

SONYA BLEVINS)
(Widow of LLOYD J. BLEVINS))
)
 Claimant-Petitioner)
)
 v.)
)
 ECCO ELECTRICAL AND)
 INSTRUMENTATION, INCORPORATED) DATE ISSUED: 09/19/2012
)
 and)
)
 SEABRIGHT INSURANCE COMPANY)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Decision and Order of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

Tommy Dulin (Dulin and Dulin, Ltd.), Gulfport, Mississippi, for claimant.

Henry H. LeBas (LeBas Law Offices, P.L.C.), Lafayette, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (2010-LHC-00791) of Administrative Law Judge Patrick M. Rosenow 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's husband (decedent) worked for employer as a project manager, overseeing a job at Signal shipyard. On September 4, 2007, as he was arriving at work, decedent suffered a fatal myocardial infarction. Claimant sought death benefits under the Act. *See* 33 U.S.C. §909. The administrative law judge found that claimant is not entitled to the Section 20(a), 33 U.S.C. §920(a), presumption, but if she were, employer offered sufficient evidence to rebut the presumption. Weighing the record as a whole, the administrative law judge found that claimant failed to establish that decedent's heart attack was work-related. Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends the administrative law judge erred in finding that she did not establish a prima facie case relating decedent's death to his employment, and therefore in failing to apply the Section 20(a) presumption. Claimant further contends the administrative law judge erred in finding that employer submitted substantial evidence to rebut the presumption. Employer responds in support of the administrative law judge's denial of benefits. Claimant filed a reply brief.

Section 9 of the Act provides for death benefits to certain survivors "if the injury causes death." 33 U.S.C. §909. In establishing entitlement to death benefits, a claimant is aided by Section 20(a) of the Act, which presumes, in the absence of substantial evidence to the contrary, that the claim for death benefits comes within the provisions of the Act, *i.e.*, that the death was work-related. *See, e.g., American Grain Trimmers v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999), *cert. denied*, 528 U.S. 1187 (2000); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998). In order to establish her prima facie case, and thus entitlement to invocation of the Section 20(a) presumption, a claimant must show the existence of working conditions which could have caused, contributed to, or hastened decedent's death. *See, e.g., Fineman v. Newport News Shipbuilding & Dry Dock Co.*, 27 BRBS 104 (1993); *Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989); *see generally U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). Once the Section 20(a) presumption is invoked, the burden shifts to the employer to produce substantial evidence that the decedent's death was not caused by his 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 the administrative law judge finds the Section 20(a) presumption rebutted, it drops from the case, and the administrative law judge must weigh all the evidence and resolve the issue based on the record as a whole with the claimant bearing the burden of persuasion. *Ceres Gulf, Inc. v. Director, OWCP [Plaisance]*, 683 F.3d 225 46 BRBS 25(CRT) (5th Cir. 2012); *see generally Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

In this case, Dr. Cook opined that pressures to meet deadlines at work caused decedent significant work-related stress, which contributed to his heart attack and death. CX 11 at 55. Claimant asserts this opinion is sufficient to establish her entitlement to the Section 20(a) presumption. Two courts have stated that a claimant must offer “some evidence” to establish each element of a prima facie case in order to invoke the Section 20(a) presumption. *See Albina Engine & Machine v. Director, OWCP [McAllister]*, 627 F.3d 1293, 44 BRBS 89(CRT) (9th Cir. 2010); *Brown v. ITT/Continental Baking Co.*, 921 F.2d 289, 24 BRBS 75(CRT) (D.C. Cir. 1990). The administrative law judge found that the evidence that decedent was under stress is “highly equivocal” and he declined to rely on Dr. Cook’s opinion to invoke the Section 20(a) presumption. Decision and Order at 20-21. We need not address whether the administrative law judge erred in not invoking the Section 20(a) presumption because the administrative law judge continued the analysis, he found that employer rebutted the presumption, and weighed the relevant evidence to find that the record as a whole does not support a causal relationship between the decedent’s death and his employment. *See generally Bass v. Broadway Maintenance*, 28 BRBS 11 (1994). The administrative law judge’s alternative findings are supported by substantial evidence and we affirm them.

The administrative law judge found that the opinions of Drs. McGarry and LaVie rebut the Section 20(a) presumption. Dr. McGarry stated that, assuming decedent had just arrived at work, and considering decedent’s weight and the findings on decedent’s autopsy of an enlarged heart, hardening of the arteries and smoker’s changes in the lungs, the doctor did not believe decedent’s heart attack was work-related, and it was happenstance that the event occurred at work. EX 6 at 30-39. Dr. McGarry additionally stated that the stomach/abdominal pain decedent complained of before arriving at work was likely an indication that he was having a heart attack. *Id.* at 40. Dr. LaVie opined that “there is no evidence that this unfortunate fatal event . . . on 9/4/07 was in anyway stress-related or work-related.” EX 3. Dr. LaVie attributed decedent’s heart attack to his “advanced cardiovascular disease with smoking, uncontrolled hypertension, overweightness, sedentary lifestyle, probable dyslipidemia, very marked LVH [left ventricular hypertrophy], hypertensive renal disease, smoking-induced lung disease, and, most importantly, advanced coronary atherosclerosis.” EX 3. Dr. LaVie stated that, given decedent’s risk factors and the symptoms of chest pain, heartburn, and shortness of breath he had suffered a few days before he died, decedent was “sitting on a time bomb,” and his heart attack could have happened even if he had no workplace stress in his life. EX 8 at 18-19. Dr. LaVie agreed with Dr. McGarry that the stomach/abdominal pain decedent experienced that morning before work indicates decedent’s heart attack began before he arrived at work. *Id.* at 42. Thus, contrary to claimant’s general assertion of error, the administrative law judge correctly found the opinions of Drs. McGarry and LaVie rebut the Section 20(a) presumption. *Plaisance*, 683 F.3d 225, 46 BRBS 25(CRT); *Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT).

In addressing the record as a whole, the administrative law judge found that claimant failed to establish the work-relatedness of decedent's fatal heart attack. Contrary to claimant's contention, this case is indeed similar to *Charpentier*. In *Charpentier*, it was undisputed that the decedent's heart attack began in the evening while he was at home, continued there throughout the night and early morning, and concluded in the decedent's fatal cardiac arrest 15 minutes into his morning's work. Further, there also was unrebutted medical testimony that the decedent's heart attack would have escalated to a fatal cardiac arrest no matter where he was at the time. The United States Court of Appeals for the Fifth Circuit held that evidence showing that decedent's death at his place of employment was a coincidence constitutes substantial evidence sufficient to rebut the Section 20(a) presumption and to establish the absence of a causal relationship between the death and the employment based on the record as a whole. The court explained that if "an employee's pre-existing injury would *necessarily* be exacerbated by *any* activity regardless of where or when this activity takes place, and an employee happens to go to work, it is an impermissible leap of logic to say that there must be a causal connection between the worsening of the employee's injury and his work." *Id.*, 332 F.3d at 292, 37 BRBS at 40(CRT) (emphasis in original). In this case, Drs. McGarry and LaVie opined that decedent's heart attack was not caused by work-related stress, his heart attack likely started before he arrived at work and medical treatment may not have affected his chances of survival. Moreover, Dr. Cook conceded that decedent's heart attack could have started before he arrived at work, and that he could have suffered the heart attack in the absence of any workplace stress, given his risk factors.¹ CX 11 at 17, 47, 49, 55. Based on this evidence, the administrative law judge rationally determined that the preponderance of evidence does not establish the requisite causal relationship between decedent's death and his employment. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). Consequently, we affirm this finding and the denial of benefits as it is supported substantial evidence and in accordance with law.²

¹Dr. Cook considered decedent to have the following risk factors: hypertension for which decedent was not taking his prescribed medication, diabetes, obesity, smoking, enlarged heart, and hardening of the arteries. CX 11 at 17, 47, 49, 55.

²The administrative law judge also rationally rejected claimant's argument that the delay between decedent's heart attack and his receiving medical treatment caused decedent's death. As the administrative law judge found, there is no evidence to support such an argument. Dr. McGarry stated that access to faster treatment may not have made any difference, and Dr. LaVie stated that decedent probably would have died, despite immediate defibrillation, given the massive size of the heart attack. Decision and Order at 22; EXs 6, 8.

Accordingly, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge