BRB Nos. 89-897
and 89-897A

ALVIN L. BROWN	)	
	)	
Claimant-Respondent	)	
Cross-Petitioner	)	
	)	
v.	)	
	)	
WATTERS WIRELINE	)	DATE ISSUED:
	)	
and	)	
	)	
AETNA CASUALTY & SURETY COMPANY	)	
	)	
	)	
Employer/Carrier-Petitioners	)	
Cross-Respondents	)	DECISION AND ORDER

Appeals of the Decision and Order and Supplemental Decision and Order Awarding Attorney's Fees of Ben H. Walley, Administrative Law Judge, United States Department of Labor.

John W. Merting, Pensacola, Florida, for claimant.

Walter M. Cook, Jr. and Allen E. Graham (Lyons, Pipes & Cook, P.C.), Mobile, Alabama, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order and claimant appeals the Supplemental Decision and Order Awarding Attorney's Fees (87-LHC-1143) of Administrative Law Judge Ben H. Walley awarding 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*., as extended by the Outer Continental Shelf Lands Act, 43 U.S.C. §1331 *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). The amount of an attorney's fee award is discretionary and may be set aside only if the challenging party shows it to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272

(1980).

At the time of his injury, claimant worked as a wireline rigger and working foreman for employer. On the first day of this period of employment, claimant arrived for work on the oil platform and carried his sea bag to his quarters. After changing clothes, he picked up his tools, which weighed approximately 20-30 pounds, and descended 100-125 steps to sea level to begin work. At this time, claimant began to feel dizzy and "drunk-like." Claimant proceeded to work at unclogging a sump pump, which required a sustained high level of exertion for 12-16 hours a day over three days. The dizziness commenced whenever claimant began exerting himself and abated when he ceased his activities. Claimant began to suspect that he may be experiencing a stroke and returned to shore for medical attention. At the hospital on shore, claimant's attending physician diagnosed that claimant had suffered a stroke which began offshore. Claimant has not returned to work since the injury and sought permanent total disability benefits.[1]

In his decision, the administrative law judge found that the evidence was sufficient to invoke the Section 20(a), 33 U.S.C. §920(a), presumption that claimant's stroke is work-related. He also found that Dr. Hubbell's testimony may not be specific and comprehensive enough to sever the potential connection between the disability and the work environment, but also found that even if it was, the evidence considered as a whole establishes that claimant's condition is work-related. The administrative law judge also found that claimant had reached maximum medical improvement, that claimant was not able to return to his former employment, and that no suitable alternate employment was established. Thus, the administrative law judge awarded claimant permanent total disability benefits. 33 U.S.C. §908(a). Finally, the administrative law judge assessed a penalty against employer under Section 14(e), 33 U.S.C. §914(e), and awarded medical benefits pursuant to Section 7, 33 U.S.C. §907. In a Supplemental Decision and Order Awarding Attorney's Fees, the administrative law judge awarded claimant's attorney a fee in the amount of $9,812 for 89.20 hours of legal services at the rate of $110 per hour and $1,106.30 in expenses to be paid by employer.

On appeal, employer contends that the administrative law judge erred in finding that claimant's disabling stroke was work-related. Claimant responds, urging affirmance of the administrative law judge's Decision and Order as it is supported by substantial evidence. In his cross-appeal, claimant contends that the administrative law judge erred in reducing the number of hours and expenses claimed in the fee petition without sufficient explanation. Employer responds, urging affirmance of the administrative law judge's disallowances, if the compensation award stands.

Specifically, on appeal employer contends that the administrative law judge erred in finding that the Section 20(a) presumption is not rebutted by the testimony of Drs. Hubbell and Moore, and that there is no affirmative testimony from the physicians of record that claimant's stroke was caused by his employment. Therefore, employer contends that the administrative law judge erred in finding that the evidence as a whole establishes that the stroke was work-related. The Section 20(a) presumption, 33 U.S.C. §920(a), applies to the issue of whether an injury is causally related to employment. Where an employment injury aggravates, accelerates, or combines with a pre-existing

[1]Since the stroke, claimant has also undergone coronary bypass surgery, which the parties do not dispute is not work-related.

impairment, the entire resulting disability is compensable. *Ronne v. Jones Oregon Stevedoring Co.*, 22 BRBS 344 (1989), *aff'd in pertinent part sub nom. Port of Portland v. Director, OWCP*, 932 F.2d 836, 24 BRBS 137 (CRT)(9th Cir. 1991). Once invoked, Section 20(a) places the burden on employer to go forward with substantial countervailing evidence rebutting the presumption that claimant's injury was caused by his employment. *Sinclair v. United Food and Commercial Workers*, 23 BRBS 148 (1989). If the Section 20(a) presumption is overcome, the administrative law judge must weigh all the evidence and make a finding as to causation based on the record as a whole. *Avondale Shipyards, Inc. v. Kennel*, 914 F.2d 88, 24 BRBS 46 (CRT)(5th Cir. 1990).

In the present case, claimant was initially treated by Dr. Hubbell, who opined that claimant started to have his stroke while offshore and that his stroke is not job-related, but was caused by his high blood pressure, diabetes, smoking and weight. Dep. of Dr. Hubbell at 19. However, Dr. Hubbell did note that strenuous activity can elevate blood pressure and pulse which would have a negative effect on his hypertension. *Id.* at 44-45. The administrative law judge found that Dr. Hubbell's opinion could be construed to stand for the position that claimant's condition was not caused by his employment, but as Dr. Hubbell admitted that exertion would have a negative effect on claimant's blood pressure and pulse, it is not substantial evidence to the contrary sufficient to sever the causal connection. We reject employer's contention that this finding constitutes reversible error as the administrative law judge, assuming, *arguendo*, that Dr. Hubbell's opinion is sufficient to rebut the Section 20(a) presumption, continued by making findings based on the evidence as a whole.[2] *See generally Oliver v. Murry's Steaks*, 21 BRBS 348 (1988).

In weighing the evidence as a whole, the administrative law judge rationally found that the testimony of claimant and his co-worker establishes that claimant was at work when the stroke began; that claimant was involved in strenuous activity; that claimant's symptoms seemed to coincide with exertion; and that two medical experts opined that working conditions were a factor in the stroke.[3] Thus, he found the evidence sufficient to establish that claimant's stroke was work-related. Contrary to employer's contention, claimant's work duties would not have to be the sole cause of claimant's injury in order for him to be entitled to benefits under the Act; if his work aggravated his condition to contribute to the stroke, that is sufficient to establish a causal relationship. *See Janusziewicz v. Sun Shipbuilding & Dry Dock Co.*, 22 BRBS 376 (1989).

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[2]Dr. Moore's opinion is insufficient to rebut the Section 20(a) presumption, as he states that claimant's physical activity could have been a factor in causing the stroke. *See Caudill v. Sea Tac Alaska Shipbuilding*, 25 BRBS 92 (1991).

[3]Dr. Gotthelf stated that claimant's symptoms were exercise-induced and that his job activities contributed to, but did not cause, the stroke. Dr. Gotthelf dep. at 18. Dr. Gotthelf further noted that the fact claimant "pushed on" for 3 1/2 days affected the final outcome of his condition. *Id.* at 9-10. Dr. Moore opined that claimant's job stress and physical activity could have been a factor in claimant's stroke and noted that the three-day delay before treatment would have an impact on the final outcome of the incident. Dr. Moore dep. at 26, 32.

The administrative law judge in the instant case considered the medical opinions of record, the testimony of claimant and co-workers, and the temporal nexus between claimant's symptoms and exertion and found that the evidence as a whole establishes that claimant's stroke was work-related. As the administrative law judge's finding that claimant's stroke was work-related is rational and supported by substantial evidence, we affirm his finding. *Uglesich v. Stevedoring Services of America*, 24 BRBS 180 (1991).

In his appeal of the administrative law judge's Supplemental Decision and Order Awarding Attorney's Fees, claimant contends that the administrative law judge erred in reducing the number of hours and expenses requested without sufficient explanation. Claimant also contends that the administrative law judge erred in reducing the hourly rate given the complexity of the case. We agree. When an administrative law judge reduces the amount of the attorney's fee awarded from the amount requested, the administrative law judge is required to provide a sufficient explanation of the reasons for the reduction; a statement that time spent was excessive is insufficient. *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990); *Collins v. General Dynamics Corp.*, 14 BRBS 458 (1981). Moreover, the proper test to determine if an attorney's work is compensable is whether, at the time the attorney performed the work in question, he could reasonably regard the work as necessary to establish entitlement. *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *see also* 20 C.F.R. §702.132.

In the instant case, the administrative law judge summarily found:

> [T]he following appear to be excessive time charges, items dated: 5/26/88 all, 6/27/88 all, 10/14/88 all, 10/17/88 all, 11/7/88 all, 11/8/88 all, 12/13/88 all, 12/20/88 all, 12/21/88 all, 12/22/88 all, and 12/23/88 all, totalling 48.3 hours, and are hereby disallowed.

Supplemental Decision and Order at 2. Further, the administrative law judge found:

> [T]he following expense items appear to lack sufficient explanation, items dated: 6/6/88, 6/29/88, 9/13/88, 9/27/88, 10/12/88, 10/18/88, 11/16/88 and 12/14/88, totalling $635.10, and are hereby disallowed.

Supplemental Decision and Order at 2.

The hours that the administrative law judge disallowed completely include time spent preparing claimant for his deposition, June 27, 1988; preparing for and attending a deposition by Dr. Hubbell, November 7-8 and December 13, 1988; time spent preparing for the hearing, October 14-17, 1988; and time spent preparing the post-hearing memorandum, December 20-23, 1988. The administrative law judge eliminated a number of hours requested completely, reducing the total requested hours by 48.3 since they were "excessive," without further explanation, although the services were explained in the fee petition, and it is clear that all of this time cannot be viewed as unnecessary to the successful prosecution of the claim. Thus, we vacate the amount of the attorney's

fee award and remand the case to the administrative law judge for further explanation and to specifically find whether the entries are reasonable and were necessary to establish entitlement. *Maddon*, 23 BRBS at 57; 20 C.F.R. §702.132.

We reject, however, claimant's contention that the administrative law judge erred in disallowing the enumerated expense items as they lack sufficient explanation. These costs were detailed on the fee petition as "miscellaneous." Section 28(d) of the Act, 33 U.S.C. §928(d), provides that the costs, fees, and mileage can be assessed against employer when an attorney's fee is awarded against employer if they are reasonable and necessary. *Picinich v. Lockheed Shipbuilding*, 23 BRBS 128 (1989). Inasmuch as there is insufficient evidence of record on which the administrative law judge could base a finding that the enumerated costs were reasonable and necessary, we affirm the administrative law judge's disallowance of the expense items dated June 6, 1988, June 29, 1988, September 13, 1988, September 27, 1988, October 12, 1988, October 18, 1988, November 8, 1988, November 16, 1988, and December 14, 1988 totalling $635.10.

Finally, the administrative law judge found that claimant's requested hourly rate of $275 was much higher than the customary amount awarded in the area and reduced the rate to $110. As claimant was awarded permanent total disability benefits and in light of the complexity of this case, on remand the administrative law judge should reconsider the hourly rate awarded. *See generally Thompson v. McDonnell Douglas Corp.*, 17 BRBS 6 (1984).

Accordingly, the Decision and Order of the administrative law judge awarding benefits is affirmed. The administrative law judge's Supplemental Decision and Order Awarding Attorney's Fees disallowing 48.3 hours of legal services and reducing the requested hourly rate from $275 to $110 is vacated, and the case is remanded to the administrative law judge for further consideration. The administrative law judge's disallowance of $635.10 in expense items is affirmed.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge