BRB No. 98-1178

MEDAT BALLANCA	)	
	)	
Claimant-Petitioner	)	DATE ISSUED: May 17, 1999
	)	
v.	)	
	)	
EKLOF MARINE	)	
	)	
and	)	
	)	
SIGNAL MUTUAL c/o LAMORTE BURNS AND COMPANY	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

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

Daniel J. Savino, Jr. (Caruso, Spillane, Contrastano & Ulaner, P.C.), New York, New York, for claimant.

Francis M. Womack III (Weber Goldstein Greenberg & Gallagher), Jersey City, New Jersey for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (97-LHC-1569) 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. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On April 5, 1996, claimant, while working as a pipefitter for employer, allegedly sustained a work-related injury which resulted in a right inguinal hernia and low back pain. Employer voluntarily paid claimant temporary total disability compensation from May 5, 1996 to June 17, 1996. 33 U.S.C. §908(b). On June 17, 1996, claimant returned to work at his usual employment duties with employer. Claimant was subsequently laid off two weeks later on June 30, 1996.

In his Decision and Order, the administrative law judge determined that claimant's post-injury return to work without help or complaints established that claimant was capable of performing his usual employment duties. Accordingly, the administrative law judge denied the claim for additional compensation benefits.

On appeal, claimant contends that the administrative law judge erred in denying him ongoing disability compensation. In addition, claimant asserts that the administrative law judge erred in not finding that his present back condition is related to his April 5, 1996, work-injury. Employer responds, urging affirmance.

Claimant initially contends that the administrative law judge erred in determining that claimant is capable of performing his usual employment duties with employer. It is well-established that claimant bears the burden of establishing the nature and extent of any disability sustained as a result of a work-related injury. *See Anderson v. Todd Shipyards Corp.,* 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding & Const. Co.,* 17 BRBS 56 (1985). In order to establish a *prima facie* case of total disability, claimant bears the burden of establishing that he is unable to return to his usual work. *See New Orleans (Gulfwide) Stevedores v. Turner,* 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981); *see also Palombo v. Director, OWCP,* 937 F.2d 70, 25 BRBS 1 (CRT)(2d Cir. 1991); *CNA Ins. Co. v. Legrow*, 935 F.2d 430, 24 BRBS 202 (CRT)(1st Cir. 1991); *Newport News Shipbuilding & Dry Dock Co. v. Tann,* 841 F.2d 540, 21 BRBS 10 (CRT)(4th Cir. 1988); *Roger's Terminal & Shipping Corp. v. Director, OWCP,* 784 F.2d 687, 18 BRBS 79 (CRT)(5th Cir. 1986), *cert. denied,* 479 U.S. 826 (1986); *Hooe v. Todd Shipyards Corp.,* 21 BRBS 258 (1988).

In the instant case, the administrative law judge credited the opinions of Drs. Nehmer and Rosenblum, which he found to be documented and well-reasoned, in concluding that claimant did not establish a *prima facie* case of total disability. In this regard, the administrative law judge determined that claimant's testimony was not credible, and that the opinions of Drs. Head and Campana, which relied in part upon claimant's related symptomatology, were thus worthy of little weight.

We reject claimant's contention that the administrative law judge erred in failing to give determinative weight to the opinion of Dr. Head. It is well-established

that an administrative law judge is not bound to accept the opinion of any particular medical examiner, but rather, is entitled to weigh the credibility of all witnesses and draw his own inferences from the evidence. *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); *Anderson,* 22 BRBS at 22. In the instant case, the administrative law judge rationally found that Dr. Head's opinion was not determinative as to the extent of claimant's disability. Contrary to claimant's argument on appeal, it was reasonable for the administrative law judge, in evaluating the reliability of Dr. Head's opinion, to take into account claimant's credibility. Moreover, in determining that claimant is capable of performing his usual employment duties, the administrative law judge specifically considered claimant's testimony that he in fact performed those duties during the two weeks preceding his layoff on June 30, 1996. Additionally, the administrative law judge accepted the opinions of Drs. Rosenblum and Nehmer, both of whom opined that claimant was capable of resuming his usual employment duties. Thus, as the administrative law judge's credibility determinations are rational and within his authority as factfinder, we affirm the administrative law judge's determination that claimant has failed to meet his burden of proving that he is incapable of performing his former occupational duties as a pipe-fitter. *See Chong v. Todd Pacific Shipyards Corp.,* 22 BRBS 242 (1989), *aff'd mem.,* 909 F.2d 1488 (9th Cir. 1990).

We agree with claimant, however, that the administrative law judge erred in failing to consider whether claimant's present back condition is causally related to his work injury. Our review of the record reveals that this issue was presented for adjudication before the administrative law judge. *See* Tr. at 8-9. In his Decision and Order, the administrative law judge, however, did not consider whether claimant was entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption of causation. In order to be entitled to the Section 20(a) presumption, claimant must establish a *prima facie* case by showing that he 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). In order to establish his *prima facie* case for invocation of the statutory presumption, claimant is not required to prove that his working conditions in fact caused the harm; under Section 20(a), it is presumed in the absence of substantial evidence to the contrary that the harm demonstrated is related to the proven work events. *See Sinclair v. United Food and 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 his employment. *See Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84 (1995); *Sam v. Loffland Bros. Co.*, 19 BRBS 228 (1987). It is employer's burden on

rebuttal to present specific and comprehensive evidence sufficient to sever the causal connection between the injury and the 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 Director, OWCP v. Greenwich Collieries,* 512 U.S. 267, 28 BRBS 43 (CRT)(1994); *Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153 (1985). As the administrative law judge made no findings regarding this issue, we remand the case for the administrative law judge to consider whether claimant is entitled to invocation of the Section 20(a) presumption with regard to his back injury, and if so, whether employer has established rebuttal of the presumption.[1]

Accordingly, the case is remanded to the administrative law judge for consideration of the issue of the alleged causal relationship between claimant's present back condition and his employment with employer. In all other respects, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

[1]We note that an injury need not be economically disabling in order for claimant to be entitled to reimbursement of medical expenses; rather, Section 7 of the Act, 33 U.S.C. §907, requires only that the injury be work-related. *See Ballesteros v. Willamette W. Corp.,* 20 BRBS 184 (1988).