSUED: _____
	)	
and	)	
	)	
EAGLE PACIFIC INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

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

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

Albert H. Sennett (Hanna, Brophy, MacLean, McAleer & Jensen), San Francisco, California, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Awarding Benefits (89-LHC-1123) 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 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On February 16, 1986, claimant sustained injuries to his neck, back and right shoulder and arm when he fell into a water-filled hole while working as an equipment operator and supplemental

walking boss for employer. Claimant was unable to complete his shift following this incident. On February 19, 1989, claimant was treated by Dr. Meyers, who diagnosed a mild cervical strain, contusion of the right shoulder and forearm, and contusion of the lumbosacral region, with significant swelling and ecchymosis in the midline. CX D Vol. I. Claimant did not return to work until July 1, 1989, when he was released for modified duty by Dr. Meyers. Tr. Oct. 2, 1991 at 9-11.

Subsequent to the 1986 work accident but prior to his 1989 return to work, claimant sustained additional injuries to his right knee on August 12, 1987, while attempting to use inversion boots at his swim club, Tr. June 23, 1989 at 98, Tr. Oct. 3, 1991 at 354, and to his right wrist in 1988 while using exercise equipment during the course of a physical therapy program recommended by Dr. Meyers. Tr. Oct. 3, 1991 at 350, Tr. June 23, 1989 at 102-104, 155. Dr. Meyers further referred claimant to Dr. Levinson, a psychiatrist, who eventually diagnosed major depression caused by the multiple losses claimant sustained as a result of his February 16, 1986, work injury. Tr. Oct. 3, 1991 at 98-102, 109. Employer voluntarily paid claimant temporary total disability benefits from February 17, 1986 to June 10, 1986. 33 U.S.C. §908(b).

In his Decision and Order, the administrative law judge awarded claimant temporary total disability compensation for claimant's back condition from June 10, 1986 to January 1, 1987, at which time the administrative law judge determined that claimant could have returned to his usual employment duties with employer. The administrative law judge next determined that claimant's subsequent injuries to his right knee and wrist were unrelated to his employment and were thus not compensable. Lastly, the administrative law judge found that employer was not liable for the cost of services rendered by claimant's psychiatrist, Dr. Levinson, as claimant had not demonstrated that his psychological condition was related to his work injury.

On appeal, claimant challenges the administrative law judge's denial of ongoing compensation benefits, as well as the administrative law judge's determination that claimant's knee, wrist and psychological conditions are not related to his work injury. Employer responds, urging affirmance.

We initially address claimant's contention that the administrative law judge erred in terminating claimant's temporary total disability benefits for his initial physical injuries as of January 1, 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). In the instant case, the administrative law judge relied on the medical opinion of Dr. Sampson that claimant's physical injuries from his 1986 work accident were resolved and that claimant was able to return to work on January 1, 1987. Dr. Sampson initially expressed this opinion in his November 1986 report, *see* CX R Vol. IV at 398, and reaffirmed it in his March 1990 deposition, *id.* at 409, 414-420, after having reviewed, on March 11, 1988, claimant's MRIs taken on October 26, 1987. *Id.* at 399. In rendering this credibility determination, the administrative law judge noted that Dr. Sampson's diagnosis was not inconsistent with those of Drs. Meyers and

Kelley,[1] CX R Vol. IV; CX D Vol. I; EX 8, and that Dr. Sampson had the benefit of reviewing the claimant's subsequent MRIs. We hold that the administrative law judge committed no error in crediting the testimony of Dr. Sampson, as 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 generally 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, with regard to claimant's initial physical injuries, we affirm the administrative law judge's determination that claimant was capable of resuming his usual employment duties with employer as of January 1, 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 determining that his knee, wrist and psychological conditions are not related to his work injury. Section 20(a) of the Act, 33 U.S.C. §920(a), provides claimant with a presumption that his disabling condition is causally related to his employment if he shows that he suffered a harm and that employment conditions existed or an accident occurred which could have caused, aggravated, or accelerated the condition. *James v. Pate Stevedoring Co.*, 22 BRBS 271 (1989). Once the presumption is invoked, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment. *Sam v. Loffland Brothers, Inc.*, 19 BRBS 228 (1987). Employer can rebut the presumption by producing substantial evidence that claimant's disabling condition was caused by a subsequent non work-related event which was not the natural or unavoidable result of the initial work injury. *Cyr v. Crescent Wharf & Warehouse Co.*, 211 F.2d 454 (9th Cir. 1954); *Wright v. Connolly-Pacific Co.*, 25 BRBS 161 (1991), *aff'd mem. sub nom. Wright v. Director, OWCP*, 8 F.3d 34 (9th Cir. 1993). Thus, employer is liable for the entire disability if the second injury is the natural and unavoidable result of the original injury, *see Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966); where, however, the subsequent injury or aggravation is the result of an intervening cause, employer is relieved of liability for that portion of disability attributable to the intervening cause. *Bass v. Broadway Maintenance*, 28 BRBS 11 (1994); *Madrid v. Coast Marine Construction Co.*, 22 BRBS 148 (1989). If the presumption is rebutted, the administrative law judge must weigh all the evidence and resolve the causation issue based on the record as a whole. *See Avondale Shipyards, Inc. v. Kennel*, 914 F.2d 88, 24 BRBS 46 (CRT)(5th Cir. 1990).

The administrative law judge determined that the subsequent injuries claimant sustained to

[1]Dr. Kelley opined that claimant could have returned to work two or three months after the February 16, 1986 work accident, or by April 22, 1986, and that any subsequent treatment or physical therapy was unnecessary. EX 8 at 206-207, 210-211, 214-215. In a letter dated April 7, 1986, Dr. Meyers opined that claimant could return to work within a week of his next visit.

his right knee in 1987 and to his right wrist in 1988 were unrelated to his February 16, 1986, work injury but were, rather, the result of intervening causes to which employer's liability does not extend. Specifically, the administrative law judge found that claimant's continued treatment as authorized by Dr. Meyers was unnecessary. Decision and Order at 5. In light of this finding that claimant's treatment was unnecessary, and the administrative law judge's prior crediting of Dr. Sampson's opinion that claimant could return to work on January 1, 1987, claimant's 1988-1989 rehabilitative treatments must also be considered to have been unnecessary. We, therefore, affirm the administrative law judge's conclusion that the two injuries sustained to claimant's knee and wrist while undergoing physical therapy recommended by Dr. Meyers subsequent to claimant's release to return to work were due to non work-related intervening causes for which employer is not liable. *See Bass*, 28 BRBS at 11. Accordingly, we affirm the administrative law judge's denial of compensation and medical benefits for claimant's right knee and wrist injuries.

Lastly, we note that the administrative law judge did not apply the Section 20(a) presumption to link claimant's psychological problems to his work injury. In this regard, claimant relies on Dr. Levinson's medical opinion that claimant's depression is related to the losses he suffered due to his 1986 industrial accident. Tr. Oct. 3, 1991 at 98-102, 109. In addressing this issue, the administrative law judge summarily indicated that "whatever difficulties [claimant] has pre-existed his work-injury... I am not convinced that the latest event had any impact on any mental problems which previously existed..." *See* Decision and Order at 5-6. We hold that the administrative law judge erred in failing to apply Section 20(a). Specifically, as it is uncontroverted that an accident occurred on February 16, 1986, and there is medical evidence that this accident could have caused claimant's psychological condition, Section 20(a) was invoked. The administrative law judge must consider whether employer rebutted the presumption with specific and comprehensive evidence that claimant's psychological condition was not caused or aggravated by his employment injury. *See generally Adams v. General Dynamics Corp.*, 17 BRBS 258 (1985). We, therefore, vacate the administrative law judge's findings 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.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge