

JAMES LIVAS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
COMAR INDUSTRIES)	DATE ISSUED: _____
)	
and)	
)	
CIGNA P&C CASUALTY COMPANIES)	
)	
Employer/Carrier- Respondents)	DECISION and ORDER

Appeal of the Decision and Order of Robert G. Mahony, Administrative Law Judge, United States Department of Labor.

James Livas, Schriever, Louisiana, *pro se*.

Richard W. Withers (Sharp & Gay, P.A.), Jacksonville, Florida, for employer/ carrier.

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

PER CURIAM:

Claimant, appearing without legal representation, appeals the Decision and Order (94-LHC-177) of Administrative Law Judge Robert G. Mahony 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 reviewing an appeal where claimant is not represented by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law in order to determine whether they are rational, supported by substantial evidence, and in accordance with law; if so, they must be affirmed. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

On May 8, 1989, while working for employer as a welder, claimant fell fifteen feet onto a barge, injuring his left knee, right knee, and right ankle. Claimant received treatment for these injuries by Dr. El-Bahri, who found that claimant reached maximum medical improvement on February 23, 1990, and rated him as having a 20 percent permanent impairment of the left knee. Employer voluntarily paid temporary total disability from the

date of injury until the date of maximum medical improvement, and permanent partial disability under the schedule thereafter consistent with Dr. El-Bahri's impairment rating. See 33 U.S.C. §908(c)(2), (19). These benefits are not disputed.

Claimant, however, also alleged that he injured his lower back in the May 1989 work accident. He sought continuing temporary total disability benefits or, alternatively, permanent total disability compensation under the Act. In addition, he argued that employer erred in refusing to authorize additional medical treatment for his back condition.

The administrative law judge denied the contested medical benefits as unnecessary, and found that claimant did not establish that he suffered a back injury. The administrative law judge further determined that, as claimant's only work-related injury was to his left knee and employer established the availability of suitable alternate employment through the testimony of its vocational expert, Mr. Albert, claimant's recovery under the Act was limited to the permanent partial disability compensation under the schedule previously paid. Claimant, appearing without the assistance of counsel, appeals the administrative law judge's denial of his claim for total disability benefits. Employer responds, requesting affirmance of the decision below.

We conclude that the administrative law judge's Decision and Order in this case cannot be affirmed. Initially, the administrative law judge adopted employer's proposed Decision and Order virtually in its entirety as his own Decision and Order. Decisions rendered by administrative law judges under the Act are required by the Administrative Procedure Act (the APA), 5 U.S.C. §557(c)(3)(A), to include a statement of "findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented in the record." Thus, in rendering a decision, an administrative law judge must adequately detail the rationale behind his decision; he must discuss the medical evidence of record and set forth the reasons as to why he has accepted or rejected such evidence. *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380 (1990); *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988); *Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988); *Williams v. Newport News Shipbuilding & Dry Dock Co.*, 17 BRBS 61 (1985).

Although it is not error *per se* for an administrative law judge to adopt or to incorporate language from a party's pleading, see *Williams*, 17 BRBS at 62; *Orange v. Island Creek Coal Co.*, 3 BLR 1-636 (1978), doing so must not prevent independent review of the evidence by the adjudicator. *Id.* In the instant case, the administrative law judge's adoption of employer's proposed Decision and Order resulted in a decision which reflects a selective analysis of the evidence and conclusory findings.

For example, in denying claimant the requested medical expenses and disability benefits based on the alleged work-related back injury, the administrative law judge stated that there was no evidence that claimant had any disabling condition other his left knee injury which was related to or aggravated by his May 1989 work injury and that none of the objective tests, evaluations, or medical examinations indicate that claimant had any condition related to his work injury with the exception of the 20 percent impairment of the left knee. In so concluding, however, the administrative law judge failed to take into consideration a supplemental letter dated August 22, 1990, from Dr. El-Bahri in which he states that claimant complained of back pain while under his care in 1989 and that claimant received a bad blow to the back area when he fell from the barge on May 8, 1989. Moreover, Dr. El-Bahri also stated that although claimant did not complain about his back as frequently as his ankle or knee, it was his opinion that the problems claimant was having with his back are related to the May 1989 work injury. CX-1. In addition, while the administrative law judge noted in his recitation of the evidence, Decision and Order at 4, that Drs. Dennie and Rogozinski diagnosed a degenerative disc at L5-S1 and recommended surgical fusion, which was not ultimately performed based on Dr. Harris's psychological assessment, he did not weigh or discuss this evidence in determining that claimant failed to establish the occurrence of the alleged back injury. The administrative law judge also did not consider a letter from Dr. Rogozinski to employer's counsel dated November 19, 1991, in which Dr. Rogozinski explained although claimant was no longer a viable surgical candidate in light of Dr. Harris's psychological evaluation, this was quite different from his changing his mind regarding claimant's need for surgery. Moreover, he did not consider a November 20, 1992, letter in which Dr. Rogozinski opined that claimant had a 7 percent whole body impairment, and a March 1, 1991, medical report from Dr. Pohl, who agreed with Dr. Rogozinski's surgical recommendation and noted that an MRI performed on October 12, 1990, was consistent with disc degeneration and a discogram performed on December 4, 1990, indicated an abnormal staining pattern at L5-S1. Finally, the administrative law judge neglected to consider and weigh a report by Dr. Drummond indicating that claimant had back pain and mid scapular pain for which he was treated with steroid injections, as well as several psychiatric opinions in the record which document a history of chronic back pain.¹ In light of the administrative law judge's failure to fully discuss the relevant evidence of record, we conclude that remand of this case to the administrative law judge is necessary.

On remand, the administrative law judge must independently consider the medical

¹Dr. Juan Miller diagnosed chronic pain in a report dated May 31, 1994; Dr. James Berwick found chronic back pain in a June 2, 1994 opinion; and Dr. Marsha Redden diagnosed a dysthymic disorder with histrionic personality features in a report dated May 13, 1992. CX-1.

evidence of record, consistent with the applicable legal standards, regarding the issue of whether claimant's accident at work caused or aggravated a back condition. It is well-established that, in order to establish that he has suffered an "injury" under the Act, a claimant need only establish that something has gone wrong with the human frame. *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968)(*en banc*); *see also Romeike v. Kaiser Shipyards*, 22 BRBS 57, 59 (1989). Credible complaints of pain and description of symptoms are sufficient to establish the element of physical harm. *Sylvester v. Bethlehem Steel Corp.*, 14 BRBS 234, 236 (1981), *aff'd*, 681 F.2d 359, 14 BRBS 984 (5th Cir. 1982); *Golden v. Eller & Co.*, 8 BRBS 846, 849 (1978), *aff'd*, 620 F.2d 71, 12 BRBS 348 (5th Cir. 1980). Similarly, experiencing back pain at work can be sufficient to establish an injury. *See Jones v. J.F. Shea Co.*, 14 BRBS 207 (1981). Where an employment-related injury aggravates, combines with or accelerates a pre-existing condition, the entire resultant condition is compensable. *See Wayland v. Moore Dry Dock*, 25 BRBS 53 (1991). Inasmuch as the occurrence of the May 1989 work accident is not in dispute, if claimant establishes that he suffered some harm or pain, he is entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption that his condition is caused or aggravated by his employment. *See generally Rajotte v. General Dynamics Corp.*, 18 BRBS 85 (1986). If, on remand, the administrative law judge finds the Section 20(a) presumption invoked, he must determine whether employer has produced substantial countervailing evidence to rebut the presumption that claimant's back condition was caused or aggravated by his May 8, 1989, work accident. *See generally Care v. Washington Metropolitan Area Transit Authority*, 21 BRBS 248, 251 (1988). If the administrative law judge determines that the presumption has been rebutted, he must resolve the causation issue based upon the record as a whole. *See Uglesich v. Stevedoring Services of America*, 24 BRBS 180, 183 (1991). If causation is established, the administrative law judge must address the extent of disability and any remaining issues.

Accordingly, the administrative law judge's Decision and Order is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge