BRB No. 93-1148

JESSIE D. PARKER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	
	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION AND ORDER

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

Steven J. Miller, 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 Denying Benefits (92-LHC-2657) of Administrative Law Judge C. Richard Avery 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 is seeking benefits for a noise-induced hearing loss. Claimant worked for employer as a shipfitter from 1966 until 1973 and as an electrician's helper from 1975 to 1977. While working around lathes, claimant characterized his noise exposure as considerable; while working around other tools, claimant described his noise exposure as sometimes loud. Transcript at 34, 46. Audiograms administered to claimant on October 21, 1988 and November 16, 1992, demonstrated a hearing impairment. In his Decision and Order denying benefits, the administrative law judge found that, in the absence of testimony, noise surveys, manufacturer's reports, and/or expert opinions, he had no way of knowing whether anything occurred during claimant's employment which could have caused, aggravated, or accelerated claimant's hearing loss.

Accordingly, the administrative law judge denied claimant benefits.

On appeal, claimant contends that he has presented a *prima facie* case sufficient to invoke the Section 20(a) presumption that his hearing loss is work-related. 33 U.S.C. §920(a). Employer responds, urging affirmance of the administrative law judge's decision. Alternatively, employer asserts that it has established that it is not the employer responsible for the payment of claimant's benefits.

Section 20(a), 33 U.S.C. §920(a), of the Act provides claimant with a presumption that an injury is causally related to his employment. *Perry v. Carolina Shipping Co.*, 20 BRBS 90 (1987). In order for Section 20(a) to apply, claimant must establish a *prima facie* case by proving that he suffered a harm and that employment conditions existed or an accident occurred which could have caused, aggravated or accelerated the harm. *Care v. Washington Metropolitan Area Transit Authority*, 21 BRBS 248 (1988).

In the instant case, claimant contends that the administrative law judge erred in not giving him the benefit of the Section 20(a) presumption since, he asserts, he has established that he has a hearing loss and that his work at employer's facility exposed him to loud noise. We agree. In concluding that claimant has not made a *prima facie* case, the administrative law judge improperly required claimant to come forward with expert opinion evidence that the noise at employer's facility during claimant's employment was of a sufficient intensity or duration to cause, aggravate, or accelerate his hearing loss. *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 4. 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 uncontroverted testimony that the noise level was considerable and sometimes loud is 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, aggravate, or accelerate his 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 claimant has failed to establish the working conditions element of his *prima facie* case and we hold that invocation of the Section 20(a) presumption 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 evidence in this regard is the opinion of Dr. Muller who found that claimant's hearing loss was compatible with noise exposure in the past. *See* EX 5. Because Dr. Muller did not state that claimant's work environment 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). 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.

On remand, the administrative law judge must address employer's contention that it was not the last maritime employer to expose claimant to noise. As claimant's hearing loss is work-related, employer may escape liability by establishing that it is not the last covered employer to expose claimant to injurious noise. *See Avondale Industries, Inc. v. Director, OWCP*, 977 F.2d 186, 26 BRBS 111 (CRT)(5th Cir. 1992); *Lins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 62 (1992); *Suseoff v. The San Francisco Stevedoring Co.*, 19 BRBS 149 (1986). In the instant case, the administrative law judge did not specifically address all evidence regarding claimant's exposure to noise while working for subsequent maritime employers. *See generally Williams v. Newport News Shipbuilding & Dry Dock Co.*, 17 BRBS 61 (1985). On remand, therefore, the administrative law judge must discuss this evidence and determine is it is sufficient to meet employer's burden of showing that it is not the employer responsible for the payment of claimant's benefits.

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