BRB No. 92-0235

WINDLASS J. ADAMS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
D. B. ENGINEERS, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
HARTFORD INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Kenneth A. Jennings, Administrative Law Judge, United States Department of Labor.

R. A. Osborn, Jr., Gretna, Louisiana, for claimant.

Lance S. Ostendorf and David L. Barnett (McGlinchey, Stafford, Cellini & Lang), New Orleans, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Awarding Benefits (90-LHC-0398) of Administrative Law Judge Kenneth A. Jennings 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 if they 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).

Claimant, on October 17, 1984, fractured his right heel bone while in the course of his employment as a welder when he fell approximately fifteen feet off a separation tank. Claimant was treated with a splint and medication from October 17, 1984, until January 4, 1985, when he was released to return to work; upon attempting to return to his usual employment, however, claimant was informed that no work was available. Employer has paid claimant temporary total disability compensation pursuant to the Louisiana Worker's Compensation Act since the October 17, 1984 incident. Claimant, who has not worked since the October 1984 incident, subsequently sought compensation under the Act, contending that the October 1984 incident aggravated and made

symptomatic his pre-existing developmental spondylolisthesis.

In his Decision and Order, the administrative law judge determined that employer rebutted the Section 20(a), 33 U.S.C. §920(a), presumption linking claimant's back condition to his employment and thus denied claimant's request for compensation for that condition. Next, the administrative law judge found claimant entitled to temporary total disability compensation as the result of the injury to his heel for the period of October 18, 1984, through January 4, 1985. 33 U.S.C. §908(b).

On appeal, claimant challenges the administrative law judge's determination that his back condition is unrelated to his October 1984 work injury. Employer responds, urging affirmance.

Claimant bears the burden of proving that he has sustained a harm or pain, and that working conditions existed or an accident occurred which could have caused the harm or pain. *See Sinclair v. United Food and Commercial Workers*, 23 BRBS 148 (1990). Once claimant establishes these two elements of his *prima facie* case, the Section 20(a) presumption applies to link the harm or pain with claimant's employment. *See Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990). An employment injury need not be the sole cause of a disability; rather, if the employment aggravates, accelerates or combines with an underlying condition, the entire condition is compensable. *See, e.g., Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989). Upon invocation of the presumption, the burden shifts to employer to present specific and comprehensive evidence sufficient to sever the casual connection between the injury and the employment. *See Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C.Cir.), *cert. denied*, 429 U.S. 820 (1976). If the administrative law judge finds that the Section 20(a) presumption is rebutted, the administrative law judge must weigh all of the evidence and resolve the causation issue based on the record as a whole. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990). It is sufficient for purposes of causation if claimant's employment "aggravates the symptoms of the process." *Pittman v. Jeffboat, Inc.*, 18 BRBS 212 (1986).

In the instant case, the administrative law judge accepted the parties' stipulation that claimant fell from a separation tank on October 17, 1984; furthermore, the administrative law judge found that claimant was subsequently diagnosed as having developmental spondylolisthesis and now complains of back pain. The administrative law judge thus applied the Section 20(a) presumption to link claimant's back condition to his work injury, and shifted the burden of proof to employer to rebut that presumption.

Next, after setting forth the medical evidence of record, the administrative law judge credited the testimony of Drs. Laborde, Serio and Pusateri and found that the opinions of those physicians were sufficient to establish rebuttal of the Section 20(a) presumption. Dr. Laborde opined that, within a reasonable degree of medical certainty, claimant's current back complaints are not related to his employment injury. *See* Laborde depo. at 33-34. Dr. Serio, although conceding that it was possible that an accident such as that sustained by claimant could cause a previously asymptomatic spondylolisthesis to become symptomatic, stated that, based upon the history claimant provided on January 8, 1985, and his examination of that same day, he found no evidence that claimant aggravated or injured his back on October 17, 1984. *See* Serio depo. at 15. In contrast, Dr. Pusateri, who noted that claimant initially complained of "jarring" his back when he fell, opined that

claimant's work trauma was the only explanation that could account for claimant's current back symptoms. *See* Pusateri depo. at 53, 62-63. Because Dr. Pusateri's testimony supports the theory that claimant's back condition became symptomatic as a result of his employment with employer, his testimony does not establish rebuttal, contrary to the administrative law judge's finding. *See Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988). However, as the opinions of Drs. Laborde and Serio constitute substantial evidence to support a finding that claimant's back condition was neither caused nor aggravated by his employment with employer, we nonetheless affirm the administrative law judge's finding that the Section 20(a) presumption was rebutted. *See Neeley v. Newport News Shipbuilding & Dry Dock Co.*, 19 BRBS 138 (1986).

We hold, however, that the administrative law judge erred when, after finding that employer had rebutted the presumption, he failed to weigh all of the evidence and resolve the causation issue based on the record as a whole. *See Devine*, 23 BRBS at 279. In the instant case, the credited opinions of Drs. Laborde, Serio and Pusateri disagree as to the whether claimant's employment aggravated, contributed or combined with claimant's pre-existing back condition. We, therefore, vacate the administrative law judge's finding that there is no casual relationship between claimant's back condition and his work injury, and we remand this case for the administrative law judge to determine whether claimant has established a casual connection between his current back complaints and his work injury based on the record as a whole. Should the administrative law judge determine that claimant has established a casual connection based on the record as a whole, the administrative law judge must then determine the nature and extent of claimant's disability due to his work-related back condition.

Accordingly, the administrative law judge's determination that claimant's back condition is not related to his employment is vacated, and the case is remanded for further consideration consistent with this opinion. In all other respects, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge