BRB No. 98-1273

EDWARD GILDS	)	
	)	
Claimant-Petitioner	)	DATE ISSUED: June 10, 1999
	)	
v.	)	
	)	
COOPER/T. SMITH STEVEDORING COMPANY, INCORPORATED	)	
	)	
and	)	
	)	
COOPER/T. SMITH CORPORATION	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order on Remand of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

William S. Vincent, Jr., New Orleans, Louisiana, for claimant.

Alan G. Brackett and Daniel J. Hoerner (Mouledoux, Bland, Legrand & Brackett, L.L.C.), New Orleans, Louisiana, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order on Remand (95-LHC-2074) of Administrative Law Judge James W. Kerr, 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). 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). This is the second time this case is before the Board.

Claimant suffered multiple injuries in a vehicular accident on October 17, 1993,

during the course of his employment with employer. Following medical treatment, claimant was enrolled in a work-hardening program preparatory to his returning to work. On October 12, 1994, during the course of his work-hardening program, claimant noticed swelling in his right leg while working on a quadriceps exercise machine. Claimant went to the hospital where the physician diagnosed his injury as a right knee effusion. Claimant was subsequently discharged from the work-hardening program on December 21, 1994. On December 22, 1994, while getting off a stool, claimant's right knee gave way; on January 23, 1995, claimant underwent surgery to repair a ruptured right quadriceps tendon. Claimant returned to his regular work duties on March 26, 1995. Claimant sought additional temporary total disability benefits from January 31, 1995, through March 26, 1995, and scheduled permanent partial disability benefits thereafter, contending that his right quadriceps tear resulted from the weakening of the tendon during his work hardening program.[1]

In his initial Decision and Order, the administrative law judge concluded that claimant's right quadriceps tendon ruptured when he twisted his knee while getting off the bar stool on December 22, 1994. Finding claimant's condition was thus not the natural or unavoidable result of either his October 17, 1993, work injury or his October 12, 1994, work-hardening injury, but was due to his failure to exercise due diligence after his injury, the administrative law judge denied benefits based on claimant's failure to establish a causal relationship between the work accident and the quadriceps tear.

[1]Employer voluntarily paid medical benefits and temporary total disability compensation from October 18, 1993, to January 31, 1995. 33 U.S.C. §§907, 908(b).

On appeal, the Board held that, as it was undisputed that claimant sustained a harm, a ruptured quadriceps tendon, and that claimant was involved in a work-related accident on October 17, 1993, as well as a second work-related injury on October 12, 1994, while participating in the work-hardening program, claimant established both elements of his *prima facie* case, thus entitling him to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption as a matter of law.[2] As the administrative law judge did not invoke the Section 20(a) presumption, the Board remanded the case for the administrative law judge to evaluate the relevant medical evidence to determine whether the Section 20(a) presumption was rebutted; specifically, on remand, the administrative law judge was to determine whether employer established that claimant's quadriceps tear was not related to either of the employment-related events. *Gilds v. Cooper/T. Smith Stevedoring Co., Inc.*, BRB No. 97-0654 (Jan. 26, 1998)(unpublished).

On remand, the administrative law judge concluded that the Section 20(a) presumption was rebutted by the testimony of Drs. Manale and Guanche. The administrative law judge then weighed the evidence as a whole and determined that claimant did not establish a causal relationship between claimant's knee condition and his employment by a preponderance of the evidence. Accordingly, he denied claimant's claim for benefits.

On appeal, claimant challenges the administrative law judge's finding that employer produced substantial evidence to rebut the Section 20(a) presumption of causation, and his subsequent finding that claimant's knee condition is unrelated to his employment with employer. Employer responds, urging affirmance of the administrative law judge's decision. Specifically, claimant contends that his ruptured tendon resulted from the injury suffered on October 12, 1994, during the work-hardening therapy necessitated by the injuries he suffered in the original vehicular accident at work in October 1993. Employer argues that it rebutted this contention by medical evidence establishing that claimant's ruptured tendon arose as a result of the subsequent unrelated accident on December 22, 1994.

Once, as in the instant case, the Section 20(a) presumption has been invoked, the burden shifts to employer to present specific and comprehensive evidence sufficient to sever the causal connection between the injury and the employment. *See Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976); *Devine v.*

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[2]The Board, citing *Shell Offshore, Inc. v. Director, OWCP*, 122 F.3d 312 (5th Cir. 1997), *cert. denied*, 118 S.Ct. 1563 (1998), and *Madrid v. Coast Marine Const. Co.*, 22 BRBS 148 (1989), also reversed the administrative law judge's finding that claimant's failure to exercise due diligence following the work-hardening incident constituted an intervening cause sufficient to relieve employer of liability, as this conclusion was unsupported by substantial evidence. Board Decision and Order at 5.

Atlantic Container Lines, G.I.E., 23 BRBS 279 (1990). The unequivocal testimony of a physician that no relationship exists between claimant's condition and his employment may provide such evidence. *See Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984). If the presumption is rebutted, the administrative law judge must weigh all of the evidence contained in the record and resolve the causation issue based on the record as a whole. *See Devine*, 23 BRBS at 279; *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT)(1994). An injury sustained during medical examinations or rehabilitation for a work-related injury is compensable. *Mattera v. M/V Antoinette Pacific King, Inc.*, 20 BRBS 43 (1987); *Weber v. Seattle Crescent Container Corp.*, 19 BRBS 146 (1986). Moreover, employer is liable for the natural and unavoidable results of a work injury; thus, the mere occurrence of a subsequent event will not sever the causal chain where the medical evidence attributes the harm to a work-related cause. *See Colburn v. General Dynamics Corp.*, 21 BRBS 219 (1988).

In the instant case, in concluding that claimant's right quadriceps tendon rupture is not employment-related, the administrative law judge found the Section 20(a) presumption rebutted based upon the testimony of Drs. Manale and Guanche. In order to establish rebuttal, however, a medical opinion must unequivocally state that no relationship exists between claimant's harm and his employment; thus, in order to be sufficient to rebut the Section 20(a) presumption in this case, either the opinion of Dr. Manale or Dr. Guanche must establish that claimant's employment or the consequences arising out of it did not cause claimant's condition nor aggravate, accelerate or combine with an underlying condition. *See Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir 1966).

Our review of the testimony of these two physicians reveals that neither opinion states that claimant's medical condition is not related to his employment. In addressing this issue, Dr. Manale testified that although claimant's initial October 17, 1993, work injury did not cause or aggravate his present knee condition, *see* HT at 170-71, claimant's work-hardening exercises unknowingly weakened his deteriorating right knee. *Id*. at 169-70. Based upon this assessment, Dr. Manale opined within a reasonable degree of medical certainty that the October 12, 1994, work-hardening incident caused a small tear in claimant's right knee, and that this tear subsequently became one of the causal factors in the tendon rupture which occurred on December 22, 1994. *Id*. at 174, 179-80.

Dr. Guanche initially testified that although the October 12, 1994, incident during work-hardening and the swelling in his knee which followed were consistent with some pathology on the inside of the knee, this condition was probably not the problem which resulted in claimant's rupturing his right quadriceps tendon in December 1994. *See* CX-16 at 15-18. Dr. Guanche thereafter acknowledged, however, that quadriceps ruptures are usually due to a relative degenerative condition of the tendon, that claimant probably had symptoms

prior to October 1994, and that, therefore, an association between claimant's occurrence of pain in October 1994 and his January 1995 surgery could be made. *Id*. at 25.

As neither Dr. Manale nor Dr. Guanche found claimant's ruptured quadriceps tendon was unrelated to the October 12, 1994, work-hardening incident, neither opinion is sufficient, as a matter of law, to rebut the Section 20(a) presumption. *See Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84, 89-90 (1995). Moreover, as these opinions constitute the only relevant evidence proffered by employer on rebuttal, there is no need to remand this case for reconsideration of the issue of causation. *See I.T.O. Corp. v. Director, OWCP*, 883 F.2d 422, 22 BRBS 126 (CRT)(5th Cir. 1989); *Manship v. Norfolk & W. Railway Co.*, 30 BRBS 175 (1996). The administrative law judge's determination therefore is reversed, and the case must be remanded to the administrative law judge for consideration of the remaining issues.

Accordingly, the administrative law judge's finding that claimant's knee condition is not work-related is reversed, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge