BRB No. 01-0529

JAMES R. COX	)	
	)	
Claimant-Petitioner	)	DATE ISSUED: March 11, 2002
	)	
v.	)	
	)	
M.D. MOODY & SONS/ MOBRO MARINE	)	
	)	
and	)	
	)	
UNISOURCE ADMINISTRATORS, INCORPORATED	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

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

L. Jack Gibney, Jacksonville, Florida, for claimant.

Michael C. Crumpler and Christopher V. Puleo (McConnaughhay, Duffy, Coonrod, Pope & Weaver, P.A.), Jacksonville, Florida, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (00-LHC-0912) of Administrative Law Judge Richard K. Malamphy 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 findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence and 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, a welder, suffered an injury to his back and hips when he fell from a ladder during the course of his employment with employer on May 21, 1998. He returned to light duty work with employer in June and was released to his usual employment duties without medical restrictions on July 8, 1998. In early August 1998, he suffered back pain outside of work while engaged in loading

a boat onto a trailer. Four days after his return to work following this incident, claimant ceased working. He last worked for employer on August 28, 1998, and was terminated on September 10, 1998, for failure to call in or report to work. Claimant subsequently sought temporary total disability compensation from August 28, 1998, and continuing, as well as medical treatment, including suggested surgery. JX 19.

In his Decision and Order, the administrative law judge found claimant entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption linking his present back condition, *i.e.*, a lumbar strain and degenerative disc disease, to his employment. However, the administrative law judge concluded that the presumption was rebutted by the testimony of Dr. Crenshaw and that, upon weighing all of the medical evidence, causation had not been established on the record as a whole. Accordingly, the claim for compensation was denied.

On appeal, claimant argues that the medical evidence does not support the administrative law judge's conclusion that employer rebutted the Section 20(a) presumption. Employer responds, urging affirmance.

In order to be entitled to the Section 20(a) presumption linking claimant's condition to his employment, claimant must establish a *prima facie* case by showing that he suffered a harm and that an accident occurred or working conditions existed which could have caused the injury or harm. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1990). Once the Section 20(a) presumption is invoked, employer may rebut it by producing substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Brown v. Jacksonville Shipyards, Inc.*, 893 F.2d 294, 23 BRBS 22(CRT) (11th Cir. 1990); *O'Kelley v. Dept. of the Army/NAF*, 34 BRBS 39 (2000). It is employer's burden on rebuttal to present substantial 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); *see also Del Vecchio v. Bowers*, 296 U.S. 280 (1935); *American Grain Trimmers, Inc. v. OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999); *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Bath Iron Works Corp. v. Director, OWCP*, 109 F.3d 53, 31 BRBS 19 (CRT)(1st Cir. 1997); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990). If the administrative law judge finds that the Section 20(a) presumption is rebutted, it drops from the case, and he must then weigh all of the evidence and resolve the issue of causation based on the record as a whole. *See Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153 (1985); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

In the instant case, claimant avers that the administrative erred in concluding that the testimony of Dr. Crenshaw is sufficient to rebut the Section 20(a) presumption. We agree. The United States Court of Appeals for the Eleventh Circuit, within whose jurisdiction the instant claim arises, has held that the Act places on employer the duty of rebutting the Section 20(a) presumption with evidence that the employee's employment neither caused nor

aggravated his harm. *Brown*, 893 F.2d 294, 23 BRBS 22(CRT). Where none of the physicians of record expressed an opinion ruling out a causal connection, the court determined that there was no direct concrete evidence sufficient to rebut the presumption. *Id.*, 893 F.2d at 297, 23 BRBS at 24(CRT). In the present case, Dr. Crenshaw's opinion is similarly insufficient to sever the presumed causal relationship between claimant's present back condition and his employment.

In finding Section 20(a) rebutted, the administrative law judge noted that employer argued that claimant had fully recovered from his May work-injury by July 1998; thereafter, stating that "many of the reports of Dr. Crenshaw support this conclusion," the administrative law judge summarily concluded that the presumption was rebutted. Decision and Order at 9. However, Dr. Crenshaw's opinion is insufficient to rebut Section 20(a), as he never stated that claimant's condition after August 1998 was unrelated to the work injury but rather continued to relate claimant's continuing back problems at least in part to the work injury. Specifically, although Dr. Crenshaw opined that claimant had recovered from his May 1998 work-injury sufficiently to return to full work without restrictions by July 1998, *see* JX 19c, he thereafter examined claimant following his August 1998 non work-related lifting incident and opined, in September 1998, that claimant's ongoing back complaints were "at least work aggravated." *See* JX 19e. In January 2000, Dr. Crenshaw reviewed claimant's case and once again opined that claimant's present condition was related to his work-injury, concluding that "[claimant's] present condition...is, in fact, related to his reported work injury." *See* JX 19r, s. Lastly, during his June 2000 deposition, Dr. Crenshaw testified that claimant's condition may have predated the work fall and been further aggravated by his August 1998 boat-lifting incident, but that the work injury contributed to and aggravated his current condition. *See* JX 29oo, pp. Thus, as Dr. Crenshaw's opinion in fact supports the conclusion that the May 1998 work injury was a contributing cause of claimant's present back complaints, that physician's opinion is insufficient, as a matter of law, to support a finding that the Section 20(a) presumption is rebutted.[1] *See Brown*, 893 F.2d 294, 23 BRBS 22(CRT); *Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84 (1995). *Compare O'Kelley*, 34 BRBS 39 (physician's opinion given to a reasonable degree of medical certainty that claimant's condition was neither caused nor contributed to by working conditions is sufficient to rebut Section 20(a)). Moreover, as this opinion constitutes the only relevant evidence relied upon by employer on rebuttal, there is no need to remand this case for reconsideration of the issue of causation. Since employer offered no other evidence on this

[1]Although employer argued that the August boat incident was an intervening cause of claimant's disability, it produced no evidence that claimant's condition thereafter was wholly attributable to that cause. Where employer alleges an intervening cause, Section 20(a) places upon it the burden of producing evidence in support of the allegation. *See James v. Pate Stevedoring Co.*, 22 BRBS 271 (1988).

issue, the administrative law judge's finding that Section 20(a) was rebutted is not supported by substantial evidence in the record and is reversed. Consequently, the administrative law judge's conclusion that claimant's present back condition is not work-related is also reversed. The case therefore must be remanded for consideration of the remaining issues.

Accordingly, the administrative law judge's finding that claimant's back condition is not work-related is reversed, and the case is remanded for consideration of the remaining issues.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge