BRB No. 93-2223

W. F. RAWLS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	DATE ISSUED:
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order and Decision and Order Denying Motion for Reconsideration of A. A. Simpson, Jr., Administrative Law Judge, United States Department of Labor.

John D. Gibbons (Gardner, Middlebrooks & Fleming), Mobile, Alabama, for claimant.

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order and Decision and Order Denying Motion for Reconsideration (92-LHC-1197) of Administrative Law Judge A. A. Simpson, Jr., 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 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 as an outside machinist for employer in 1966 and 1967. In his Decision and Order denying benefits, the administrative law judge found that the evidence of record is insufficient to establish the existence of a hearing impairment while claimant worked for employer.

On appeal, claimant contends that he has presented a *prima 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 denial of benefits.

Section 20(a) of the Act provides claimant with a presumption that the 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). Claimant need not establish by affirmative medical evidence that the working conditions to which he was exposed in fact caused his harm; he need only establish the existence of working conditions that could have caused the harm. *Stevens v. Tacoma BoatBuilding, Inc.*, 23 BRBS 191 (1990); *Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989).

In his testimony, claimant stated that he was subjected to noise caused by shopfitters, jitterbugs, guns and jackhammers while working for employer. Transcript at 26-27. He stated that he became aware of a hearing problem, ringing in his ears, in the 1970's and that he sought medical help in the 1980's, as his hearing continued to deteriorate. Emp. Ex. 11. On an employment application subsequent to his employment with Ingalls, claimant mentioned noise exposure while working at a paper plant, but he made no mention of being exposed to noise while working for Ingalls on this application. Emp. Ex. 6.

The administrative law judge noted that audiograms administered in 1975 and 1982 reflected a hearing impairment. Emp. Ex. 7. The administrative law judge, however, accorded no weight to these audiograms as they were performed by a nurse, not an audiologist and the conditions under which the tests were taken were not available. The administrative law judge also noted that the 1990 audiogram, on which the claim is based, was administered 23 years after claimant worked for employer. The administrative law judge then summarily stated that based on the evidence, including claimant's deposition and the employment application, claimant has not made a *prima facie* case that Ingalls is the responsible employer liable for claimant's hearing impairment. The administrative law judge concluded that the record lacked credible evidence that claimant's hearing loss existed at the time he stopped working for employer.

In discussing claimant's testimony, the administrative law judge merely noted that claimant stated that he became aware of hearing problems in the 1970's and sought medical attention in the 1980's. He did not specifically discuss claimant's testimony regarding noise exposure while working for employer. *See generally Williams v. Newport News Shipbuilding & Dry Dock Co.*, 17 BRBS 61 (1985). This testimony, if credited, is sufficient to establish that claimant was exposed to working conditions that could have caused his hearing impairment and invoke the Section 20(a) presumption. *See generally Brown v. I.T.T./Continental Baking Co.*, 921 F.2d 289, 24 BRBS 75 (CRT) (D.C. Cir. 1990); *Sinclair*, 23 BRBS at 148. Once the presumption is invoked, employer can rebut it by showing that claimant's hearing loss is not causally related to noise; employer can also

escape liability by meeting its burden to show it is not the responsible employer.[1] *See Avondale Industries, Inc. v. Director, OWCP*, 977 F.2d 186, 26 BRBS 111 (CRT) (5th Cir. 1992); *Suseoff v. The San Francisco Stevedoring Co.*, 19 BRBS 149 (1986). We therefore vacate the administrative law judge's findings and remand the case to the administrative law judge to discuss claimant's testimony and determine if it is sufficient to invoke the Section 20(a) presumption.

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

[1]Once the Section 20(a) 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. *James v. Pate Stevedoring Co.*, 22 BRBS 271 (1989); *Sam v. Loffland Brothers Co.*, 19 BRBS 228 (1987). If the administrative law judge determines that the presumption is rebutted, the administrative law judge must weigh all of the evidence and resolve the causation issue on the record as a whole. *See Hite v. Dresser Guiberson Pumping*, 22 BRBS 87 (1989).