

BEVERLY A. BONNER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
HUNTINGTON INGALLS INDUSTRIES,)	DATE ISSUED: 09/25/2012
INCORPORATED - INGALLS)	
OPERATIONS)	
)	
Self-Insured)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-In-Interest)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Larry W. Price, Administrative Law Judge, United States Department of Labor.

Robert E. O'Dell (Davis & Feder, P.A.), Vancleave, Mississippi, for claimant.

Paul B. Howell (Franke & Salloum, PLLC), Gulfport, Mississippi, for self-insured employer.

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

SMITH, Administrative Appeals Judge:

Claimant appeals the Decision and Order Denying Benefits (2011-LHC-00294) of Administrative Law Judge Larry W. Price 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, who has pre-existing sickle cell anemia disease, injured her right shoulder while working as a laborer for employer on April 25, 2007. Following an MRI conducted on May 31, 2007, which showed osteonecrosis due to sickle cell disease aggravated by the work injury, Dr. Black recommended shoulder surgery. Dr. Haas, who, at employer’s request, examined claimant on September 10, 2007, agreed with the recommendation for arthroscopic surgery. Dr. Haas also informed claimant that she may ultimately need a total shoulder replacement due to her sickle cell anemia.

Dr. Black performed arthroscopic surgery on claimant’s right shoulder on December 12, 2007. Due to claimant’s slow recovery from the surgery, Dr. Black referred claimant, on March 13, 2008, to Dr. Harrison for a possible shoulder replacement. At that time, Dr. Black also prescribed medication and released claimant to return to light-duty work with minimal use of the right arm, no overhead work, and no lifting over five pounds. On April 10, 2008, Dr. Black opined that claimant reached maximum medical improvement with an eight percent permanent impairment of her right shoulder attributable to the work-related right shoulder injury, and released claimant to return to work at full duty. Claimant returned to work full-time but continued right shoulder pain, coupled with Dr. Black’s April 10, 2008 referral, prompted claimant to begin treating with Dr. Harrison on April 16, 2008. Dr. Harrison, who assessed claimant with avascular necrosis of the humeral head, performed a total shoulder arthroplasty on June 3, 2008. On January 5, 2009, Dr. Harrison released claimant to return to work without restrictions. Employer paid claimant temporary total disability benefits from May 21 to July 8, 2007, and from December 10, 2007 to March 16, 2008, as well as for the treatment and arthroscopy performed by Dr. Black.

Claimant filed a claim seeking temporary total disability benefits from May 14, 2008 to January 4, 2009, as well as medical benefits associated with the total shoulder arthroplasty performed by Dr. Harrison. Employer controverted the claim, contending that the arthroplasty and resulting disability are not related to the work injury but instead are a direct result of claimant’s underlying sickle cell anemia.¹

The administrative law judge found claimant entitled to the Section 20(a) presumption with regard to her right shoulder arthroplasty, and that employer established rebuttal thereof. 33 U.S.C. §920(a). Addressing the evidence as a whole, the

¹Alternatively, employer sought Section 8(f) relief, 33 U.S.C. §908(f), from continuing compensation liability.

administrative law judge found that claimant did not establish, by a preponderance of the evidence, a causal connection between her second shoulder surgery and the April 25, 2007 work accident. Accordingly, he denied benefits.

On appeal, claimant challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the administrative law judge's decision. Claimant has filed a reply brief.

Claimant contends that the administrative law judge erred in finding that employer rebutted the Section 20(a) presumption through the opinions of Drs. Black and Haas. Claimant avers that the statements of Drs. Black and Haas, regarding the lack of a causal connection between the arthroplasty performed by Dr. Harrison and the work accident, are inconsistent with their own observations. Specifically, claimant maintains that prior to expressing his opinion that claimant's work accident was not a "significant" aggravation of her pre-existing condition, Dr. Black, on at least four occasions, stated that claimant suffered from pre-existing right shoulder avascular necrosis exacerbated by a work-related injury. Claimant contends that Dr. Haas's opinion, that a future arthroplasty would be due to sickle cell anemia and not her work injury, is similarly encumbered by his own inconsistent statements, i.e., on September 10, 2007, that claimant has been having problems since her work injury, and subsequent opinion letter stating that the work injury most likely exacerbated the pre-existing condition. Claimant thus asserts that it was improper for the administrative law judge to find the Section 20(a) presumption rebutted.

Where the claimant establishes a prima facie case and Section 20(a) applies to relate the disabling injury to the employment, as here, the employer can rebut this presumption by producing substantial evidence that the injury is not related to the employment. *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), cert. denied, 540 U.S. 1056 (2003); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). If a work-related injury contributes to, combines with, or aggravates or accelerates a pre-existing condition, the entire resultant condition is compensable. *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); *Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45(CRT) (5th Cir. 1986) (en banc); *Southern Stevedoring Co. v. Henderson*, 175 F.2d 863 (5th Cir. 1949). When aggravation of a pre-existing condition is claimed, the employer must produce substantial evidence that work events neither directly caused the injury nor aggravated the pre-existing condition to result in injury. See *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009); *Gooden*, 135 F.3d 1066, 32 BRBS 55(CRT); see also *Obert v. John T. Clark & Sons of Maryland*, 23 BRBS 157 (1990) (under aggravation rule, if work played any role in manifestation of disease, entire disability is compensable; non-work-relatedness of underlying disease is

irrelevant). If, however, the claimant's disability is due solely to the natural progression of a prior injury or condition, employer is not liable for the disabling condition. *Id.*

The administrative law judge found that the opinions of Drs. Black, Haas and Hull constitute substantial evidence of the lack of a connection between claimant's work injury and the second shoulder surgery and thus rebut the Section 20(a) presumption. In this regard, the administrative law judge found that Drs. Black and Haas stated that claimant's need for a total right shoulder arthroplasty was due to her sickle cell anemia and not the work injury sustained on April 25, 2007.² EXs 17-19. Dr. Hull stated that "aseptic necrosis is a known complication of her medical condition." EX 21. When asked to explain why he felt that the April 25, 2007 work injury is not a reasonably likely cause of claimant's right shoulder arthroplasty, Dr. Black stated because claimant's "osteonecrosis was not caused by work." EX 17. Dr. Haas opined that the "main underlying pathology [of claimant's condition] is due to sickle cell anemia and [that] her injury is most likely an exacerbation of the pre-existing condition." EX 18. When he advised claimant prior to her first surgery that she may ultimately need shoulder replacement surgery, however, he stated such would not be due to her work injury. *Id.*

We agree with claimant that the case must be remanded for further consideration. While the evidence relied upon by the administrative law judge establishes that claimant's need for arthroplasty is primarily due to her osteonecrosis, the administrative law judge did not address whether employer produced substantial evidence that claimant's April 25, 2007 work injury did not aggravate her underlying condition and accelerate her need for the arthroplasty. As claimant notes, Dr. Black opined only six weeks before the arthroplasty that claimant's underlying osteonecrosis was aggravated by the work injury. EX 17 at 25. Moreover, while the administrative law judge correctly noted that Dr. Hull opined that "aseptic necrosis is a known complication of [claimant's] medical condition," EX 21, he did not address Dr. Hull's statement that he could not comment on whether the work injury may have contributed to claimant's need for the shoulder replacement. *Id.* We thus vacate the administrative law judge's finding that the Section 20(a) presumption is rebutted and remand the case for reconsideration of this issue. On remand, the administrative law judge must address the totality of the medical opinions and make a finding whether employer produced substantial evidence that the work injury did not aggravate, accelerate, or exacerbate claimant's underlying condition such that the arthroplasty was required.

²Additionally, the administrative law judge found that Dr. Black opined that claimant sustained only a temporary aggravation of her pre-existing condition. EX 17.

Claimant further argues that, in weighing the evidence, the administrative law judge did not fully address all the relevant evidence. If, on remand, the administrative law judge finds that employer established rebuttal of the Section 20(a) presumption, the administrative law judge must weigh all of the relevant evidence and resolve the issue of whether claimant's work injury aggravated, exacerbated and/or accelerated her underlying condition to the point that she required arthroplasty, based on the record as a whole, with claimant bearing the burden of persuasion. *See Ceres Gulf, Inc. v. Director, OWCP [Plaisance]*, 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) (1984).

The administrative law judge found that claimant suffered bone death in her right shoulder prior to her work-related injury of April 25, 2007. In reaching this conclusion, the administrative law judge relied on: the opinions of Drs. Black and Haas that claimant's sickle cell disease caused the pre-existing osteonecrosis of her right shoulder; Dr. Hull's emphasis that aseptic necrosis is a well-known complication of claimant's disease; and the absence of a causation opinion from Dr. Harrison. The administrative law judge found that claimant's work-related accident caused only a temporary strain of her pre-existing condition, which was treated through the arthroscopic surgery performed by Dr. Black on December 12, 2007. The administrative law judge found that since claimant reached maximum medical improvement and was released to return to work at full duty without any restrictions on April 10, 2008, any work-related aggravation claimant suffered to her pre-existing necrosis had subsided. The administrative law judge found that prior to claimant's referral to Dr. Harrison on March 13, 2008, both Dr. Black and Dr. Haas agreed that if claimant came to need arthroplasty in the future, it would be due to her sickle cell anemia, not her work-related injury. Decision and Order at 10. The administrative law judge thus concluded that claimant's pre-existing necrosis, and not her April 25, 2007 accident, led to her right total shoulder arthroplasty. He therefore found that claimant did not establish a causal connection between her second shoulder surgery and her April 25, 2007 accident.

We cannot affirm the administrative law judge's finding because he did not accurately represent Dr. Harrison's opinion. Contrary to the administrative law judge's finding, Dr. Harrison specifically addressed the causal relationship between claimant's arthroplasty and her work injury. In a letter dated March 22, 2010, Dr. Harrison opined that claimant had an underlying pre-existing condition that was aggravated by her work injury and that that aggravation "accelerated her need for shoulder replacement." CX 7. Dr. Harrison added that claimant continues to suffer from a disability to her shoulder for which the April 25, 2007 accident is at least minimally causative. *Id.* Moreover, although on April 10, 2008, Dr. Black checked a box releasing claimant to full duty work, in a report of the same date Dr. Black stated claimant had osteonecrosis exacerbated by work activities and that he was continuing claimant's temporary work

restrictions until she saw Dr. Harrison. EX 17 at 24-25. As the administrative law judge did not discuss this evidence, we must vacate the administrative law judge's finding that claimant did not establish a causal connection between her second shoulder surgery and her April 25, 2007 work accident and remand the case for further consideration.³ *Howell v. Einbender*, 350 F.2d 442 (D.C. Cir. 1965).

Accordingly, the administrative law judge's denial of benefits is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

I concur:

BETTY JEAN HALL
Administrative Appeals Judge

McGRANERY, Administrative Appeals Judge, concurring in part and dissenting in part:

Although I agree with my colleagues' decision to remand this case for reconsideration of the causation issue based on the record as a whole, I respectfully dissent from their decision to remand the case for reconsideration of the Section 20(a) rebuttal issue. I would affirm the administrative law judge's finding that employer produced substantial evidence to establish rebuttal of the Section 20(a) presumption. The evidence that detracts from the portions of the doctors' opinions credited by the administrative law judge at rebuttal should properly be addressed during the administrative law judge's weighing of the evidence based on the record as a whole.

³We deny claimant's request to reassign this case to a different administrative law judge on remand. *See generally Bogdis v. Marine Terminals Corp.*, 23 BRBS 136 (1989); *see also generally* 5 U.S.C. §554(d).

Recently, the United States Court of Appeals for the Fifth Circuit explained that to rebut the Section 20(a) presumption “all [employer] must do is advance evidence to throw factual doubt on the prima facie case.” *Ceres Gulf, Inc. v. Director, OWCP*, 683 F.3d 225, 231, 46 BRBS 25, 29(CRT) (5th Cir. 2012).⁴ Under that standard, I would affirm the administrative law judge’s determination that employer established rebuttal with the opinions of Drs. Black and Haas that claimant’s need for the arthroplasty is related to her underlying sickle cell anemia and is not related to her work injury, as bolstered by Dr. Hull’s general assessment regarding the complications associated with that underlying condition.

Accordingly, I believe the administrative law judge’s finding that employer produced substantial evidence to rebut of the Section 20(a) presumption is a reasonable exercise of his authority to assess the relevance and credibility of this evidence. *Plaisance*, 683 F.3d 225, 46 BRBS 25(CRT). Therefore, I would affirm the administrative law judge’s finding that employer rebutted the Section 20(a) presumption. *Id.* However, I agree with my colleagues’ decision to remand the case to the administrative law judge because he did not fully address the medical opinions of record, specifically evidence that supports claimant’s claim that her work injury accelerated her need for the shoulder arthroplasty.

REGINA C. McGRANERY
Administrative Appeals Judge

⁴The United States Court of Appeals for the Fifth Circuit has held that the administrative law judge is entitled to assess the relevance and credibility of testimony and that the administrative law judge’s decision need not constitute the sole inference that can be drawn from the facts, i.e., although another fact-finder might have reached a different conclusion, the administrative law judge’s findings may be affirmed if he has thoroughly explained his decision. *See Ceres Gulf, Inc.*, 683 F.3d at 231, 46 BRBS at 29(CRT).