BRB No. 96-1501

LLOYD FROILAND	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CALIFORNIA STEVEDORE AND BALLAST COMPANY	)	DATE ISSUED:
	)	
Self-Insured Employer	)	
	)	
and	)	
	)	
METROPOLITAN STEVEDORE COMPANY	)	
	)	
Administrator-Petitioners	)	DECISION and ORDER

Appeal of the Decision and Order and Decision and Order on Reconsideration of Thomas Schneider, Administrative Law Judge, United States Department of Labor.

Robert E. Babcock, Lake Oswego, Oregon, for self-insured employer and administrator.

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

PER CURIAM:

Employer appeals the Decision and Order and Decision and Order on Reconsideration (96-LHC-125) of Administrative Law Judge Thomas Schneider 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*. (the Act).[1] 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).

[1]Employer has filed a motion for summary decision vacating the administrative law judge's award and remanding the instant case for further proceedings. Employer's motion is hereby denied.

On August 11, 1986, claimant, a dockman, suffered an injury during the course of his employment with employer when steel pipes being unloaded from a ship came loose and fell on claimant. Claimant was initially treated in the emergency room at Alameda Hospital for knee strain and multiple abrasions. On October 10, 1986, claimant filed a claim for compensation under the Act for injuries resulting from the August 11, 1986 accident, describing his injuries as "severe personal injuries, including multiple injuries to both lower extremities, knees, ankles, and feet, and low back injury, cerebral concussion, and other multiple bodily injuries." Cl. Ex. 16. Employer voluntarily paid claimant temporary total disability compensation from August 12, 1986 through December 6, 1986.[2] 33 U.S.C. §908(b). Claimant did not return to work following his August 11, 1986 injury.

In his Decision and Order, the administrative law judge found that claimant suffered a work-related knee injury on August 11, 1986, which aggravated claimant's underlying arthritic knee condition. The administrative law judge further found that work-related trauma also played a part in claimant's current mentation problems. He concluded that claimant's work-related knee injury combined with claimant's other medical conditions, including his arthritic neck and back conditions and mental condition, to cause permanent total disability. Accordingly, the administrative law judge awarded claimant benefits for periods of temporary total disability, 33 U.S.C. §908(b), and for permanent total disability, 33 U.S.C. §908(a), and accorded employer relief from continuing compensation liability under Section 8(f) of the Act, 33 U.S.C. §908(f), for claimant's pre-existing medical conditions. Thereafter, in a Decision and Order on Reconsideration, the administrative law judge modified the periods of time which employer owed compensation to claimant.

On appeal, employer has submitted a 5-page brief in support of his Petition for Review in which employer asserts that the administrative law judge misapplied the "aggravation rule" in finding a causal relationship between claimant's August 11, 1986 work injury and his disabling medical conditions; employer attaches as "Exhibit A" to its

[2]Employer additionally voluntarily paid compensation for temporary total disability from April 3, 1991 through April 23, 1991 following foot surgery related to an April 20, 1984 work injury. Claimant filed a separate compensation claim under the Act for foot injuries arising out of the April 20, 1984 injury, and benefits were awarded in a Decision and Order entered by Administrative Law Judge Schneider on April 30, 1996. Thus, the foot injuries sustained in the April 20, 1984 incident were not considered by the administrative law judge in the instant claim and are not considered now by the Board.

brief its post-hearing memorandum filed with the administrative law judge.[3] Claimant has not responded to employer's appeal.

In establishing that an injury arises out of his employment, a claimant is aided by the presumption under Section 20(a) of the Act, 33 U.S.C. §920(a), which applies to the issue of whether an injury is causally related to his employment activities. *Perry v. Carolina Shipping Co.*, 20 BRBS 90 (1987).[4] An employment injury need not be the sole cause of a

[3]Employer's post-hearing memorandum also contains a discussion of suitable alternate employment; as employer's Petition for Review and brief filed with the Board makes no mention of suitable alternative employment, the issue will not be considered by the Board. The post-hearing brief alone provides an inadequate basis for review by the Board, as it does not identify specific error in the administrative law judge's decision. *See Collins v. Oceanic Butler, Inc.*, 23 BRBS 227 (1990).

[4]In order to be entitled to the Section 20(a) presumption, claimant must establish a *prima facie* case by showing that he suffered a harm and that either a work-related accident occurred or that working conditions existed which could have caused or aggravated the harm. *See Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990); *Perry v. Carolina Shipping Co.*, 20 BRBS 90 (1987). In order to establish his *prima facie* case for invocation of the statutory presumption, claimant is not required to prove that his working conditions in fact caused the harm; under Section 20(a), it is presumed that the harm demonstrated is related to the proven work events. *See Sinclair v. United Food and Commercial Workers*, 23 BRBS 148 (1989). In the instant case, employer does not specifically aver in its appeal brief that claimant is not entitled to invocation of the Section 20(a) presumption. It is clear, moreover, that on the facts of this case, claimant is entitled to invocation of the presumption

disability; rather, if the employment aggravates, accelerates, or combines with an underlying condition, the entire resultant condition is compensable. *See Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966); *Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989); *see also Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968). Upon invocation of the presumption, the burden shifts to the employer to present specific and comprehensive evidence sufficient to sever the causal 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, he must weigh all of the evidence and resolve the causation issue based on the record as a whole. *See Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153 (1985).

In the case at bar, the administrative law judge determined that claimant's work-related knee injury combined with his underlying pre-existing arthritic conditions in his knees, neck and back and mental conditions to render claimant permanently totally disabled. Employer's brief in support of its Petition for Review alleges no specific error made by the administrative law judge in his consideration of the evidence relevant to causation. Employer's sole argument on appeal is that it is not liable for claimant's arthritis or mentation problems; employer asserts it is liable for conditions which develop or worsen post-injury only if those conditions are proven to be related to the work injury. Employer asserts that the administrative law judge's decision is not supported by the aggravation rule. Employer quotes two sentences from pages three and four of the decision, which it asserts demonstrate that the administrative law judge awarded benefits for conditions which developed post-injury.

We reject employer's argument, as it misstates the administrative law judge's decision and is inconsistent with the allocation of the burden of proof provided under the Section 20(a) presumption and with the principle that if a work-related injury aggravates, accelerates or combines with an underlying condition, the entire resultant disability is compensable. *See O'Leary*, 357 F.2d at 812; *Marko v. Morris Boney Co.*, 23 BRBS 353 (1990). Employer has cited no record evidence establishing that claimant's arthritis did not pre-exist the work-related injury, that it was not aggravated by the injury, or that claimant's mentation problems arose from post-injury causes. Moreover, employer's appellate brief cites no evidence that could sever the causal connection between claimant's disability and his employment. *See Swinton*, 554 F.2d at 1075, 4 BRBS at 466. The administrative law judge properly applied the aggravation rule, finding that claimant's arthritis was a pre-existing condition aggravated by the work injury. As the entire condition is thus work-related, any deterioration thereafter due to the natural progression of the condition is compensable. Similarly, the administrative law judge credited evidence that trauma played a role in the development of claimant's mental problems and rejected employer's argument regarding a pre-existing 1975 injury under the same theory. Employer cites no evidence

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as a matter of law.

contrary to these findings and fails to identify with specificity any error in the administrative law judge's weighing of the evidence. *See Collins v. Oceanic Butler, Inc.*, 23 BRBS 227 (1990). We therefore affirm the administrative law judge's award of permanent total disability. *See O'Leary*, 357 F.2d at 812.

Accordingly, the Decision and Order and Decision and Order on Reconsideration of the administrative law judge awarding benefits are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. MCGRANERY
Administrative Appeals Judge