

G.V.)	
)	
Claimant-Respondent)	
)	
v.)	
)	
KELLOGG, BROWN & ROOT/SERVICE)	DATE ISSUED: 05/20/2009
EMPLOYERS INTERNATIONAL,)	
INCORPORATED)	
)	
and)	
)	
INSURANCE COMPANY OF THE STATE)	
OF PENNSYLVANIA)	
)	
Employer/Carrier-)	ORDER ON MOTION FOR
Petitioners)	RECONSIDERATION

Employer has filed a timely motion for reconsideration of the Board’s decision in *G.V. v. Kellogg, Brown & Root/Service Employers International, Inc.*, BRB No. 08-0322 (Sep. 29, 2008). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Claimant responds, urging the Board to reject employer’s motion.

In its decision, the Board, *inter alia*, addressed employer’s contentions that the administrative law judge erred in invoking the Section 20(a), 33 U.S.C. §920(a), presumption that claimant’s chronic idiopathic degenerative polyneuropathy (CIDP) is work-related and in finding that the evidence is insufficient to establish rebuttal of the presumption. The Board affirmed the administrative law judge’s finding that Dr. Vaughn’s opinion that claimant’s surgeries necessitated by the work injury and the gastrointestinal illness he suffered in Iraq could have caused claimant’s CIDP is sufficient to invoke the Section 20(a), presumption. *G.V.*, slip op. at 5. In addition, the Board affirmed the administrative law judge’s finding that employer did not rebut the Section 20(a) presumption. Although Dr. Mauldin stated that the arm injury claimant sustained in the work explosion did not cause the CIDP, he did not address whether the surgeries or gastrointestinal illness caused or precipitated the CIDP. Thus, claimant’s CIDP is compensable under the Act. *Id.* The Board also affirmed the award of total disability benefits.

In its motion for reconsideration, employer contends that the recent decision in *Amerada Hess Corp. v. Director, OWCP*, 543 F.3d 755, 42 BRBS 41(CRT) (5th Cir. 2008), requires reversal of the administrative law judge's decision. In *Amerada Hess*, the claimant suffered a work-related back injury for which he underwent surgery and had a series of steroid injections. At the hearing, the claimant testified that after the steroid treatments he began having heart problems and had had four heart attacks. He did not provide any medical documentation to support this allegation. The administrative law judge applied the Section 20(a) presumption to claimant's heart condition, found that employer did not rebut it, and found the heart condition compensable. The employer did not contest the administrative law judge's finding that the claimant suffered from a heart condition, but rather contested the administrative law judge's finding that claimant was entitled to the Section 20(a) presumption that this condition was related to his work-related back injury. The United States Court of Appeals for the Fifth Circuit agreed, holding that the Section 20(a) presumption applies only to the claim made. As claimant did not make a claim for a heart condition related to the back injury, but only for back and groin injuries, the administrative law judge erred in applying the Section 20(a) presumption to claimant's heart condition. *Amerada Hess*, 543 F.3d at 761, 42 BRBS at 49(CRT) (citing *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 613, 14 BRBS 631, 632 (1982)) ("the presumption by its terms cannot apply to a claim that has never been made"). The court held that under these circumstances the claimant must establish by substantial evidence that his subsequent condition arose naturally or unavoidably from the treatment for his work-related injury in order for the subsequent condition to be compensable.

This case is distinguishable from *Amerada Hess* in that claimant made a claim for the sequelae of the arm injury caused by the explosion at work. It is well settled that employer is liable for any sequelae resulting from the original injury. See, e.g., *Seguro v. Universal Maritime Service*, 36 BRBS 28 (2002); *Bass v. Broadway Maintenance*, 28 BRBS 11 (1994); *Thompson v. Lockheed Shipbuilding & Constr. Co.*, 21 BRBS 94 (1988); *Turner v. The Chesapeake & Potomac Telephone Co.*, 16 BRBS 255 (1984). In this case, claimant filed a claim for injuries to his left elbow and left arm resulting from the explosion and for injuries to "other parts of body, other related problems associated with injury and working conditions in Iraq." Cl. Ex. 2. Claimant therefore made a claim encompassing his allegation that his CIDP resulted from his employment injury. Therefore, the administrative law judge properly applied the Section 20(a) presumption to conditions that were part of the "claim" filed. See *Turner*, 16 BRBS 255. Moreover, the administrative law judge properly invoked the presumption because Dr. Vaughn opined that claimant's disabling CIDP could have been precipitated by his initial arm injury or

the subsequent surgeries therefore.¹ *G.V.*, slip op. at 4; Cl. Ex. 29 at 15, 27, 43. Consequently, we reject employer's argument that the Fifth Circuit's decision in *Amerada Hess* mandates a different result in this case. Therefore, we deny employer's motion for reconsideration.

Accordingly, employer's motion for reconsideration is denied, 20 C.F.R. §802.409, and the Board's decision affirming the award of benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

¹ Thus, unlike *Amerada Hess*, claimant submitted medical evidence in support of his claim. Moreover, the Board affirmed the administrative law judge's finding that Dr. Vaughn's opinion that claimant's neuropathic condition occurred while claimant was employed in Iraq, combined with his opinion that that the "more likely culprit" of claimant's condition was his gastrointestinal infection, which occurred while claimant was employed in Iraq, is sufficient to establish that claimant's work-related gastrointestinal condition also could have precipitated his CIDP. Cl. Ex. 29 at 26-27, 32.