BRB No. 10-0361

STEVEN HUMFLEET	)	
	)	
Claimant	)	
	)	
v.	)	
	)	
SERVICE EMPLOYEES INTERNATIONAL, INCORPORATED	)	
	)	
and	)	
	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA c/o AIG WORLDSOURCE	)	DATE ISSUED: 07/28/2011
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	ORDER on
Party-in-Interest	)	RECONSIDERATION

Employer has filed a timely motion for reconsideration of the Board's Decision and Order in *Humfleet v. Service Employees International, Inc.*, BRB No. 10-0361 (Feb. 18, 2011) (unpub.). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Claimant has not responded to employer's motion.

In its decision, the Board reversed the administrative law judge's finding that claimant did not establish a *prima facie* case of a work-related injury on November 15, 2004, that could have caused his right shoulder condition. *See* 33 U.S.C. §920(a). The administrative law judge based his finding on claimant's lack of credibility and the absence of medical corroboration of a work injury. The Board stated that the administrative law judge's finding that claimant did not receive medical treatment after the alleged November 15, 2004, work injury until December 20, 2004, is contradicted by employer's incident report that was completed around December 20, 2004, and that this

report directly refutes the administrative law judge's reasons for finding that the November 2004 accident did not occur. *Humfleet*, slip op. at 4; *see* EX 6. Additionally, the Board vacated the administrative law judge's finding of rebuttal and remanded the case for the administrative law judge to address, pursuant to the appropriate standard, whether employer rebutted the Section 20(a) presumption.[1] *See Brown v. Jacksonville Shipyards, Inc.*, 893 F.2d 294, 23 BRBS 22(CRT) (11th Cir. 1990).

In its motion for reconsideration, employer argues the Board erred by holding, based on the incident report documenting the results of its investigation of claimant's work injury, that claimant is entitled to the benefit of the Section 20(a) presumption linking his shoulder condition to a work injury on November 15, 2004. The sufficiency of employer's incident report for purposes of invoking the Section 20(a) presumption was fully addressed by the Board, and employer has failed to make any persuasive argument that the determination is in error.[2] The Board also stated that Dr. York's opinion relating claimant's shoulder condition to the work incident is further evidence entitling claimant to the benefit of the Section 20(a) presumption as a matter of law. *Humfleet*, slip op. at 5; *see* EX 11c at 14-17. Therefore, we deny employer's motion for reconsideration and affirm the Board's decision.

[1]For purposes of judicial economy, the Board also addressed the administrative law judge's alternative findings as to the nature and extent of claimant's shoulder disability, as well as his error in not addressing claimant's submission as a motion for Section 22 modification. 33 U.S.C. §922. The Board's disposition in terms of these findings is not challenged by employer on reconsideration.

[2]We emphasize that this report, completed by employer's personnel, states that employer investigated the November 2004 incident and that, contrary to the administrative law judge's finding, claimant had sought medical treatment for shoulder pain several days after the incident and continued to seek treatment from medics for the next month. EX 6 at 1; *see also* EX 8 at 1-2.

Accordingly, employer's motion for reconsideration is denied. 20 C.F.R. §802.409. The Board's decision is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge