BRB Nos. 11-0747
and 11-0747A

RONALD ANDERSON	)	
	)	
Claimant-Respondent	)	
Cross-Petitioner	)	
	)	
v.	)	
	)	
MURPHY MARINE SERVICES	)	DATE ISSUED: 05/24/2012
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION	)	
	)	
	)	
Employer/Carrier-Petitioners	)	
Cross-Respondents	)	DECISION and ORDER

Appeals of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

David M. Linker (Freedman and Lorry, P.C.), Cherry Hill, New Jersey, for claimant.

Christopher J. Field (Field Womack & Kawczynski), South Amboy, New Jersey, for employer/carrier.

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

PER CURIAM:

Employer appeals, and claimant cross-appeals, the Decision and Order (2010-LHC-02053) of Administrative Law Judge Ralph A. Romano 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. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant alleges that, on April 14, 2008, he experienced numbness in his hands while working for employer.[1] Claimant was diagnosed with bilateral carpal tunnel syndrome, and it was recommended that claimant undergo surgery for that condition. Employer declined to pay for the recommended surgery, asserting that claimant's condition is unrelated to his employment. Claimant subsequently filed a claim under the Act, seeking an award of medical benefits for the treatment of his bilateral carpal tunnel syndrome.

In his Decision and Order, the administrative law judge found that claimant is entitled to the benefit of the presumption at Section 20(a) of the Act, 33 U.S.C. §920(a), that his bilateral carpal tunnel syndrome is related to his employment with employer. The administrative law judge further found, however, that employer produced evidence, specifically the opinion of Dr. Patterson, contained in his deposition testimony, sufficient to rebut the presumption. Thereafter, the administrative law judge found that claimant established, based on the record as a whole, that his bilateral carpal tunnel syndrome is related to his employment with employer, and he consequently awarded claimant medical benefits, payable by employer, for the treatment of that condition. 33 U.S.C. §907.

On appeal, employer argues that the administrative law judge erred in finding that claimant's bilateral carpal tunnel syndrome is causally related to his work with employer. Claimant responds, urging affirmance of the administrative law judge's award of medical benefits. In his protective cross-appeal, claimant challenges the administrative law judge's finding that employer offered substantial evidence to rebut the presumed causal relationship between claimant's carpal tunnel syndrome and his employment with employer. Employer responds, urging affirmance of the administrative law judge's finding that it established rebuttal of the invoked Section 20(a) presumption.

We will first address claimant's protective cross-appeal in which claimant challenges the administrative law judge's finding that employer offered evidence sufficient to rebut the Section 20(a) presumption. Once, as in this case, the Section 20(a),

[1]Claimant has been employed as a longshoreman for approximately 27 years. In March 1988, claimant commenced working as a truck inspection report mechanic, a position which required that he inspect vehicles and replace lights and add engine oil or coolant as needed.

33 U.S.C. §920(a), presumption has been invoked, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See C & C Marine Maintenance Co. v. Bellows,* 538 F.3d 293, 42 BRBS 37(CRT) (3d Cir. 2008). Where aggravation of a pre-existing condition is at issue, employer must establish that work events neither directly caused the injury nor aggravated the pre-existing condition resulting in injury.[2] *Id.* If the administrative law judge finds that the Section 20(a) presumption is rebutted, he must weigh all of the evidence and resolve the causation issue based on the record as a whole with claimant bearing the burden of persuasion. *See 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).

In this case, claimant avers that the administrative law judge erred in finding that the testimony of Dr. Patterson is sufficient to establish rebuttal of the Section 20(a) presumption. We agree. While, as the administrative law judge found, Dr. Patterson opined that claimant's carpal tunnel syndrome was *caused* by a combination of his non-work-related diabetes and smoking habit, his opinion is legally insufficient to rebut the Section 20(a) presumption because he did not state that claimant's employment duties with employer, which required the use of his hands to change lights and vehicle fluids, did not aggravate claimant's pre-existing carpal tunnel syndrome or render his condition symptomatic. *C & C Marine Maintenance,* 538 F.3d 293, 42 BRBS 37(CRT); *see also Bath Iron Works Corp. v. Fields,* 599 F.3d 47, 44 BRBS 13(CRT) (1st Cir. 2010); *Newport News Shipbuilding & Dry Dock Co. v. Holiday,* 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009). Rather, Dr. Patterson acknowledged that the use of claimant's hands, whether at work or at home, would increase claimant's carpal tunnel symptoms. *See* Emp. Ex. 1 at 29-30. If claimant's work caused his underlying carpal tunnel syndrome to become symptomatic or otherwise worsened his symptoms, claimant has sustained a work injury. *See Gardner v. Director, OWCP,* 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981); *Pittman v. Jeffboat, Inc.,* 18 BRBS 212 (1986). Accordingly, as employer did not present substantial evidence that claimant's carpal tunnel syndrome was not aggravated or made symptomatic by his employment with employer, we reverse the administrative law judge's determination that employer rebutted the Section 20(a) presumption. *Holiday,* 591 F.3d 219, 43 BRBS 67(CRT).

[2]The aggravation rule provides that where an injury at work aggravates, accelerates or combines with a prior condition, the entire resultant disability is compensable. *Strachan Shipping Co. v. Nash,* 782 F.2d 513, 18 BRBS 45(CRT) (5th Cir. 1986) (en banc). This rule applies not only where the underlying condition itself is affected but also where the injury "aggravates the symptoms of the process." *Pittman v. Jeffboat, Inc.,* 18 BRBS 212 (1986).

Assuming, *arguendo*, that employer rebutted the Section 20(a) presumption, we also reject employer's challenge to the administrative law judge's finding that claimant established a causal connection between his carpal tunnel syndrome and his employment with employer based on the record as a whole. It is well-established that the administrative law judge is entitled to weigh the medical evidence and to draw his own inferences therefrom. *See 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). The administrative law judge set forth the relevant medical evidence of record and rationally found that claimant established through the deposition testimony of his treating physician, Dr. Sowa, and the deposition testimony of Dr. Patterson, acknowledging that any use of claimant's hands may increase his carpal tunnel symptoms, that his employment activities resulted in the manifestation of his carpal tunnel syndrome symptoms.[3] As employer did not rebut the Section 20(a) presumption and as the administrative law judge's finding on the record as a whole is supported by substantial evidence, we affirm the conclusion that claimant's carpal tunnel syndrome is related to his employment with employer.[4] *See generally Young v. Newport News Shipbuilding & Dry Dock Co.*, 45 BRBS 35 (2011). Therefore, we affirm the finding that employer is liable for medical benefits for the treatment of claimant's work injury, pursuant to Section 7. *See generally Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989).

[3]Dr. Sowa opined within a reasonable degree of medical certainty that claimant's bilateral carpal syndrome developed as a result of his repetitive activities while working for employer. He also noted that claimant's symptoms increased with the performance of his employment duties. *See* Cl. Ex. 1 at 10 – 12. The administrative law judge observed that a January 2010 medical journal article which Dr. Sowa had cited to support his analysis of the relationship between repetitive movement and carpal tunnel syndrome did not find a strong correlation between clerical work and carpal tunnel syndrome. The administrative law judge found that the uncertainty expressed in the article did not undermine Dr. Sowa's opinion because the article also states that the relationship between work-related activity and the development of carpal tunnel syndrome is "unanswered." Cl. Ex. 1 at Cx. 4 p. 149.

[4]The administrative law judge specified the evidence upon which he relied, and it supports the finding that the use of claimant's hands results in bilateral carpal tunnel syndrome symptoms. Thus, employer's assertion that the administrative law judge's decision fails to satisfy the Administrative Procedure Act is without merit, notwithstanding the terse nature of the administrative law judge's decision. *See generally Marinelli v. American Stevedoring, Ltd.*, 34 BRBS 112 (2000), *aff'd*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001).

Accordingly, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

_____
ROY P. SMITH
Administrative Appeals Judge

_____
REGINA C. McGRANERY
Administrative Appeals Judge

_____
JUDITH S. BOGGS
Administrative Appeals Judge