BRB No. 97-1540

CHARLES R. REEVES	)	
	)	
Claimant-Respondent	)	DATE ISSUED:_____
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY	)	
	)	
	)	
Self-Insured Employer-Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order of Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

Robert J. Macbeth, Jr. and Matthew H. Kraft (Rutter & Montagna, L.L.P.), Norfolk, Virginia, for claimant.

Benjamin M. Mason (Mason & Mason, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Employer appeals the Decision and Order (96-LHC-2120) of Administrative Law Judge Fletcher E. Campbell, Jr., 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).[1] 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. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

[1]The administrative law judge amended his Decision and Order in an Errata Order, wherein he corrected a typographical error which awarded claimant benefits at a rate of $359.47 per month instead of per week. Decision and Order at 9; Errata Order.

Claimant worked as a welder for employer. On June 30, 1993, he was injured when a package of primary coolant lube insulation, weighing between 20 and 30 pounds, fell and hit the left side of his head and face and his left shoulder. He was placed on light duty work for approximately one week, and then he returned to his usual work. Tr. at 19-21, 29. Claimant continued to experience pain in the affected areas and continued to seek medical advice and treatment, but he lost no further time from work due to this injury. On January 31, 1995, claimant quit his job, alleging pain and disorientation as well as a fear of being unsafe. Tr. at 35-36, 52, 54-55. He began treating with Dr. Towne on February 23, 1995, who diagnosed post-traumatic pain syndrome with a substantial psychological component, and he determined that claimant is totally disabled from returning to his usual work. Emp. Ex. 2. Employer voluntarily paid temporary total disability benefits under the Virginia workers' compensation law from February 23 through June 29, 1995, when Dr. Towne released claimant to light duty work. Emp. Ex. 2; Tr. at 7. Claimant filed a claim for temporary total disability benefits under the Act from February 23,1995, and continuing. Tr. at 8.

The administrative law judge determined that claimant's condition is causally related to his 1993 injury, as claimant established a *prima facie* case and invoked the Section 20(a), 33 U.S.C. §920(a), presumption. Decision and Order at 8. Further, he found that employer failed to rebut the presumption, as there is no evidence which severs the causal connection. *Id.* Next, the administrative law judge concluded that claimant established a *prima facie* case of total disability and that employer failed to present evidence of suitable alternate employment. *Id.* at 8-9. Therefore, the administrative law judge awarded claimant temporary total disability benefits from February 23, 1995, and continuing.[2] *Id.* at 9. Employer appeals the administrative law judge's decision, and claimant responds, urging affirmance.

[2]Although the administrative law judge found that claimant's condition reached maximum medical improvement on April 26, 1996, Decision and Order at 6, he did not award permanent disability benefits, as claimant did not file a claim for permanent benefits.

Employer contends the administrative law judge erred in finding that the causal nexus between claimant's disability and his work-injury was not severed. Employer argues that the administrative law judge failed to separately consider the physical and psychological components of claimant's condition, that he failed to consider claimant's voluntary retirement, that he failed to consider all the relevant medical evidence, and thus that his decision violates the Administrative Procedure Act, 5 U.S.C. §553(c)(3)(A).[3] Claimant argues in response that the decision is supported by substantial evidence of record and should be affirmed.

In determining whether a disability is work-related, a claimant is aided by the Section 20(a), 33 U.S.C. §920(a), presumption, which may be invoked only after the claimant establishes a *prima facie* case. *Kubin v. Pro-Football, Inc.*, 29 BRBS 117 (1995). To establish a *prima facie* case, a claimant must show that he sustained a harm or pain and that conditions existed or an accident occurred at the employer's facility which could have caused that harm or pain. Once the presumption is invoked, an employer may rebut it by producing facts to show that a claimant's employment did not cause, aggravate or contribute to his condition. *Peterson v. General Dynamics Corp.*, 25 BRBS 71, 78 (1991), *aff'd sub nom. Insurance Company of North America v. U.S. Dept. of Labor*, 969 F.2d 1400, 26 BRBS 14 (CRT) (2d Cir. 1992), *cert. denied*, 507 U.S. 909 (1993); *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976); *Obert v. John T. Clark and Son of Maryland*, 23 BRBS 157 (1990). If the employer submits substantial countervailing evidence to sever the connection between the injury and the employment, the Section 20(a) presumption no longer controls and the issue of causation must be resolved on the whole body of proof. *Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990).

In this case, the parties agree claimant sustained a work-related injury. The dispute is solely over whether claimant's current physical and psychological conditions are related to that injury. Claimant testified he suffers from pain on the left side of his head and neck and his left shoulder related to the injury, and the record reveals he continued to seek medical help to resolve the problem. Cl. Exs. 1-14; Emp. Exs. 1-4, 6-11, 14; Tr. at 22-23, 25-26, 36, 40. Although employer argues there is no objective evidence to support claimant's complaints of pain and, therefore, that there is no physical disability, claimant's MRI revealed degenerative cervical changes, and the administrative law judge credited Dr. Towne's opinion that these changes may have been aggravated by the 1993 incident. Decision and

[3]Employer does not challenge the administrative law judge's finding that it did not establish the availability of suitable alternate employment.

Order at 8; Cl. Ex. 10; Emp. Ex. 3 at 24-25.

Additionally, based on Dr. Towne's determination that claimant's condition involved a significant psychological component, he referred claimant to Dr. Wade, a neuropsychologist, who administered tests and determined that claimant has a somatoform pain disorder.[4] Emp. Ex. 4. Dr. Wade concluded that claimant's somatoform disorder pre-existed his 1993 work injury and, while claimant is no longer suffering from any cognitive impairment from the injury, the event is that on which he "hangs his hat" -- on which he blames his pain. *Id.* at 28, 30. The administrative law judge credited Dr. Wade's opinion, and he found that the opinion does not sever the connection between the injury and an aggravation of claimant's pain disorder. Decision and Order at 8.

Based on the evidence of record, the administrative law judge properly determined that claimant's current conditions are related to his 1993 injury because employer failed to produce evidence which would rule out a causal connection. *See Brown v. Jacksonville Shipyards, Inc.*, 893 F.2d 294, 23 BRBS 22 (CRT) (11th Cir. 1990); *Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989). Although claimant's disability involves two separate conditions, we hold that the administrative law judge did not err in failing to analyze the conditions separately. Rather, in this case, claimant's pain is comprised of both a physical and a psychological aspect. Further, the administrative law judge properly found that no medical opinion of record, regarding either the physical or the psychological aspect of claimant's condition, ruled out a work-related aggravation of the pre-existing conditions. *Gencarelle v. General Dynamics Corp.*, 892 F.2d 173, 23 BRBS 13

[4]A somatoform pain disorder occurs when a person's physical condition cannot explain the degree to which he believes he is suffering from pain. Jt. Ex. 1 at 27.

(CRT) (2d Cir. 1989); *Peterson*, 25 BRBS at 78. As employer failed to rebut the Section 20(a) presumption, claimant's disability is work-related as a matter of law.[5] *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988).

[5]We reject employer's remaining arguments. Contrary to employer's assertion, the administrative law judge's decision is thorough and considers all relevant medical evidence; thus, his decision does not violate the Administrative Procedure Act. Further, the administrative law judge credited claimant's explanation for his retirement, Decision and Order at 9 n.6, and found that he did not retire voluntarily. Moreover, the issue of whether claimant's retirement was voluntary or involuntary is not relevant to a discussion involving the Section 20(a) presumption and the cause of claimant's disability.

Accordingly, the administrative law judge's decision is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JAMES F. BROWN
Administrative Appeals Judge