BRB No. 93-0511

BURRELL L. WHITE, JR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	DATE ISSUED:
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

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

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

Traci M. 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-604) of Administrative Law Judge C. Richard Avery 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 pipefitter for six and one-half years from 1966 to 1973. During his employment, claimant was exposed to noise levels which he characterized as quite noisy. On October 24, 1988, an audiogram was administered which demonstrated a hearing impairment. Claimant filed his claim for benefits for his hearing loss that same day. The administrative law judge determined that claimant was not entitled to the presumption that his hearing loss is causally related to his employment pursuant to

Section 20(a) of the Act, 33 U.S.C. §920(a). Accordingly, the administrative law judge denied claimant benefits. On appeal, claimant challenges the administrative law judge's denial of benefits. Employer responds in support of the administrative law judge's denial.

Claimant contends that the administrative law judge erred in not giving him the benefit of the Section 20(a) presumption as he established that he has a hearing loss and that his work at employer's facility exposed him to loud noise. We agree. In denying claimant the benefit of the Section 20(a) presumption, the administrative law judge improperly required claimant to come forward with expert opinion evidence or a stipulation that the noise at employer's facility during claimant's employment was of an intensity sufficient to cause permanent hearing loss or that in this instance it did. *Peterson v. General Dynamics Corp.*, 25 BRBS 71 (1991), *aff'd sub nom. Insurance Co. 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); *Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990); Decision and Order at 3. Although the administrative law judge properly found that claimant established that he has a harm, a hearing loss, the administrative law judge erred in finding that claimant did not establish the existence of working conditions which could have caused the harm. Claimant's testimony that it was quite noisy when he worked for employer, Tr. at 9, as well as Dr. Lamppin's statement that it appeared that claimant was exposed to loud noise at employer's facility, Claimant's Exhibit 1, are sufficient to establish that working conditions existed which could have caused claimant's hearing loss. Contrary to the administrative law judge's conclusion, claimant is not required to prove that the noise levels claimant experienced were sufficient, in fact, to cause hearing loss. *See generally Brown v. I.T.T./Continental Baking Co.*, 921 F.2d 289, 24 BRBS 75 (CRT)(D.C. Cir. 1990); *Stevens*, 23 BRBS at 193. We, therefore, reverse the administrative law judge's finding that the Section 20(a) presumption was not invoked and hold that invocation has been established as a matter of law.

Once the Section 20(a) presumption is invoked, the burden shifts to employer to establish that claimant's hearing loss was not caused or aggravated by claimant's employment with employer. *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 820 (1976). The only relevant evidence in this regard is the opinion of Dr. Lamppin who stated that it appeared that claimant was exposed to noise at employer's facility. Claimant's Exhibit 1; Employer's Exhibit 8. Dr. Lamppin also stated that if there was a sufficient period of noise exposure claimant could have noise-induced hearing loss although claimant's flat audiogram was not ideally characteristic of noise-induced hearing loss but would indicate presbycusis or hereditary pattern. Dr. Lamppin concluded that with claimant's history of noise exposure he could not separate the effects of claimant's presbycusis, hereditary pattern and noise on claimant's hearing. Because Dr. Lamppin could not state that claimant's work environment at employer's facility did not cause or contribute to claimant's hearing loss, his opinion is insufficient as a matter of law to establish rebuttal pursuant to Section 20(a). *Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84 (1995); *Care v. Washington Metropolitan Area Transit Authority*, 21 BRBS 248 (1988). Thus, a causal relationship between claimant's employment and his hearing loss has been established. *Cairns v. Matson Terminals, Inc.* 21 BRBS 252

(1988). The denial of benefits is therefore vacated, and the case is remanded to the administrative law judge for consideration of the remaining issues.

Accordingly, the administrative law judge's Decision and Order denying benefits is vacated, and this case is remanded to the administrative law judge 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