BRB No. 96-0963

GENE ORGERON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MACK GROVES, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
LOUISIANA WORKERS' COMPENSATION CORPORATION	)	
	)	
Employer/Carrier-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Stanley J. Jacobs and Chester C. Stetfelt (Jacobs, Manuel & Kain), New Orleans, Louisiana, for claimant.

David K. Johnson (Wall, Johnson, Stiltner, Patterson, Egan & Wilton), Baton Rouge, Louisiana, 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-1902) of Administrative Law Judge C. Richard Avery denying benefits 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 was exposed to gas vapors from a neighboring facility while working for

employer on February 21, 1994. Sodium hydrosulfide vapors drifted while being loaded onto a barge, and claimant and other employees were overcome by fumes. In November 1994, claimant suffered a heart attack and alleged that it was due to the exposure to fumes. Claimant received temporary total disability benefits through March 2, 1995, and sought additional disability benefits for his heart condition.

In his Decision and Order, the administrative law judge found that the Section 20(a) presumption was invoked to link claimant's heart attack to the exposure to chemicals on February 21, 1994. 33 U.S.C. §920(a). He found, however, that the presumption was rebutted and that claimant's heart condition and resulting disability are not causally related to the exposure to fume. Accordingly, benefits were denied.

Claimant appeals, contending that his cardiac problems and subsequent heart attack are causally related to the chemical exposure on February 21, 1994. Claimant alleges two theories of recovery, both of which he raised before the administrative law judge. Initially, he contends that his heart attack is the direct result of the chemical exposure. Alternatively, he contends that the chemical exposure caused psychological stress which then played a causative role in the manifestation of his heart attack. Employer responds, urging affirmance of the denial of benefits.

Claimant is entitled to invocation of the Section 20(a) presumption if he establishes that he has sustained a harm, and that an accident at work occurred or working conditions existed that could have caused the harm. *See generally Bolden v. G.A.T.X. Corp.*, 30 BRBS 71 (1996). The administrative law judge invoked the Section 20(a) presumption in the present case, and the burden therefore shifted to employer to rebut the presumption with substantial countervailing evidence that claimant's condition was not caused or aggravated by the exposure at work. *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). The administrative law judge found the opinion of Dr. Casten sufficient to rebut the Section 20(a) presumption. Once the presumption is rebutted, the administrative law judge must weigh the relevant evidence of record and determine if claimant establishes that his injury is work-related based on consideration of the record as a whole. *Holmes v. Universal Maritime Service Corp.*, 29 BRBS 18 (1995); *see Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT) (1994). Upon doing so in this case, the administrative law judge concluded that claimant failed to meet his burden of establishing that his heart attack was caused by the chemical exposure.

On appeal, claimant contends that the opinions of Drs. Kroll and Rodriguez-Fiero are sufficient to establish a relationship between claimant's heart attack and his exposure to chemicals. As the administrative law judge noted, although Drs. Kroll and Rodriguez-Fiero opined that the chemical exposure affected claimant's heart condition, Dr. Kroll concluded by deferring to the opinion of an expert, and the administrative law judge rationally gave less weight to the opinion of Dr. Rodriguez-Fiero as he did not review all medical records and was unaware of claimant's risk factors for coronary artery disease. *See generally Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141 (1990). Further, the administrative law judge reasonably accorded determinative weight to the opinion of Dr. Casten that there is

no connection between claimant's exposure to chemicals and his heart attack as he is a specialist in occupational medicine and he fully explained his findings. *See generally Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); Jt. Ex. 3. As the administrative law judge's finding that claimant's heart attack was not directly caused by the exposure to fumes is rational, and supported by substantial evidence, the denial of benefits on this basis is affirmed. *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996).

Claimant also contends that the heart attack and resulting disability are compensable because the exposure to fumes resulted in psychological stress, which in turn played a role in the manifestation of his underlying arteriosclerosis. Under the aggravation doctrine, if a work-related injury aggravates, accelerates, or combines with a pre-existing impairment to produce a greater disability, the entire resulting disability is compensable. *See generally Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45 (CRT) (5th Cir. 1986) (*en banc*). The administrative law judge did not consider this theory of recovery although claimant raised it below, *see* Claimant's trial brief, and we therefore must vacate the denial of benefits and remand the case for him to consider whether employer produced evidence sufficient to rule out stress from the chemical exposure as an aggravating factor in the manifestation of claimant's heart attack. *See generally Uglesich v. Stevedoring Services of America*, 24 BRBS 180 (1991). If the administrative law judge finds the Section 20(a) presumption rebutted, he must weigh the evidence as a whole to determine if claimant's heart attack is work-related, with claimant bearing the burden of persuasion. *Santoro*, 30 BRBS at 171.

Accordingly, the administrative law judge's Decision and Order denying benefits is vacated, and the case is remanded for further findings consistent with this decision.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge