

BRB No. 96-1671

HARRY GARDNER)
Claimant-Petitioner)
v.) DATE ISSUED:
ART CATERING)
and)
LOUISIANA WORKERS')
COMPENSATION CORPORATION)
Employer/Carrier-)
Respondents) DECISION and ORDER

Appeal of the Decision and Order of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

Tony B. Jobe (Law Offices of Tony B. Jobe, P.C.), Covington, Louisiana, for claimant.

David K. Johnson (Wall, Johnson, Stiltner, Patterson, Wilton & Egan), Baton Rouge, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order - Awarding Medical Benefits and Order Denying Motion for Reconsideration (94-LHC-1730) of Administrative Law Judge James W. Kerr, Jr., 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

From January 1 until May 30, 1993, claimant worked as a steward in charge of the catering services employer provided on the *Booker 15*, an oil rig. Claimant testified that he was exhausted and under constant stress in this position due to his responsibilities, long working hours, temperatures in the working area being as high as 120 degrees, problems with staff and equipment, and lack of sleep. Tr. at 85-89, 107, 116-117. On February 4, 1993, claimant had a heart attack and was transported from the rig to Terrebon General Hospital where he was treated by Dr. Abben, a cardiologist. Dr. Abben performed an angioplasty, prescribed medication, and told claimant not to return to work for a week. Dr. Abben examined claimant and released him to return to work, with the restriction of no heavy lifting, on February 15, 1993. He also advised claimant to quit smoking. Claimant continued to be treated by Dr. Abben and his colleagues, Drs. Ladd and Stagg, at the Houma Heart Clinic. Claimant returned to work and, except for a month in March 1993 when the workers were moved to a temporary location, worked on the rig until May 31, 1993, when the job ended.

Several days after his work on the rig ended, claimant again developed chest pains and underwent another angioplasty to clear his right artery. In the summer of 1993, an angiogram revealed that claimant's pain was due to scarring on his heart. Claimant underwent several catheterizations, diagnostic procedures to evaluate him for blockage in the arteries that feed the heart. In June 1994, claimant had a severe heart attack and eventually underwent double bypass surgery on September 2, 1994. Tr. at 105-107. According to Dr. Abben, claimant's heart muscle reflected moderate damage as a result of his problems. Cl. Ex. 2 at 13. Since being released for light duty work in September 1993, claimant has held various jobs, but has not returned to his prior work. Claimant sought permanent partial disability compensation and medical benefits under the Act.

The administrative law judge found that claimant was entitled to the Section 20(a), 33 U.S.C. §920(a), presumption inasmuch as he suffered from chest pains, coronary artery disease, and a myocardial infarction, and Dr. Abben testified that work-related stress probably aggravated claimant's underlying coronary artery disease, resulting in the myocardial infarction. The administrative law judge further determined that as employer failed to introduce any evidence sufficient to establish that claimant's heart condition was not aggravated by his employment, claimant established a work-related injury, consisting of a myocardial infarction on February 4, 1993. Citing Dr. Abben's testimony, the administrative law judge further concluded that because the work-related stress which aggravated claimant's heart disease and caused his February 1993 myocardial infarction ended when his employment with employer ended, employer was not liable for disability and medical benefits after May 30, 1993; he found that any problems claimant had thereafter were attributable to his underlying coronary artery disease and not to his work-related February 1993 myocardial infarction. The administrative law judge also concluded that because claimant had not missed any work as a result of the February 1993 myocardial infarction, he was not entitled to any disability compensation prior to May 30, 1993, but awarded him reasonable and necessary medical expenses for the February 4,

1993 injury.¹ By Order dated July 24, 1996, the administrative law judge summarily denied claimant's Motion for Reconsideration.

On appeal, claimant contends that the administrative law judge's conclusion that claimant's disability and need for medical care subsequent to May 1993 are not work-related does not comport with the "aggravation rule." Claimant further asserts that it was irrational for the administrative law judge to have identified his only work-related injury as the February 1993 heart attack after having determined previously, based on Dr. Abben's testimony, that work-related stress aggravated claimant's underlying coronary artery disease. Claimant further avers that because the record is devoid of evidence severing the causal nexus between the stress-related aggravation of claimant's underlying coronary artery disease and the coronary problems he experienced after leaving employer, the administrative law judge also erred in determining that claimant's disability and need for medical care after May 1993 are not the compensable sequelae of his work-related injury. Employer responds, urging affirmance.

Claimant's arguments in this case have merit. Initially, Section 20(a) of the Act, 33 U.S.C. §920(a), provides claimant with a presumption that his disabling condition is causally related to his employment if he shows that he suffered a harm and that employment conditions existed or a work accident occurred which could have caused, aggravated, or accelerated the condition. See *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991); *Gencarelle v. General Dynamics Corp.*, 22 BRBS 170 (1989), aff'd, 892 F.2d 173, 23 BRBS 13 (CRT)(2d Cir. 1989). In the present case, inasmuch as the administrative law judge relied upon Dr. Abben's testimony that claimant's underlying coronary artery disease was aggravated by his employment in invoking the Section 20(a) presumption, he erred in determining that claimant's only work-related injury was his February 1993 myocardial infarction. Under the aggravation rule, if claimant's employment aggravated his underlying coronary disease, his entire resultant disability is compensable. See *Obert v. John T. Clark and Sons of Maryland*, 23 BRBS 157 (1990). As the Section 20(a) presumption in conjunction with the aggravation rule links claimant's underlying coronary artery disease with his employment, the burden was on employer to demonstrate that the disease was not aggravated by claimant's work. As Dr. Abben's opinion is the only relevant evidence, the record is devoid of proof that claimant's coronary artery disease was not aggravated by his employment; therefore, the Section 20(a) presumption is not rebutted. As a result, the administrative law judge's denial of all benefits after May 30, 1993 is not supported by substantial evidence or in accordance with law, as it is based on his determination that any problems claimant had after leaving employer are due to

¹Claimant testified that the time he was off due to heart problems coincided with the time he was off of his rotation from the rig; thus, he did not miss any work.

coronary artery disease, and any disability resulting from this disease is compensable by virtue of the aggravation rule.

In cases involving a subsequent injury, an employer can also rebut the Section 20(a) presumption by showing that claimant's disabling condition was caused by a subsequent event, provided that the subsequent event was not caused by claimant's work-related injury. See, e.g., *Bass v. Broadway Maintenance*, 28 BRBS 11 (1994). The employer is liable for claimant's entire resultant disability, however, if the second injury is the natural or unavoidable result of the first injury; if the second injury is a result of an intervening cause, the employer is relieved of liability for that portion of claimant's disability attributable to the second injury. *Merrill*, 25 BRBS at 140. In the present case, in finding that claimant's heart problems subsequent to May 30, 1993 are not compensable, the administrative law judge relied upon Dr. Abben's testimony, which he reported as stating that stress had nothing to do with claimant's subsequent heart problems because his right-sided heart problems continued after he left his stressful employment. Decision and Order at 16-17. In so concluding, however, the administrative law judge mischaracterized Dr. Abben's testimony. Dr. Abben stated claimant's left-side problems were unrelated to workplace stress, but he did not state that claimant's continuing right-sided problems were unrelated to the initial work-related heart problems. In fact, Dr. Abben testified that claimant's work-related stress initially triggered the underlying problem in the right coronary artery, and he stated that this condition led to recurrent problems for claimant. Abben deposition, Cl. Ex. 2 at 37. The right coronary condition continued to worsen, and claimant's subsequent surgery involved both the right and the left. *Id.* at 37-39. Dr. Abben was unable to state the causal chain was severed as far as the right artery was concerned, and he testified that although the subsequent problem was not totally due to the original stress factor, it was part of an interrelated continuum. *Id.* 41-42. Moreover, he opined that claimant could not return to his former job because of problems with both the left and right coronary arteries.

Inasmuch as the opinion of Dr. Abben, the only evidence to address the effect of stressful working conditions on claimant's heart condition, establishes that claimant's heart problems after May 30, 1993, were due at least in part to his work-related injury, we reverse the administrative law judge's conclusion that claimant's disability after this date was not work-related. This case is remanded for consideration of the nature and extent of claimant's disability due to his heart condition. See generally *Crum v. General Adjustment Bureau*, 738 F.2d 474, 16 BRBS 115 (CRT)(D.C. Cir. 1984). Because causation is established, the administrative law judge's denial of medical benefits after May 30, 1993, is also reversed. On remand, the administrative law judge should award claimant reasonable and necessary medical expenses for treatment rendered in connection with his heart condition. See generally *Colburn v. General Dynamics Corp.*, 21 BRBS 219, 222 (1988); 33 U.S.C. §907.

Accordingly, the administrative law judge's denial of disability and medical benefits after May 30, 1993, is vacated, and the case is remanded for further consideration consistent with this opinion. In all other respects, the Decision and Order - Awarding Medical Benefits and Order Denying Motion for Reconsideration are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge