BRB No. 01-0558

WILLIE SPELLER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY	)	DATE ISSUED: March 18, 2002
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

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

John H. Klein (Montagna, Klein & Camden), Norfolk, Virginia, for claimant.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand (98-LHC-1677) of Administrative Law Judge Fletcher E. Campbell, 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 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).

This case is before the Board for the second time. Claimant, a painter, alleged he was injured on October 29, 1997, when he was climbing a ladder and he hit his right knee on the rung above. He did not report the injury that day, but went home and noticed that the knee began to swell. The next day, claimant dressed to go to work and went down the steps of his home. Before he reached the bottom, his knee gave out, but he did not fall or hit his knee. Claimant attempted to go to work but had difficulty exiting his van in the shipyard parking lot. Consequently, he reported to the emergency room instead. Initially, claimant sought treatment for his knee injury with Dr. Phillips, but he later changed to Dr. Stiles. Claimant has been diagnosed with an anterior cruciate ligament tear and a possible meniscal injury;

both physicians have recommended knee surgery, which claimant has not yet undergone. Claimant returned to work after December 16, 1997, as a painter. He sought temporary total disability benefits for the period from October 29, 1997, to December 16, 1997, as well as medical benefits.

In his initial decision, the administrative law judge did not invoke the Section 20(a) presumption, finding that claimant did not put forth sufficient evidence that his knee condition could have been caused by the work injury. He found, in the alternative, that employer introduced substantial evidence that claimant's knee injury is not work-related and that claimant failed to establish the work-relatedness of his condition based on the record as a whole. Claimant appealed the denial of benefits.

The Board reversed the administrative law judge's finding that the Section 20(a) presumption was not invoked, as Dr. Stiles stated that the bumping injury could have caused claimant's anterior cruciate ligament tear and meniscal injury. *Speller v. Newport News Shipbuilding & Dry Dock Co.*, BRB No. 99-0910 (May 26, 2000). Nonetheless, the Board affirmed the administrative law judge's finding that Dr. Phillips's opinion is sufficient to rebut the Section 20(a) presumption as Dr. Phillips stated that the tear did not occur at work and that it is unlikely claimant could have sustained an injury of this extent by bumping his knee. *Id.*, slip op. at 3. The Board affirmed the administrative law judge's crediting of the opinion of Dr. Phillips over that of Dr. Stiles; thus, the denial of benefits based on the bumping incident itself was affirmed. *Id.* The Board remanded the case, however, for the administrative law judge to consider whether claimant's knee's giving out on the stairs at home caused the tear and if this incident was the natural or unavoidable result of the bumping incident at work, stating that employer remains liable for the natural and/or unavoidable consequences of the original injury. *Id.*, slip op. at 4.

On remand, the administrative law judge invoked the Section 20(a) presumption based on Dr. Phillips's statement that it is "possible" that the bumping accident at work predisposed claimant's knee to a tearing injury at home. The administrative law judge further, found, however, that Dr. Phillips's opinion also rebutted the Section 20(a) presumption, as he stated that it was "not probable" that claimant's work injury predisposed claimant to the tearing injury. As claimant did not present any evidence affirmatively linking the incident at home to the work accident, the administrative law judge denied benefits based on the record as a whole.

On appeal, claimant contends the administrative law judge erred in finding Dr. Phillips's opinion sufficient to establish rebuttal of the Section 20(a) presumption. Employer has not responded to this appeal.

Once, as here, the Section 20(a) presumption is invoked, employer may rebut the presumption by introducing substantial evidence that claimant's disabling condition is not

work-related. *See Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). If the Section 20(a) presumption is rebutted, it falls from the case and the administrative law judge must weigh all relevant evidence to determine if claimant's injury is work-related, with claimant bearing the burden of proof. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

Dr. Phillips stated that "it is unlikely that [claimant] sustained an injury of this extent coming down stairs and having his knee give way. However, it is possible that the injury . . . occurred as he described when his knee gave way coming down stairs at home." EX 3.[1] When asked in a letter from employer's counsel if the bumping accident at work pre-disposed claimant to the tearing injury at home, Dr. Phillips wrote in the margin "possible but not probable." EX 5. The administrative law judge acknowledged that Dr. Phillips did not give a reason for his opinion, but nevertheless found it sufficient to rebut the Section 20(a) presumption as Dr. Phillips stated it was more probable than not that the work accident did not cause claimant's injury.

Initially, we reject claimant's contention that the administrative law judge improperly used Dr. Phillips's opinion both to invoke the Section 20(a) presumption and to rebut it. The burden on claimant to establish invocation of the Section 20(a) presumption is a light one; he need only introduce evidence that the work injury *could have* caused the resultant harm, but need not introduce evidence that it actually did so. *See generally Moore*, 126 F.3d at 262, 31 BRBS at 123(CRT); *Champion v. S & M Traylor Bros.*, 690 F.2d 285, 15 BRBS 33(CRT) (D.C. Cir. 1982); *Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990). Thus, the fact that Dr. Phillips's statement that it is possible that the work injury predisposed claimant to a tearing injury is sufficient to invoke the Section 20(a) presumption does not preclude the administrative law judge from considering whether the rest of Dr. Phillips's opinion is sufficient to rebut the Section 20(a) presumption.

We also affirm the administrative law judge's finding that Dr. Phillips's opinion is sufficient to rebut the Section 20(a) presumption. The Board stated in its previous decision that Dr. Phillips did not explicitly state that his opinion as to the causal relationship between claimant's knee injury and the work injury was based on a

[1]Dr. Phillips stated this type of injury is more often seen with a sports injury. EX 3.

reasonable degree of medical certainty. *See Speller*, slip op. at 4 n.1. Nonetheless, the Board remanded the case for the administrative law judge to determine the sufficiency of Dr. Phillips's opinion as rebuttal evidence. The administrative law judge found that although Dr. Phillips did not provide a rationale for his opinion, his opinion was given to a reasonable degree of medical certainty because he stated it was more probable than not that the work accident did not predispose claimant to the injury he sustained. Decision and Order on Remand at 3, citing *Ross Laboratories v. Barbour*, 412 S.E.2d 205 (Va. Ct. App. 1991) (stating that "reasonable degree of medical certainty" means "more probable not"). Indeed, a physician need not rule out all possibilities regarding the cause of the claimant's condition before his opinion that the condition is not work-related may be found sufficient to rebut the Section 20(a) presumption. *See Bath Iron Works Corp. v. Director, OWCP*, 137 F.3d 673, 32 BRBS 45(CRT) (1st Cir. 1999); *see also Conoco, Inc.,* 194 F.3d 684, 33 BRBS 187(CRT). In this case, the administrative law judge rationally found that Dr. Phillips's opinion constitutes substantial evidence rebutting the Section 20(a) presumption as Dr. Phillips stated it was more probable than not that claimant's anterior cruciate ligament tear and meniscal injury did not occur on the stairs at home, nor as a result of the accident at work. *See Moore,* 126 F.3d at 263, 31 BRBS at 123(CRT)*; see also Bath Iron Works,* 137 F.3d at 675, 32 BRBS at 46-47(CRT). Thus, we affirm the administrative law judge's finding that employer rebutted the Section 20(a) presumption. *Id.* As claimant does not challenge the administrative law judge's finding that claimant did not establish that his injury is work-related based on the record as a whole, we affirm the denial of benefits.

Accordingly, the administrative law judge's Decision and Order on Remand denying benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL

Administrative Appeals Judge