BRB No. 11-0280

EDDIE KNIGHT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MURPHY MARINE SERVICES	)	DATE ISSUED: 10/21/2011
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LIMITED	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

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

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

Joseph E. Kawczynski (Field Womack & Kawczynski, LLC), South Amboy, New Jersey, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (2010-LHC-0007) of Administrative Law Judge Janice K. Bullard 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 administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are 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, a diabetic, was involved in an automobile accident at work on September 24, 2007; he has no memory of the incident. He was discovered incoherent in his own personal car, which had been damaged when he hit a ramp railing, leaving the front left wheel hanging over the end of a pier. Claimant testified that he went to work and was assigned to unhook containers on a container ship. Although he was scheduled to work with two other men, they did not arrive on time, so he unhooked the containers himself; the job took longer than it would have had they been there. Because claimant had not taken his medicine before work, he planned to go to his car when he finished the job to take his insulin. However, because he needed food to take with the insulin, he wished to drive the car to get something to eat. Claimant asked his foreman if he could do so, but the foreman told him to stay on the job until he, the foreman, returned from a meeting. During the break between his jobs, claimant went to his car. Claimant stated that the next thing he remembered was being treated by paramedics. Tr. at 17-27. Claimant filed a claim for temporary total disability benefits for the period of September 25, 2007, to March 2, 2008, alleging injury to his back, neck, and lower extremities resulting from the accident.

The administrative law judge found the evidence sufficient to invoke the Section 20(a), 33 U.S.C. §920(a), presumption, linking claimant's injuries to his employment. She also found that employer presented sufficient evidence to rebut the Section 20(a) presumption based on Dr. Springer's opinion that the accident was caused by a hypoglycemic episode which was due to claimant's non-compliance with the medical protocols to control his diabetes. Decision and Order at 13. Considering the remaining evidence of record, the administrative law judge found that claimant failed to establish that he was unable to work due to a work-related injury. Accordingly, she denied the claim for compensation and medical benefits. *Id.* at 15-16. Claimant appeals the denial of benefits, and employer responds, urging affirmance.

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. 33 U.S.C. §920(a). Once the claimant establishes a *prima facie* case, as here,[1] Section 20(a) applies to relate the injury to the employment, and the burden is on the employer to rebut this presumption by producing substantial evidence that the injury is not related to the employment. *C&C Marine Maintenance Co. v. Bellows*, 538 F.3d 293, 42 BRBS 37(CRT) (3d Cir. 2008). If the employer rebuts the presumption, it no longer

[1]The administrative law judge found that claimant established a *prima facie* case because claimant sustained physical injuries in an automobile accident at work. Employer concedes in its brief on appeal that the administrative law judge properly invoked the Section 20(a) presumption based on the facts of this case. *See, e.g., Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997).

controls and the issue of whether there is a causal relationship 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).

The administrative law judge credited Dr. Springer's opinion to find employer established rebuttal of the Section 20(a) presumption. Decision and Order at 13; Emp. Ex. 19; Tr. at 74-84. Dr. Springer stated that the car accident was due to claimant's hypoglycemic episode, which was bought on by claimant's non-compliance with his medical protocol. Dr. Springer opined that the complications attendant to claimant's diabetes were not related to his work, as claimant has a long history of being non-compliant with his doctors' instructions to control his diabetes.[2] While Dr. Springer admitted that the accident might not have occurred had claimant's supervisor allowed him to eat when claimant requested, Dr. Springer also stated that there is no way of knowing how hypoglycemic claimant was at that time of his request, so that he may already have been impaired because claimant had not taken his medication. Dr. Springer also noted that claimant's AIC levels are constantly high, indicating that control of his blood sugar was not good, and that had he taken enough glucose pills that would have helped him. Claimant admitted that he had not tested his blood sugar levels before work that morning, that he did not eat before work, that he had driven past a food cart on his way into work, and that he had glucose tablets in his car but forgot to take them. Tr. at 24-25, 40, 47, 73-75, 78. As Dr. Springer's opinion constitutes substantial evidence that claimant's injuries were not related to his work, we affirm the administrative law judge's finding that employer rebutted the Section 20(a) presumption. *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT) (9th Cir. 2010); *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir. 2003), *cert. denied*, 540 U.S. 1056 (2003); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000).

In addressing the evidence as a whole, the administrative law judge correctly stated that no physician opined that claimant's car accident was caused by anything other than his hypoglycemia, which is not work-related. Moreover, the administrative law judge properly found that claimant was not required to be in his car for a work-related purpose. Thus, the administrative law judge properly concluded that claimant did not establish by a preponderance of the evidence that any injuries which prevented his return

[2]Claimant was diagnosed with diabetes in 1987 and has had six documented hypoglycemic episodes since 2003. One such incident occurred in August 2007 and resulted in a suspension from working in safety positions, including driving, until he was cleared by a physician. Decision and Order at 8-9; Emp. Exs. 5, 13, 19.

to work from September 25, 2007 through March 5, 2008, were related to his employment. Rather, the administrative law judge found that "Claimant's diabetes and hypoglycemia caused the work place accident." Decision and Order at 16. This finding is supported by substantial evidence of record and is affirmed.[3] *Lennon v. Waterfront Transport*, 20 F.3d 658, 28 BRBS 22(CRT) (5th Cir. 1994); *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171 (2001); *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988). As claimant's injuries were not work-related, we need not address claimant's contention that the administrative law judge erred in denying temporary total disability benefits, as it is axiomatic that a disability must be work-related in order for a claimant to be entitled to compensation. *See Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000).

Accordingly, the administrative law judge's Decision and Order 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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JUDITH S. BOGGS
Administrative Appeals Judge

[3]Contrary to claimant's argument, in order for the aggravation rule to be applicable, a work-related injury or the claimant's employment must aggravate or exacerbate a pre-existing condition, resulting in disability. *Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1990); *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988). The administrative law judge specifically found that claimant's accident was not work-related. Therefore, we reject claimant's assertion that the administrative law judge failed to address whether the aggravation rule applies.