BRB No. 96-0769

JAMES DOUGLAS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MERRILL STEVENS SHIPYARD	)	DATE ISSUED:
	)	
and	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of George A. Fath, Administrative Law Judge, United States Department of Labor.

Stephen C. Embry (Embry & Neusner), Groton, Connecticut, for claimant.

Thomas R. Harris, Sarasota, Florida, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (95-LHC-951/952) of Administrative Law Judge George A. Fath 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. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant worked as a draftsman for a shipyard from 1941-1945 and for employer for one and one-half quarters in 1953. Claimant contends that he was exposed to noise, asbestos, dust and fumes while working for the employer. In 1991, claimant was diagnosed with chronic obstructive pulmonary disease, among other conditions.

Employer accepted liability for claimant's 29.1 percent binaural hearing impairment loss, and the administrative law judge entered an award based on this agreement. With regard to claimant's claim for a pulmonary impairment, the administrative law judge found invoked the Section 20(a), 33 U.S.C. §920(a), presumption, but found it rebutted on the basis that claimant does not have asbestosis. Crediting the reports of Drs. Schwartz and Chandler that claimant does not have asbestosis, the administrative law judge denied the claim for pulmonary disability.

On appeal, claimant contends that the administrative law judge erred in finding rebuttal of the Section 20(a) presumption on the claim for pulmonary disability. He further avers that the administrative law judge should have recused himself from this case due to bias and that he erred by basing his findings on factors outside of the formal record. Claimant lastly contends that he is entitled to interest on his hearing loss award. Employer responds, urging affirmance of the Decision and Order.

Where, as here, the administrative law judge finds that claimant has established invocation of the Section 20(a) presumption, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment.[1] *Dangerfield v. Todd Pacific Shipyards Corp.*, 22 BRBS 104 (1989). Claimant contends that the administrative law judge erred in finding rebuttal of Section 20(a) presumption as the opinions of Drs. Schwartz and Chandler are insufficient to establish that claimant's exposure to fumes and respiratory irritants did not cause or contribute to his pulmonary disease. The administrative law judge found the opinions of Drs. Schwartz and Chandler sufficient to rebut the Section 20(a) presumption because they found that claimant does not have asbestosis. Claimant's claim for a pulmonary impairment is not based only on a claim of asbestosis, however. Rather, claimant claims that his chronic obstructive pulmonary disease in general is due in part to his work exposure to respiratory irritants.

Based on this claim, we hold that Dr. Schwartz's opinion is insufficient to establish rebuttal as he stated that he does not know how much of claimant's lung impairment is due to his work exposures and how much is due to cigarette smoking. He further stated that he would not rule out work exposures as a contributing factor to claimant's chronic obstructive pulmonary disease. Depo. 10-18. Thus, as Dr. Schwartz does not rule out claimant's employment as a contributing factor to his chronic obstructive pulmonary disease, his opinion cannot rebut the Section 20(a) presumption. *Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84 (1995); *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988). Further, although Dr. Chandler found that claimant does not have asbestosis, his opinion also is insufficient to establish rebuttal as he never addressed whether exposure to other pulmonary irritants contributed to claimant's lung impairment. This opinion, therefore, fails to sever the connection between claimant's lung impairment and his employment. *Kubin v. Pro-Football, Inc.*, 29 BRBS 117 (1995). We therefore reverse the administrative law judge's finding that the Section 20(a) is rebutted, and we hold that causation is

[1]We note that the administrative law judge's finding that the Section 20(a) presumption is invoked is not challenged on appeal.

established as a matter of law.[2] *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988). The denial of benefits is therefore vacated, and the case is remanded to the administrative law judge for consideration of the extent of claimant's impairment. 33 U.S.C. §§902(10), 908(c)(23).

Claimant next contends that he is entitled to interest on his 29.1 percent binaural hearing loss award accruing from the date of his last exposure in 1953.[3] We reject this contention. In *Renfroe v. Ingalls Shipbuilding, Inc.*, 30 BRBS 101 (1996), the Board held that in a hearing loss case interest accrues from the date benefits become due under Section 14(b), 33 U.S.C. §914(b), and accrues on all benefits due and unpaid from that date until they are paid; benefits do not become due under Section 14(b) until employer has notice or knowledge of the injury. *See* 33 U.S.C. §912. In the instant case, the claim was filed on January 26, 1993, but there is no other evidence in the record indicating when employer obtained knowledge of claimant's injury. We therefore remand the case to the administrative law judge to determine when employer received notice or knowledge of claimant's injury and whether claimant is entitled to interest on his hearing loss award. *Meardry v. International Paper Co.*, 30 BRBS 160 (1996).

[2]Thus, we need not address claimant's contentions regarding the administrative law judge's weighing of the evidence based on the record as a whole.

[3]Although it is not clear from the record whether claimant raised this issue below, the issue of entitlement to interest can be raised at any time. *Jones v. U.S. Steel Corp.*, 25 BRBS 355 (1992).

Accordingly, the administrative law judge's Decision and Order denying benefits for claimant's pulmonary impairment is vacated. The case is remanded for further proceedings regarding the extent of claimant's pulmonary impairment and claimant's entitlement to interest consistent with this opinion.[4]

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

[4]In light of our decision herein, we need not address claimant's remaining contentions alleging bias on the part of the administrative law judge and that the administrative law judge considered his own shipyard experiences in rendering his decision. The resolution of the remaining issues is not affected by any error that may have been committed by the administrative law judge.