

HELEN STANLEY)		
(Widow of WESLEY STANLEY))		
)		
Claimant-Respondent)		
)		
v.)		
)		
ATLANTIC LAND CORPORATION)	DATE	ISSUED:
)		
Self-Insured)		
Employer-Petitioner)	DECISION and ORDER	

Appeal of the Decision and Order of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Walter R. Meigs, Mobile, Alabama, for self-insured employer.

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

PER CURIAM:

Employer appeals the Decision and Order (82-LHC-286) of Administrative Law Judge Donald W. Mosser 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

The decedent, an outside machinist, filed a disability claim in 1979 and received compensation until the date of his death on October 17, 1993, for lung cancer and asbestosis due to asbestos exposure. His disability claim is not at issue in this case. Subsequent to the decedent's death, claimant, the decedent's widow, filed her claim for death benefits on January 6, 1994. The death certificate lists the immediate cause of death as metastatic cancer of the bladder with asbestosis as another significant condition contributing to death. CX 2; RX 1. In his Decision and Order, the administrative law judge invoked the presumption pursuant to Section 20(a) of the Act, 33 U.S.C. §920(a), after finding, based on Dr. Powell's opinion,¹ that the decedent's cause of death was bladder cancer but that the decedent's underlying work-related lung condition compromised his

¹It is not suggested in this case that the bladder cancer was work-related.

treatment for the bladder cancer. The administrative law judge further found that Dr. Bass' opinion was insufficient to rebut the Section 20(a) presumption as it left open the possibility that the decedent's breathing problems could potentially have compromised his treatment for the bladder cancer. Consequently, the administrative law judge awarded claimant death benefits pursuant to Section 9 of the Act, 33 U.S.C. §909, medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907, and funeral expenses. On appeal, employer contends that the administrative law judge erred in finding Dr. Bass' opinion insufficient to rebut the Section 20(a) presumption. Claimant did not file a response brief.

Section 9 of the Act provides for death benefits to certain survivors "if the injury causes death." 33 U.S.C. §909 (1988). The Board has held that if a medical condition hastens a death in any way, it contributes to that death. See *Fineman v. Newport News Shipbuilding & Dry Dock Co.*, 27 BRBS 104 (1993); *Woodside v. Bethlehem Steel Corp.*, 14 BRBS 601 (1982)(Ramsey, C.J. dissenting). Section 20(a) of the Act 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 *Sprague v. Director, OWCP*, 688 F.2d 862, 15 BRBS 11 (CRT)(1st Cir. 1982). Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption with substantial evidence that the decedent's employment injury did not cause or contribute to his death. See *Peterson v. General Dynamics Corp.*, 25 BRBS 71 (1991)(*en banc*), *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*, 113 S.Ct. 1253 (1993). If employer presents specific and comprehensive evidence sufficient to sever the connection between the death and the employment, the presumption no longer controls and the issue of causation must be resolved on the whole body of proof. See *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

After consideration of employer's contention on appeal and the administrative law judge's decision in light of the record evidence, we affirm the administrative law judge's award of death benefits. In finding that causation was established, the administrative law judge discussed and weighed the conflicting opinions of Drs. Powell and Bass. Dr. Powell stated that the decedent's work-related lung condition compromised his ability to receive treatment for the bladder cancer and that asbestosis contributed to the death, but Dr. Bass stated that, "I think there's a potential that his lung disease is severe enough that it could have led to complications. I've not seen anything in the medical records to suggest that it did." CX 3; RXS 6 at 19, 7 at 11-12. The administrative law judge credited the opinion of Dr. Powell, a Board-certified family practitioner, over that of Dr. Bass, Board-certified in internal medicine, pulmonary disease and critical care, since Dr. Powell treated the decedent at the time of his death and was in a better position to determine whether the decedent's lung problems interfered with the ability to receive treatment for his metastatic bladder cancer. Decision and Order at 6. The administrative law judge noted that Dr. Bass, although highly qualified, had not treated the decedent since the early 1980's and merely reviewed the medical records pertaining to his death. Decision and Order at 6.

We need not determine whether Dr. Bass' opinion is legally sufficient to rebut the Section 20(a) presumption. Assuming, *arguendo*, that Dr. Bass' opinion is sufficient to

rebut the Section 20(a) presumption, the administrative law judge discussed and weighed the opinions of both Drs. Powell and Bass, and acted within his discretion in crediting the opinion of Dr. Powell that the decedent's death was in part work-related over that of Dr. Bass. See *Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28 (CRT)(D.C. Cir. 1994); *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78 (CRT)(5th Cir. 1991), *rev'g in part* 19 BRBS 15 (1986); *Fineman*, 27 BRBS at 104; *Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984); *Woodside*, 14 BRBS at 601; Decision and Order at 5-6; CX 3; RXS 6, 7.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge