BRB No. 99-0145

THOMASINE GREENE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NORFOLK SHIPBUILDING AND DRY DOCK CORPORATION	)	DATE ISSUED: 10/19/99
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

Robert J. Macbeth, Jr. (Rutter, Walsh, Mills & Rutter, L.L.P.), Norfolk, Virginia, for claimant.

Richard E. Garriott, Jr. (Clarke, Dolph, Rapaport, Hardy & Hull, P.L.C.), Norfolk, Virginia, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (98-LHC-0555) of Administrative Law Judge Fletcher E. Campbell, Jr., 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).

Claimant, a sheet metal worker, suffered back strains on January 6, 1991, and April

25, 1991, during the course of her employment. Following these occurences, claimant continued working in a light duty capacity for employer until she was released in 1993. Employer voluntarily paid claimant compensation under the Act until October 1996. Claimant subsequently sought compensation under the Act for permanent total disability from October 1996 until November 1997, and for permanent partial disability thereafter.[1]

In his decision, the administrative law judge found claimant entitled to invocation of the presumption at Section 20(a), 33 U.S.C. §920(a), linking her back ailments to her employment. The administrative law judge concluded, however, that employer established rebuttal of the presumption based upon the opinions of Drs. Burns and Williamson. Next, weighing the evidence as a whole, the administrative law judge concluded that claimant's current condition is unrelated to the aforementioned work incidents. Thus, the administrative law judge denied claimant's claim for compensation.

On appeal, claimant challenges the administrative law judge's denial of benefits. Specifically, claimant contends that the administrative law judge erred in finding rebuttal of the Section 20(a) presumption established, and in ultimately finding that claimant's back condition is not related to her employment with employer. Employer responds, urging affirmance.

In order to be entitled to the Section 20(a), 33 U.S.C. §920(a), presumption linking claimant's condition to her employment, claimant must establish a *prima facie* case by showing that she sustained a harm and that working conditions existed or an accident occurred 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). An employment injury need not be the sole cause of a disability; rather, if the employment injury aggravates, accelerates or combines with an underlying condition, the entire resultant condition is compensable. *See Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966). Upon invocation of the Section 20(a) presumption, the burden shifts to employer to produce substantial evidence that claimant's condition was 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). If the presumption is rebutted, the administrative law judge must weigh all the evidence contained in the record and resolve the

[1]Following her release from this employer, claimant did not obtain employment until she began working as a telemarketer in October 1997. EX 14. At the time of the hearing, she was employed as a school bus attendant. HT at 24.

causation issue based on the record as a whole with claimant bearing the burden of persuasion. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990); *see generally Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT) (1994).

We hold that the opinions relied on by the administrative law judge to find the Section 20(a) presumption rebutted are legally insufficient to satisfy employer's burden of producing substantial evidence severing the connection between the injury and the employment. The administrative law judge found rebuttal of the Section 20(a) presumption established based on the reports of Drs. Burns and Williamson. In his August 14, 1996 report, Dr. Burns stated:

> I do not think [claimant] is disabled from this injury at this time....I think that she sustained an acute lumber strain on the date of the accident . . . I can not break this down to percentage of disability, but I think that it is *very little* from the injury on the job. *Most* of her problem is related to excessive weight, and the degenerative disc disease was only stirred up when she hurt herself on the job in January of 1991, and also again April 25, 1991.

Emp. Ex. 2 (emphasis added). The administrative law judge focused only on the first sentence quoted above in finding rebuttal established. This opinion, as a whole, however, does not completely sever the connection between the accidents at work and claimant's back condition, as Dr. Burns relates that some portion of claimant's condition, albeit small, is due to the work accidents. This opinion, therefore, is insufficient to rebut the Section 20(a) presumption. *Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84 (1995). Similarly, Dr. Williamson opined that claimant experiences intermittent low back pain two to three times a year and that this condition is not *directly* related to the 1991 incidents. *See* Emp. Ex. 1. This opinion merely states there is no direct link between claimant's condition and her work. It does not state unequivocally that the work accidents did not aggravate or contribute to claimant's condition. *See Peterson v. General Dynamics Corp.*, 25 BRBS 71 (1991), *aff'd sub nom. Ins. Co. of North America v. U.S. Dept. of Labor*, 969 F.2d 1400, 26 BRBS 14 (CRT)(2d Cir. 1992), *cert. denied*, 507 U.S. 909 (1993). As these opinions, taken in their entirety, do not unambiguously state that there is *no* relationship between claimant's back condition and her work accidents , they are insufficient as a matter of law to establish rebuttal of the Section 20(a) presumption.[2] *Brown v. Jacksonville Shipyards, Inc.*, 893 F.2d 294, 23 BRBS 22 (CRT)(11th Cir. 1990). As the only relevant evidence proffered by employer is legally insufficient to rebut the Section 20(a) presumption, a causal relationship

[2]We note that the administrative law judge himself found the opinions of Drs. Burns and Williamson to be "maddeningly confusing in places." *See* Decision and Order at 5.

between claimant's employment and her back condition is established as a matter of law. *See Manship v. Norfolk & W. Ry. Co.*, 30 BRBS 175 (1996); *Bass v. Broadway Maintenance*, 28 BRBS 11 (1994). The administrative law judge's determination to the contrary is therefore reversed. The case is remanded to the administrative law judge for consideration of the remaining issues.

Accordingly, the administrative law judge's finding that claimant's back condition is not work-related is reversed, and the case is remanded for consideration of any remaining issues.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge