BRB No. 12-0102

ALFRED HOOKER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NORTHROP GRUMMAN SHIPBUILDING, INCORPORATED	)	DATE ISSUED: 11/14/2012
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Charlene A. Morring (Montagna Klein Camden, LLP), Norfolk, Virginia, for claimant.

Benjamin M. Mason (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (2011-LHC-00178) of Administrative Law Judge Richard K. Malamphy 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).

In 2005, claimant sustained a work-related injury to his left knee and was diagnosed with a meniscal tear. Dr. Schaffer performed arthroscopic surgery on claimant's left knee on March 14, 2005. Employer paid claimant medical benefits and permanent partial disability benefits for a ten percent impairment to his left knee, 33 U.S.C. §§907, 908(c)(2), and claimant returned to work for employer with permanent

restrictions. Subsequently, claimant alleged that, as of May 3, 2010, working conditions caused him to sustain an aggravation or new injury to his left knee. On June 18, 2010, Dr. Schaffer performed a second arthroscopic surgery on claimant's left knee, and, following his recovery, claimant returned to work for employer with his restrictions unchanged. Claimant filed a claim for temporary total disability benefits for the period of May 3 through August 30, 2010, when he was unable to work. Employer paid claimant "sickness and accident" pay and medical benefits, but controverted the claim for disability benefits under the Act.

The administrative law judge found that claimant did not establish his prima facie case of a work-related injury because he did not demonstrate that a work accident occurred or working conditions existed which could have caused his knee injury. Therefore, the administrative law judge did not invoke the Section 20(a) presumption, 33 U.S.C. §920(a), and he denied benefits on this basis. Decision and Order at 8. Nevertheless, the administrative law judge continued his analysis and, assuming, *arguendo*, that claimant was entitled to the Section 20(a) presumption, he found that employer rebutted the presumption based on Dr. Schaffer's statement that the 2010 condition was a "continuation" of the 2005 injury. On weighing the evidence as a whole, the administrative law judge found that claimant failed to establish that his current knee injury is related to his working conditions. *Id.* at 8-9. On appeal, claimant contends the administrative law judge erred in denying his claim for temporary total disability benefits. Employer responds, urging affirmance of the administrative law judge's decision.

In determining whether an injury is work-related, a claimant is aided by the Section 20(a) presumption, which may be invoked only after he establishes a prima facie case. To establish a prima facie case, the claimant must show that he sustained a harm or pain and that conditions existed or an accident occurred at his place of employment which could have caused the harm or pain. *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). Under the aggravation rule, if a claimant's employment causes an injury that contributes to, combines with or aggravates a pre-existing condition, the entire resultant condition is compensable. *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009). Once the claimant establishes a prima facie case, Section 20(a) applies to relate the disabling injury to the employment, and the employer can rebut this presumption by producing substantial evidence that the injury is not related to the employment. *Id.* If the employer rebuts the presumption, it no longer controls, and the issue of causation must be resolved on the evidence of record as a whole with the claimant bearing the burden of persuasion. *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).

Claimant contends the administrative law judge erred in finding that he did not establish his prima facie case and is not entitled to invocation of the Section 20(a) presumption. We agree. To be entitled to invocation of the presumption, claimant must show he suffered a harm and there were working conditions that could have caused that harm. As the administrative law judge found, it is undisputed that claimant suffered a left knee injury for which he underwent arthroscopic surgery in 2010. The administrative law judge also acknowledged that claimant's deposition testimony regarding his working conditions and activities is uncontroverted, as claimant testified that he had to walk on gravel and uneven surfaces and climb in and out of forklifts. Decision and Order at 7. Claimant testified that these activities bothered his knee. Cl. Ex. 17 at 13-14, 28-29. This undisputed evidence is sufficient to establish a prima facie case and, thus, to invoke the Section 20(a) presumption. *See, e.g., Obadiaru v. ITT Corp.*, 45 BRBS 17 (2011); *Addison v. Ryan-Walsh Stevedoring Co.*, 22 BRBS 32 (1989). Moreover, it was erroneous for the administrative law judge to require claimant to offer medical evidence affirmatively relating his work activities to his knee injury. *See, e.g., Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141 (1990); *Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989). Accordingly, we reverse the administrative law judge's finding that claimant did not establish the existence of working conditions that could have caused his knee injury. Therefore, claimant has established a prima facie case and is entitled to the Section 20(a) presumption that his 2010 knee injury was caused or aggravated by his employment activities. *See, e.g., Peterson v. General Dynamics Corp.*, 25 BRBS 71 (1991), *aff'd sub nom. INA v. U.S. Dep't of Labor*, 969 F.2d 1400, 26 BRBS 14(CRT) (2d Cir. 1992), *cert. denied*, 507 U.S. 909 (1993).

Claimant next contends the administrative law judge erred in finding that employer rebutted the Section 20(a) presumption. An employer must submit substantial evidence to rebut the presumption that the injury was caused or aggravated by the claimant's employment. *Holiday*, 591 F.3d at 226, 43 BRBS at 69-70(CRT). The administrative law judge relied on Dr. Schaffer's statement that claimant's condition "is a continuation" of his 2005 injury to conclude that claimant's current knee condition is the "natural and unavoidable consequence" of the 2005 knee injury and, therefore, is not compensable. Decision and Order at 8. Although Dr. Schaffer did state that claimant's condition was a continuation of the earlier injury, he did not state that claimant's condition is the "natural and unavoidable" result of his 2005 knee injury. Rather, he explained in his deposition that claimant's pathology in 2010 was more "widespread"

than in 2005.[1] Dr. Schaffer opined that the most common reason for the widespread changes is wear and tear from any heavy activity, work-related or otherwise. Dr. Schaffer stated that claimant's knee changes were incompatible with a recent specific event and were more likely persistent over a period of time. Cl. Ex. 18 at 8-12.

The administrative law judge did not address the entirety of Dr. Schaffer's opinion in considering whether it constitutes substantial evidence sufficient to rebut the Section 20(a) presumption. Employer must present substantial evidence that claimant's knee condition was not caused, aggravated, or contributed to by his working conditions. *Holiday*, 591 F.3d at 226, 43 BRBS at 69-70(CRT). Accordingly, we vacate the finding that employer rebutted the Section 20(a) presumption, and the alternate finding on the record as a whole that claimant's knee condition was not caused or aggravated by his continued employment. We remand the case for further consideration of Dr. Schaffer's opinion in its entirety. If the administrative law judge determines that Dr. Schaffer's opinion rebuts the Section 20(a) presumption, then the presumption falls out, and he must address the causation issue based on the record as a whole with claimant bearing the burden of persuasion. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT). Although the administrative law judge already evaluated the record as a whole, we are unable to affirm his finding because he has not explained why this injury is not compensable.[2] If employer did not present sufficient evidence to rebut the Section 20(a) presumption, then claimant's left knee condition is work-related as a matter of law, and the administrative law judge must determine the benefits to which claimant is entitled. *See Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988).

[1]Dr. Schaffer explained that claimant's 2005 surgery was for medial and lateral meniscal tears in the left knee. Cl. Ex. 18 at 5; Cl. Exs. 3, 5. The 2010 surgery repaired meniscal tearing and fraying and revealed articular cartilage damage, moderate erosion of the medial and lateral femoral condoyles and the patellar femoral joint. Cl. Ex. 18 at 7-8.

[2]Specifically, in finding that employer rebutted the Section 20(a) presumption, the administrative law judge stated that claimant's 2010 injury is the natural and unavoidable result of his 2005 injury. However, the 2005 injury was a work-related injury, and an injury which is the natural progression of a work injury is compensable unless some other defense is applicable. *Admiralty Coatings Corp. v. Emery*, 228 F.3d 513, 34 BRBS 91(CRT) (4th Cir. 2000). Employer asserts in its brief that claimant's 2010 injury is the natural progression of his 2005 injury and, therefore, his entitlement to disability compensation for his 2010 injury is time-barred. On remand, if the administrative law judge considers the record as a whole, he must explain why claimant would not be entitled to benefits for this injury.

Accordingly, the administrative law judge's finding that claimant is not entitled to invocation of the Section 20(a) presumption is reversed, and the finding that claimant is not entitled to temporary total disability benefits is vacated. The case is remanded for reconsideration consistent with this opinion.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge