

NANCY TURNER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING	)	DATE ISSUED:
AND DRY DOCK COMPANY	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

Nancy Turner, Hampton, Virginia, *pro se*.

Benjamin Mason (Mason & Mason, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Claimant, representing herself, appeals the Decision and Order (95-LHC-2819 / 2820 / 2821) of Administrative Law Judge Fletcher E. Campbell, 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). In an appeal by a claimant without representation by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law to determine 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, a crane operator, suffered three injuries during the course of her employment on August 12, 1981, July 15, 1983, and June 13, 1985. Subsequently, claimant returned to work in a janitorial position which accommodated her physical restrictions. In late 1986, claimant was diagnosed as a delusional paranoid schizophrenic. On January 12, 1987, claimant was advised by employer not to return to work until she underwent treatment for her psychiatric condition; following a two year absence from work during which time claimant failed to obtain treatment for her mental condition, she was

permanently discharged by employer according to the terms of the union contract. EX 8a-b.

In his Decision and Order, the administrative law judge stated that, since the nature of claimant's claim was not clear, he would address claimant's entitlement, if any, to temporary total disability benefits for the period January 15, 1987, to the present and continuing, Decision and Order at 2 fn. 1, and whether claimant's dismissal by employer was an act for which employer must pay compensation.<sup>1</sup> The administrative law judge determined that claimant's mental condition, specifically diagnosed as delusional paranoid schizophrenia, did not arise out of nor was aggravated by her work conditions based upon the opinion of Dr. Pile that claimant's condition was pre-existent and not made worse by her work conditions. EX 6. The administrative law judge also found claimant was not terminated due to a claim under the Act.

Claimant, without the assistance of counsel, now appeals, contending that the administrative law judge erred in not finding her entitled to continuing compensation for her current impairment resulting from the injuries she suffered in 1981 and 1985. Employer has not responded to this appeal.

It is well-established that claimant bears the burden of proving the existence of an injury or harm and that a work-related accident occurred or that working conditions existed which could have caused the harm, in order to establish her *prima facie* case. See *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *Obert v. John T. Clark and Son of Maryland*, 23 BRBS 157 (1990). It is claimant's burden to establish each element of her *prima facie* case by affirmative proof. See *Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989); see also *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT)(1994). Once claimant has established her *prima facie* case, the Section 20(a) presumption is invoked, linking her harm to her employment. See *Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990).

In the instant case, the administrative law judge found that claimant had not established that an accident or working conditions occurred which could have caused her current mental condition. The administrative law judge's decision is supported by the record in this case. Claimant here has not at any time alleged or claimed the existence of

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<sup>1</sup>The administrative law judge in this case did not specifically state that he was analyzing the propriety of claimant's dismissal under Section 49, of the Act, 33 U.S.C. §948a (1994). However, as he reviewed the issue and the evidence under the proper standards, this omission is harmless.

working conditions that could have resulted in her mental condition or presented evidence in support of such a claim. As claimant failed to establish an essential element of her *prima facie* case, her claim for benefits was properly denied. See *U.S. Industries*, 455 U.S. at 608, 14 BRBS at 631; *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27 (CRT)(9th Cir. 1988).

The administrative law judge also determined that, assuming, *arguendo*, claimant established her *prima facie* case, the uncontradicted testimony of Dr. Pile was sufficient to rebut the Section 20(a) presumption and that, once the presumption was rebutted, claimant failed to sustain her burden of establishing causation. Dr. Pile, the only psychiatrist to examine claimant, opined that claimant's symptoms pre-existed her work-injuries and that her work for employer did not affect these symptoms. As the opinion of Dr. Pile constitutes substantial evidence sufficient to rebut the presumption, we affirm the administrative law judge's finding that the Section 20(a) presumption, if invoked, is rebutted, see *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988), and that, as the record contains no medical evidence exists linking claimant's condition to her employment, claimant has failed to sustain her burden of showing causation. See *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990).

Lastly, we address the administrative law judge's finding that employer did not violate the Act when it terminated claimant in January 1989. Section 49 of the Act prohibits an employer from discharging or discriminating against an employee based on her involvement in a claim under the Act, and if the employee can show she is the victim of such discrimination, she is entitled to reinstatement and back wages. 33 U.S.C. §948a (1994). To establish a *prima facie* case of discrimination, a claimant must demonstrate that her employer committed a discriminatory act motivated by discriminatory animus or intent. See *Holliman v. Newport News Shipbuilding & Dry Dock Co.*, 852 F.2d 759, 21 BRBS 124 (CRT)(4th Cir. 1988), *aff'g* 20 BRBS 114 (1987); *Geddes v. Director, OWCP*, 851 F.2d 440, 21 BRBS 103 (CRT)(D.C. Cir. 1988), *aff'g* *Geddes v. Washington Metropolitan Area Transit Authority*, 19 BRBS 261 (1987); *Brooks v. Newport News Shipbuilding & Dry Dock Co.*, 26 BRBS 1 (1992), *aff'd sub nom. Brooks v. Director, OWCP*, 2 F.3d 64, 27 BRBS 100 (CRT)(4th Cir. 1993). The administrative law judge may infer animus from circumstances demonstrated by the record. See *Brooks*, 26 BRBS at 3. The essence of discrimination is in treating the claimant differently than other employees. *Jaros v. National Steel & Shipbuilding Co.*, 21 BRBS 26 (1988).

In the instant case, following a period of time during which she exhibited trouble concentrating and performing simple tasks and had been observed behaving unconventionally by the physicians who treated her for her hand conditions, claimant was released from her employment with employer pending her receipt of treatment for her diagnosed mental condition. See EX 61. When claimant failed to receive such treatment and remained absent from work for more than 24 months for this non work-related medical condition, she was terminated under the terms of the union contract. At the time of her

dismissal, claimant was neither receiving benefits<sup>2</sup> related to a work-injury nor had she filed a claim for benefits under the Act. The administrative law judge found that claimant failed to establish that her termination was a discriminatory act motivated by discriminatory animus. Specifically, the administrative law judge determined that claimant was discharged under the terms of the union contract because of her failure to obtain medical treatment for her diagnosed mental condition and that employer had no apparent ulterior motive in discharging claimant. Since substantial evidence supports the administrative law judge's finding that claimant was discharged solely due to her failure to undergo treatment for her diagnosed mental condition, we affirm the administrative law judge's determination that employer's termination of claimant in January 1989 did not violate the Act. See, e.g., *Hunt v. Newport News Shipbuilding & Dry Dock Co.*, 28 BRBS 364 (1994), *aff'd mem.*, 61 F.3d 900 (4th Cir. 1995); *Holliman*, 852 F.2d at 759, 21 BRBS at 124 (CRT); *Manship v. Norfolk & Western Railway Co.*, 30 BRBS 175 (1996).

Accordingly, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. MCGRANERY  
Administrative Appeals Judge

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<sup>2</sup>The record reflects that claimant had received compensation for her temporary total disabilities arising from her work injuries for the periods of September 28-29, 1981, and from January 12, 1982, to February 27, 1983, as well as compensation for a 10 percent permanent partial disability to her left hand.