BRB No. 12-0155

MATTHEW HAMILTON	)	
Claimant-Petitioner	)	
v.	)	
SERVICE EMPLOYEES INTERNATIONAL, INCORPORATED	)	DATE ISSUED: 11/20/2012
and	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order – Award of Benefits of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

John M. Schwartz (Blumenthal, Schwartz & Saxe, P.A.), Titusville, Florida, for claimant.

Christopher P. Carr (Kelley, Kronenberg, Gilmartin, Fichtel, Wander, Bamdas, Eskalyo & Dunbrack, P.A.), Chicago, Illinois, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order – Award of Benefits (2010-LDA-336) of Administrative Law Judge Larry S. Merck 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 Defense Base Act, 42 U.S.C. §1651 *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 November 23, 2008, claimant injured his back while working as an electrician for employer in Iraq.[1] Following this work-related incident, claimant sought medical treatment in Iraq, but ultimately returned to the United States for additional medical care. On December 3, 2008, claimant commenced treatment with Dr. Ansorge for his back complaints. Claimant was released to return to work on December 18, 2008, whereupon he obtained stateside employment with utility companies. Claimant continued to experience back symptoms for which he sought medical care. Claimant filed a claim for benefits under the Act alleging that his continued back pain and consequent physical restrictions are related to the injury he sustained working for employer in Iraq.

In his Decision and Order, the administrative law judge found that claimant sustained a compensable work-related back injury while working for employer on November 23, 2008, and that claimant's condition reached maximum medical improvement and his condition resolved on December 18, 2008, the day claimant was released to return to work. Accordingly, the administrative law judge awarded claimant temporary total disability benefits from November 23 through December 18, 2008. 33 U.S.C. §908(b). The administrative law judge denied claimant's request for medical benefits subsequent to December 18, 2008.

On appeal, claimant challenges the administrative law judge's denial of his claim for ongoing disability and medical benefits under the Act. Employer responds, urging affirmance of the administrative law judge's decision in its entirety. Claimant has filed a reply brief.

Claimant contends the administrative law judge erred in denying all disability and medical benefits subsequent to December 18, 2008, the date Dr. Ansorge first stated that claimant could return to work without restrictions. In support of his contention of error, claimant asserts that he presented sufficient evidence for the Section 20(a) presumption to apply to his present complaints of back pain; specifically, claimant contends the administrative law judge erred in not applying Section 20(a) to presume that these complaints are related to claimant's November 23, 2008, work-related injury. We agree that the administrative law judge's decision cannot be affirmed and, for the reasons that follow, we remand the case to the administrative law judge for further consideration.

In order to be entitled to the benefit of the presumption set forth in Section 20(a) of the Act, 33 U.S.C. §920(a), claimant must establish a prima facie case by showing that he sustained a harm and that an accident occurred or working conditions existed which could have caused the harm. *See Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14

[1]Claimant had undergone an L5-S1 fusion in 1999.

BRBS 631 (1982). Once claimant has established his prima facie case, this presumption links claimant's harm to his employment. *See Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000).

Once the Section 20(a) presumption is 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 Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert. denied*, 540 U.S. 1056 (2003); *Hunter*, 227 F.3d 285, 34 BRBS 96(CRT); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). Employer can rebut the presumption by producing substantial evidence that claimant's back condition was caused by a subsequent, non work-related event. In this regard, it is well-established that employer remains liable for the natural progression of a work-related injury. *See, e.g., Admirality Coatings Corp. v. Emery,* 228 F.3d 513, 34 BRBS 91(CRT) (4th Cir. 2000). Thus, if a claimant sustains an injury at work which is followed by the occurrence of a subsequent injury or aggravation either outside of work or for a non-covered employer, the covered employer is liable for the entire disability and for medical expenses due to both injuries if the subsequent injury is the natural or unavoidable result of the original work injury. 33 U.S.C. §902(2); *see James v. Pate Stevedoring Co.,* 22 BRBS 271 (1989). If, however, the subsequent progression of the claimant's condition is not a natural or unavoidable result of the work injury, but is the result of an intervening cause, the covered employer is relieved of liability for disability attributable to the intervening cause. *Bludworth Shipyard, Inc. v. Lira*, 700 F.2d 1046, 15 BRBS 120(CRT) (5th Cir. 1983). The covered employer, however, remains liable for any disability attributable to the work injury notwithstanding the supervening injury, *see Macklin v. Huntington Ingalls, Inc.,* 46 BRBS 31 (2012); the covered employer is absolved of all liability for further benefits only if the subsequent injury is the sole cause of claimant's disability. *See Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9 (2001), *aff'd mem.*, 32 F.App'x 126 (5th Cir. 2002).

In this case, the administrative law judge, without specifically addressing Section 20(a) of the Act, found that claimant suffered a work-related back injury, which is compensable under the Act, while working for employer on November 23, 2008. *See* Decision and Order at 23. After determining that claimant's back condition reached maximum medical improvement and that claimant was released to return to work on December 18, 2008, the administrative law judge awarded claimant temporary total disability benefits from his date of injury through December 18, 2008. 33 U.S.C. §908(b); *see* Decision and Order at 23-31. As claimant correctly contends, however, the administrative law judge did not proceed to address claimant's claim that his present back symptoms, which arose subsequent to December 18, 2008, are related to his November 23, 2008, injury. Rather, the administrative law judge concluded his consideration of claimant's claim once he determined that claimant was released to return to work on December 18, 2008. The Section 20(a) presumption applies in determining whether

claimant's continuing back complaints are work-related.[2] *See Amerada Hess Corp. v. Director, OWCP*, 543 F.3d 755, 42 BRBS 42 (CRT) (5th Cir. 2008). As it is undisputed that claimant sustained a work-related back injury on November 23, 2008, claimant has established his prima facie case and is entitled to the Section 20(a) presumption that his present back condition is related to his employment. *See Hunter*, 227 F.3d 285, 34 BRBS 96(CRT). We, therefore, remand this case for the administrative law judge to address whether employer has rebutted the presumption with substantial evidence. *See Conoco*, 194 F.3d 684, 33 BRBS 187(CRT). 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 Ceres Gulf, Inc. v. Director, OWCP*, 683 F.3d 225, 46 BRBS 25(CRT) (5th Cir. 2012); *see also Director, OWCP, v. Greenwich Collieries*, 512 U.S. 257, 28 BRBS 43(CRT) (1994). Should the administrative law judge find established a causal connection between claimant's present back condition and his employment injury, he must address any remaining issues concerning this injury, such as whether disability results from it.

Claimant further contends that the administrative law judge erred in failing to find employer liable for medical expenses necessitated by his current back symptoms. Section 7(a) of the Act, 33 U.S.C. §907(a), states that "[t]he employer shall furnish such medical, surgical, and other attendance or treatment . . . for such period as the nature of the injury or the process of recovery may require." *See Brooks v. Newport News Shipbuilding & Dry Dock Co.*, 26 BRBS 1 (1992), *aff'd sub nom. Brooks v. Director, OWCP*, 2 F.3d 64, 27 BRBS 100(CRT) (4th Cir. 1993); *Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988). Medical care must be appropriate for the injury, 20 C.F.R. §702.402, and claimant must establish that the requested services are reasonable and necessary for the treatment of the work injury. *See Ezell v. Director Labor, Inc.*, 37 BRBS 11 (2003); *Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988).

In his decision, the administrative law judge discussed the issue of claimant's entitlement to medical benefits and concluded only that,

> I found that Claimant reached MMI for his injury on December 18, 2008. Thus, Claimant is not entitled to any further medical benefits for his November 23, 2008, injury as Claimant fully recovered from his injury on December 18, 2008.

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[2]In support of his claim for ongoing benefits, claimant presented the opinions of Drs. Ansorge and Dall, both of whom related claimant's present back symptoms to his November 23, 2008, work injury. *See* CXs 9, 16, 17. Beginning in October 2009, claimant sought medical treatment for increased back pain that radiated down his right leg. Claimant testified he continued to work out of financial necessity. Tr. at 27-28. Dr. Ansorge placed restrictions on claimant's ability to work on November 30, 2009. CX 9 at 53.

Decision and Order at 32. We agree with claimant that the administrative law judge erred by not addressing claimant's entitlement to medical treatment subsequent to December 18, 2008. Claimant is entitled to medical benefits for a work-related injury even if that injury is not economically disabling so long as the treatment is necessary for his work injury. *See Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993); *Buckland v. Dep't of the Army/NAF/CPO*, 32 BRBS 99 (1997).[3] If, on remand, the administrative law judge finds that claimant's present back condition is work-related, employer is liable for reasonable and necessary medical treatment of that condition. 33 U.S.C. §907(a); *Weikert v. Universal Maritime Serv. Corp.*, 36 BRBS 38 (2002). Accordingly, as the administrative law judge did not address this issue, we vacate the administrative law judge's denial of medical benefits subsequent to December 18, 2008, and remand the case for further findings.

Accordingly, we vacate the administrative law judge's denial of disability and medical benefits subsequent to December 18, 2008, and we remand the case for further findings in accordance with this decision. In all other respects, the administrative law judge's Decision and Order – Award of Benefits is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

[3]In this regard, Dr. Ronan, following a June 24, 2010, examination of claimant, found that claimant experienced a "temporary aggravation of symptoms" in October 2009, that claimant reported the onset of pain with vigorous activity, and that physical therapy – which would be related to claimant's November 2008 event - would not be unreasonable. *See* EX 10. The reports of Drs. Ansorge and Dall similarly document claimant's complaints of back discomfort following his release to return to work on December 18, 2008, and suggest that claimant would benefit from additional medical testing. *See* CXs 9, 16, 17.