BRB No. 97-1107

PAULA M. RICHARDSON	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
ARMY & AIRFORCE EXCHANGE SERVICE	)	
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits and the Petition for Reconsideration of Alexander Karst, Administrative Law Judge, United States Department of Labor.

Paula M. Richardson, Seaside, California, *pro se.*

Roger A. Levy (Laughlin, Falbo, Levy & Moresi, LLP), San Francisco, California, for self-insured employer.

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

PER CURIAM:

Claimant, representing herself, appeals the Decision and Order Denying Benefits and Petition for Reconsideration (93-LHC-2659) of Administrative Law Judge Alexander Karst 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.,* as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). In an appeal by a claimant without representation by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and in accordance with law; if they are, they must be affirmed. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.,* 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3); 20 C.F.R. §§802.211(e), 802.220.

On August 23, 1987, claimant injured her left knee, hip, back and head when she tripped and fell over an electrical cord while working for employer. After receiving treatment, she returned to her usual employment duties as a cafeteria cashier on October 13, 1987. In December 1988, claimant was transferred from employer's main cafeteria to a snack bar; claimant asserts that her new work duties aggravated her neck and back conditions that were due, at least in part, to the August 1987 work injury. On May 9, 1989, claimant quit work, allegedly due to her ongoing neck and back pain. Claimant filed a claim for benefits under the Act alleging that the August 1987 injury aggravated a pre-existing psychiatric condition and either caused or aggravated her pre-existing neck and back conditions.

In his Decision and Order, the administrative law judge initially found that claimant's pre-existing psychiatric condition was not aggravated by the August 1987 fall. He next credited, without specificity, the "rather overwhelming contrary evidence" demonstrating that claimant is neither emotionally nor physically impaired as a result of the work injury, because claimant received extensive medical treatment for the same psychological and physical complaints both before and after the work injury. Accordingly, the claim for compensation was denied. Claimant's subsequent motion for reconsideration was summarily denied by the administrative law judge.

On appeal, claimant, representing herself, challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance.

We hold that the administrative law judge erred in determining whether claimant's present neck, back and psychological problems are causally related to her work injury. Specifically, in his Decision and Order, the administrative law judge did not consider whether claimant is entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption.[1] In order to be entitled to the Section 20(a) presumption, claimant must establish a *prima facie* case by showing that she suffered a harm and that either a work-related accident occurred or that working conditions existed which could have caused or aggravated the harm. *See Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990); *Perry v. Carolina Shipping Co.*, 20 BRBS 90 (1987); *see generally U. S. Industries/Federal Sheet Metal, Inc. v.*

[1]It is well-settled that a psychological impairment which is work-related is compensable under the Act. *Sanders v. Alabama Dry Dock & Shipbuilding Co.,* 22 BRBS 340 (1989). Furthermore, the Section 20(a), 33 U.S.C. §920(a), presumption is applicable in psychological injury cases. *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380, 384 n.2 (1990).

Director, OWCP, 455 U.S. 608, 14 BRBS 631 (1982). In order to establish her *prima facie* case, claimant is not required to affirmatively prove that her working conditions in fact caused the harm; rather, claimant need only establish that the working conditions could have caused the harm alleged. *See Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989). Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut it with substantial evidence that claimant's condition is not caused or aggravated by her 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); *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, he must weigh all of the evidence and resolve the causation issue based on the record as a whole. *See Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153 (1985).

In the instant case, it is undisputed that a work accident occurred on August 23, 1987, and that claimant suffers from neck and back pain and a psychological condition. Thus, claimant has established her *prima facie* case and is entitled to the Section 20(a) presumption that these conditions are causally related to her employment. *See James v. Pate Stevedoring Co.,* 22 BRBS 271 (1989). In analyzing the issue of causation, however, the administrative law judge did not apply the Section 20(a) presumption. Rather, without stating which evidence he relied upon, the administrative law judge concluded that claimant's neck and back complaints are not related to the work-related injury. Similarly, without reference to the Section 20(a) presumption, the administrative law judge relied solely on the opinion of Dr. Zeitz to find that claimant's psychological condition is not related to the work injury.[2] We, therefore, vacate the administrative law judge's finding on this issue, and remand the case for the administrative law judge to consider whether employer has rebutted the presumption with specific and comprehensive evidence. 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. *See Devine,* 23 BRBS at 279. Lastly, if the administrative law judge finds a causal relationship between claimant's conditions and her work injury, he must then consider the nature and extent of claimant's disability.

[2]Dr. Zeitz opined that the primary cause of claimant's psychiatric disability was a reaction to the onset of chronic problems associated with her legs.

Accordingly, the administrative law judge's Decision and Order Denying Benefits and Petition for Reconsideration are vacated, and the case is remanded for further proceedings consistent with this opinion.[3]

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

[3]We note that claimant recently filed a petition for modification with the administrative law judge. Our decision in this case does not affect claimant's right to pursue her claim for modification under Section 22 of the Act, 33 U.S.C. §922.