BRB No. 92-0326

JAMES H. STRIGGLES	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ALCO MARINE, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
SIGNAL MUTUAL INSURANCE ASSOCIATION	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Order and Decision and Order of E. Earl Thomas, Administrative Law Judge, United States Department of Labor.

Howard L. Silverstein, Miami, Florida, for claimant.

James W. McCready, III (Nicklaus, Valle, Craig & Wicks), Miami, Florida, for employer/carrier.

Before: BROWN and McGRANERY, Administrative Appeals Judges, and SHEA, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Order and Decision and Order (90-LHC-3282) of Administrative Law Judge E. Earl Thomas 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).

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(1988).

Claimant, on January 19, 1990, sustained injuries to his head, neck, and cervical spine when, while in the course of his employment with employer, he slipped, fell down a ladder fifteen feet, and struck his head on a fork-lift. Employer voluntarily paid claimant temporary total disability compensation from January 20, 1990, through March 21, 1990. 33 U.S.C. §908(b). Claimant, who has not been gainfully employed since January 28, 1990, thereafter filed a claim for compensation under the Act.

Following a formal hearing before the administrative law judge, claimant filed a Motion for Appointment of Psychiatrist to Conduct Examination, requesting an independent psychiatric evaluation in order to resolve a conflict in the medical opinions of record regarding his psychological condition. The administrative law judge denied this motion in an Order dated March 27, 1991. Thereafter, in his Decision and Order, the administrative law judge determined that claimant was entitled to temporary total disability compensation from March 22, 1990, through February 4, 1991, at which time he concluded that claimant was capable of returning to his regular employment duties. Regarding claimant's psychological condition, the administrative law judge determined that claimant sustained no psychiatric impairment as a result of his employment-related accident. Lastly, the administrative law judge denied claimant reimbursement for the medical charges of Drs. Molina, Cohn and Benovitz.

On appeal, claimant challenges the administrative law judge's denial of benefits for his physical and psychological conditions, his denial of reimbursement for claimant's medical expenses, and his refusal to order an independent psychiatric examination. Employer responds, urging affirmance.

Claimant contends that the administrative law judge erred in crediting the opinion of Dr. Jarrett over the opinion of Dr. Benovitz to find that his work accident did not result in a compensable psychological injury.[1] Specifically, claimant asserts that the administrative law judge utilized an erroneous standard in making this credibility determination when, after citing to *Fidelity & Casualty Co. of New York v. Henderson*, 128 F.2d 1019 (5th Cir. 1942); *Parent v. Duluth, Missabe and Iron Range Railway Co.*, 7 BRBS 41 (1977); and *Turner v. Chesapeake and Potomac Telephone Co.*, 16 BRBS 255 (1984), he held that in order for a physical trauma to cause a psychiatric condition, the trauma must have been violent or there must have been an accompanying severe physical injury from the accident. Claimant is correct. Initially, we note that the cases cited by the administrative law judge do not stand for the proposition that a psychiatric condition must be the result of a violent or severe physical injury in order to be compensable under the Act. It is well-settled that a psychological impairment which is work-related is compensable under the Act. *Sanders v. Alabama*

[1]Although acknowledging that claimant could have a mixed psychiatric disorder, Dr. Jarrett opined that claimant's fifteen foot fall from a ladder did not result in a post-traumatic stress disorder since the "event itself does not indicate any significant catastrophic stressor of a psychological nature." EX. 5. In contrast, Dr. Benovitz, in diagnosing a post-traumatic stress disorder secondary to claimant's January 1990 work-related accident, noted that a fall from a ladder is "outside the range of usual human experience and would markedly be distressing to almost anyone." CX. 1 at 20.

Dry Dock & Shipbuilding Co., 22 BRBS 340 (1989); *Turner v. Chesapeake & Potomac Telephone Co.*, 16 BRBS 255 (1984)(Ramsey, C.J., dissenting on other grounds). Furthermore, the Section 20(a), 33 U.S.C. §920(a), presumption is applicable in psychological injury cases. *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380, 384 n.2 (1990). In order to invoke the Section 20(a) presumption, claimant must prove that he has sustained a psychological impairment and that an accident occurred or working conditions existed which could have caused the impairment. *Sanders*, 22 BRBS at 340.

Contrary to the administrative law judge's statement, neither the Board nor the courts have quantified the degree of trauma needed to invoke the Section 20(a) presumption. It is well-established, moreover, that if the circumstances of a claimant's employment cause an injury or aggravate, accelerate, or combine with an underlying condition, the entire resultant disability is compensable. *See generally Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966); *Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989). In the instant case, the administrative law judge did not consider whether claimant was entitled to invocation of the Section 20(a) presumption. Rather, because the administrative law judge determined that the standard required a violent trauma or severe physical injury and that claimant's fifteen foot fall from a ladder was neither violent nor catastrophic, he credited the opinion of Dr. Jarrett over that of Dr. Benovitz to find that claimant did not sustain an employment-related psychiatric impairment. The administrative law judge erred both in utilizing this legal standard and in failing to apply Section 20(a). As the parties stipulated that an accident occurred on January 19, 1990, and there is medical evidence that this accident could have caused claimant's psychiatric condition, Section 20(a) was invoked. The administrative law judge must consider whether employer rebutted the presumption with specific and comprehensive evidence that claimant's psychological condition was not caused or aggravated by his employment injury. *See generally Adams v. General Dynamics Corp.*, 17 BRBS 258 (1985). If the presumption is rebutted, the administrative law judge must weigh all the evidence relevant to causation. We, therefore, vacate the administrative law judge's finding on this issue, and remand the case for the administrative law judge to reconsider the issue of causation as it relates to claimant's psychological condition.

Next, claimant contends that the administrative law judge erred in his evaluation of the medical evidence of record regarding claimant's ability to return to his usual employment duties with employer. In order to establish a *prima facie* case of total disability, claimant bears the burden of establishing that he is unable to perform his usual employment due to his work-related injury. *See Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988). In the instant case, the administrative law judge set forth the testimony of Drs. Dayton, Thaker, Molina, Cohn, Tarkan, Kramer, and May, none of whom, except Dr. May, found claimant to have reached maximum medical improvement or released claimant to work. The administrative law judge credited the opinion of Dr. May solely because it is the most recent medical opinion of record and found that claimant was capable of returning to work as of February 4, 1991.

It is well-established that an administrative law judge is not bound to accept the opinion or theory of any particular medical examiner. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741

(5th Cir. 1962). Rather, the administrative law judge is entitled to evaluate the credibility of all witnesses, including doctors, and to draw his own inferences from the evidence. *See John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). Furthermore, the administrative law judge must independently analyze and discuss the medical evidence, and must adequately detail the rational behind his decision. *See Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988). In the instant case, the administrative law judge decided to credit Dr. May's opinion solely because it was the most recent medical opinion of record (February 4, 1991). The administrative law judge implicitly rejected the six medical evaluations of record which preceded Dr. May's examination of claimant (between January 24, 1990 and January 17, 1991). Included in those prior opinions is the evaluation of claimant by Dr. Kramer, an independent medical examiner who, two and a half weeks before claimant's examination by Dr. May, concluded that claimant had not reached maximum medical improvement and was presently incapable of returning to work. We hold that the administrative law judge's credibility determination on this issue lacks a reasoned analysis; specifically, the administrative law judge's decision to reject the aforementioned six physicians' opinions based solely upon a medical report dated two weeks subsequent to that of Dr. Kramer, without further analysis, is irrational. We, therefore, vacate the administrative law judge's finding that claimant is capable of resuming his employment duties with employer as of February 4, 1991. On remand, the administrative law judge must reconsider and discuss all of the medical evidence relevant to the issues of the nature and extent of claimant's disability, make appropriate findings based on the relevant law and evidence, and give a written explanation of the reasons and basis for that determination.

Claimant next argues that the administrative law judge erred in failing to order employer to pay the medical charges of Drs. Cohn, Molina, and Benovitz. Section 7 of the Act, 33 U.S.C. §907, describes an employer's duty to provide medical services necessitated by its employee's work-related injuries. Section 7(d) of the Act, 33 U.S.C. §907(d), sets forth the prerequisites for an employer's liability for payment or reimbursement of medical expenses incurred by claimant. The Board has held that Section 7(d) requires that a claimant request his employer's authorization for medical services performed by any physician, including the claimant's initial choice.[2] *See Maguire v. Todd Pacific Shipyards Corp.*, 25 BRBS 299 (1992); *Shahady v. Atlas Tile & Marble*, 13 BRBS 1007 (1981)(Miller, J., dissenting), *rev'd on other grounds*, 682 F.2d 968 (D.C. Cir. 1982), *cert. denied*, 459 U.S. 1146 (1983). Where a claimant's request for authorization is refused by the employer, claimant is released from the obligation of continuing to seek approval for his subsequent treatment and thereafter need only establish that the treatment he subsequently procured on his own initiative was necessary for his injury in order to be entitled to such treatment at employer's expense. *See Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989).

In denying reimbursement for the medical charges of Drs. Molina, Cohn and Benovitz, the administrative law judge determined that Dr. Thaker was claimant's initial choice of physician and that, as claimant did not seek authorization for treatment by these subsequent physicians, reimbursement by employer was precluded. On appeal, claimant contends that, since he was

[2]In addition, Section 702.406(a) of the Act's regulations, 20 C.F.R. §702.406(a), requires that authorization from the employer be obtained when a change of physicians occurs.

discharged by Dr. Thaker, he was relieved from the obligation of seeking employer's approval for his subsequent treatment. Our review of the record reveals that, contrary to claimant's contention on appeal, Dr. Thaker did not discharge claimant; rather, Dr. Thaker stated a willingness, acknowledged by claimant at the hearing, to continue to treat claimant as needed. *See* EX-3; Tr. at 69. Thus, as claimant does not argue that he sought authorization for the treatment subsequently rendered by Drs. Molina and Cohn, and there is no evidence of a prior refusal by employer regarding these physicians, we affirm the administrative law judge's determination that recovery of the expenses incurred by claimant in obtaining treatment from Drs. Molina and Cohn is precluded.

We vacate, however, the administrative law judge's decision to reject claimant's request for reimbursement of the medical charges of Dr. Benovitz. The record developed before the administrative law judge contains evidence that claimant was advised to consult a psychiatrist by Dr. Thaker, and that claimant subsequently requested such treatment from employer. *See* EX. A-10. Where a claimant is referred to a specialist, the regulations require that employer consent to the change in physician. 20 C.F.R. §702.406. Thus, if claimant was referred by his treating physician to a psychiatrist, Dr. Benovitz, he need only request authorization for such treatment to be compensable. *See generally Armfield v. Shell Offshore, Inc.*, 25 BRBS 303 (1992). Where a claimant's request for authorization is denied by his employer, the claimant is released from the obligation of continuing to seek approval for his subsequent treatment and thereafter need only establish that the treatment he subsequently procured on his own initiative was necessary for the injury in order to be entitled to such treatment at employer's expense. *See Caudill v. Sea Tac Alaska Shipbuilding*, 25 BRBS 92 (1991), *aff'd mem. sub nom. Sea Tac Alaska Shipbuilding v. Director, OWCP*, No. 91-70743 (9th Cir. Sept. 17, 1993); *Anderson*, 22 BRBS at 20. Thus, on remand, the administrative law judge must independently determine whether claimant is entitled to reimbursement for the medical charges incurred as a result of his treatment with Dr. Benovitz.

Lastly, claimant alleges that the administrative law judge erred by failing to order an independent psychiatric examination since the psychiatric opinions of record were in direct conflict and Dr. Jarrett, employer's expert, was biased. We disagree. Under 20 C.F.R. §§702.336 and 702.338, the administrative law judge is empowered to resolve any issue arising at the hearing, must fully inquire into matters that are fundamental to the disposition of the issues in a case, and must receive into evidence all relevant and material evidence. In the instant case, the administrative law judge rejected claimant's post-hearing request for an independent examination, noting that all contested claims present conflicting evidence and that, based upon his observations of Dr. Jarrett at the hearing, he did not agree that Dr. Jarrett's testimony was so biased as to be, as claimant contends, worthless. As the administrative law judge properly considered claimant's request and rationally set forth his reasons for denying that request, we reject claimant's contention of error and hold that the administrative law judge properly exercised his discretionary authority to refuse claimant's post-hearing request for an independent psychological examination.

Accordingly, the administrative law judge's Order of March 27, 1991 is affirmed. His findings regarding the causal relationship between claimant's psychological condition and his employment, claimant's ability to return to his usual work and claimant's entitlement to

reimbursement for the services of Dr. Benovitz are 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 is affirmed.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge