BRB No. 02-0569

DAVE SAMUELS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
NORTH FLORIDA SHIPYARDS	)	DATE ISSUED: MAR 28, 2003
	)	
Self-Insured	)	
Employer-Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order and Order Denying Reconsideration of John C. Holmes, Administrative Law Judge, United States Department of Labor.

Douglas E. Daze, Jacksonville, Florida, for claimant.

E. Clayton Harland II (Cole, Stone, Stoudemire, & Morgan, P.A.), Jacksonville, Florida, for self-insured employer.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (01-LHC-1481) of Administrative Law Judge John C. Holmes 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. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant fell into an open hatch on April 16, 1996, during the course of his employment with employer as a welder. He was initially treated for cuts and abrasions on his right leg and shin. Claimant quit working for employer in June 1996. In July 1996, claimant reported, *inter alia*, bilateral shoulder pain to his family

physician, Dr. Pennick, which claimant attributed to the work injury. Claimant related that he had extended his arms on the outside of the hatch and had broken his fall by catching himself under his armpits. Dr. Pennick referred claimant to Dr. Jones, who treated claimant from August 22 to October 10, 1996. Claimant sought treatment for bilateral shoulder pain from Dr. Kitay commencing in May 1998. Dr. Kitay diagnosed impingement syndrome, and he performed an arthroscopy on claimant's left shoulder with a subacromial decompression on December 16, 1998. Claimant sought medical benefits under the Act for treatment of his left shoulder. 33 U.S.C. §907. In a decision issued by Administrative Law Judge Ralph A. Romano, claimant's left shoulder condition was found related to his April 16, 1996, work injury, and he was awarded medical benefits. *Samuels v. North Florida Shipyards*, 1997-LHC-2362 (Sept. 14, 2000). Subsequently, claimant requested from employer medical treatment for his right shoulder, which employer denied.

In his decision, Administrative Law Judge John C. Holmes (the administrative law judge) found that claimant demonstrated a *prima facie* case that his right shoulder condition is related to the April 16, 1996, work injury, which employer failed to rebut. Alternatively, assuming employer established rebuttal of the Section 20(a) presumption, the administrative law judge found that claimant established by a preponderance of the evidence that his right shoulder condition is related to the work injury. Accordingly, claimant was awarded medical benefits, payable by employer. Employer's motion for reconsideration was summarily denied.

On appeal, employer challenges the administrative law judge's finding that claimant's right shoulder condition is related to his April 16, 1996, work injury. Claimant responds,
urging affirmance.

Employer initially contends that the administrative law judge erred by invoking the Section 20(a) presumption, 33 U.S.C. §920(a). Specifically, employer asserts that claimant's testimony is not sufficient to invoke the presumption linking claimant's shoulder condition to the April 16, 1996, work injury. In order to be entitled to invocation of the Section 20(a) presumption, claimant must establish his *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. *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *see also U.S. Industries/Federal Sheet Metal, Inc., v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). Claimant, in establishing his *prima facie* case, is not required to prove by affirmative medical evidence that the accident or working conditions in fact caused the harm; rather, claimant must show only the existence of an accident or working conditions, which could conceivably cause the harm alleged. *See Sinclair v. United Food & Commercial Workers,* 23 BRBS 148 (1989).

We hold that the administrative law judge properly invoked the Section 20(a) presumption, as it is undisputed that claimant has right shoulder impingement

syndrome, and that claimant sustained a work injury on April 16, 1996.[1] EXS 8, 12; s*ee generally Marinelli v. American Stevedoring, Ltd.*, 34 BRBS 112 (2000), *aff'd*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001). In this regard, claimant's testimony that, on April 16, 1996, he broke his fall into the open hatch by extending his arms and catching himself under his armpits, and his linking of his subsequent shoulder symptomatology to this fall is sufficient evidence to invoke the Section 20(a) presumption. Tr. at 24-30; *see generally Quinones v. H.B. Zachery, Inc.*, 32 BRBS 6 (1998), *aff'd in pert. part,* 206 F.3d 474, 34 BRBS 23(CRT) (5th Cir. 2000). Moreover, the administrative law judge credited claimant's report to Dr. Rukab on May 3, 1996, of a right arm injury, and bilateral shoulder complaints to Dr. Pennick on July 17, 1996, and to Dr. Jones on August 22, 1996. EXS 2 at 6; 5 at 6; 7 at 6. As the administrative law judge's finding is rational and supported by substantial evidence, we affirm the administrative law judge's invocation of the Section 20(a) presumption. *Quinones*, 32 BRBS 6.

Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut that presumption with 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. Dep't of the Army/NAF*, 34 BRBS 39 (2000). If the presumption is rebutted, it falls from the case and claimant bears the burden of persuading the fact-finder, based on the record as a whole, that his injury is work-related. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

We need not address employer's contention that the administrative law judge erred in finding that it did not produce substantial evidence to rebut the Section 20(a) presumption, as substantial evidence supports the administrative law judge's finding, based on the record as a whole, that claimant's right shoulder condition is work-related. We reject employer's contention that the administrative law judge erred in discrediting the opinions of Drs. Campbell and Franco that claimant's right shoulder impingement syndrome is not related to the work injury. EXS 8; 13 at 9-16; Sept. 17, 2001, deposition of Dr. Franco at 12-14, ex 1. The administrative law judge found that, contrary to the opinions of these physicians, claimant did complain of right arm pain shortly after the accident, on May 3, 1996, but that both claimant and Dr. Rukab were more immediately concerned with claimant's open shin wound. CX 5; Tr. at 26-27. The administrative law judge also observed that claimant complained of bilateral shoulder pain to Dr. Pennick on July 17, 1996, EX 2 at 6, and to Dr. Jones on August 22, 1996, who stated that claimant's left shoulder pain was slower to resolve than that on the right side. EX 7 at 6. The administrative law judge also gave less weight to the opinions of Drs. Campbell and Franco because their single

[1] Moreover, in its Post-Hearing Brief to the administrative law judge, employer conceded that claimant is entitled to the Section 20(a) presumption. Final Argument at 5.

examinations of claimant occurred long after the date of the April 1996 injury. Finally, both Dr. Jones and claimant's treating physician, Dr. Kitay, opined that claimant's right shoulder condition is related to his work injury. CX 1 at 1, 3.

The Board is not empowered to reweigh the evidence. *See generally Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991). Because the medical records of Dr. Rukab, Pennick, and Jones, and the opinions of Drs. Jones and Kitay constitute substantial evidence in support of the conclusion that claimant's right shoulder condition is work-related, and as the administrative law judge's decision to credit this evidence is within his discretion as the fact-finder, *see generally Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961), we affirm the administrative law judge's finding and his consequent award of medical benefits.

Accordingly, the administrative law judge's Decision and Order awarding medical benefits and Order Denying Reconsideration are affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge