BRB No. 97-1285

LAWRENCE E. MONCRIEF	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
SINCLAIR CONTROL CORPORATION	)	
	)	
	)	
and	)	
	)	
EMPLOYERS INSURANCE OF WAUSAU	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Ruling on Motion to Limit Testimony and Decision and Order Denying Benefits of Alfred Lindeman, Administrative Law Judge, United States Department of Labor.

Michael F. Pozzi, Seattle, Washington, for claimant.

Thomas Owen McElmeel, Seattle, Washington, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Ruling on Motion to Limit Testimony and Decision and Order Denying Benefits (96-LHC-550) of Administrative Law Judge Alfred Lindeman 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).

Claimant alleged that on May 17, 1995, while working aboard a vessel with his supervisor Richard Fuller, he received an electrical shock while reaching behind an electrical distribution panel. Claimant does not recall actually receiving this shock, but testified that he was knocked to the ground and felt dazed. Mr. Fuller testified that he did not see claimant receive a shock or fall to the ground, but that he heard claimant say "ow" or "I got zapped." Claimant did not report the incident to employer, but completed his shift and continued to work for the next two weeks. On June 2, 1995, claimant did not report for work and, on June 6, 1995, sought treatment for complaints of body aches and general malaise. Thereafter, claimant, complaining of such symptoms as disorientation, memory difficulties, depression and a phobia of electricity, sought temporary total disability compensation under the Act for a psychological injury which resulted from the electrical shock he allegedly received on May 17, 1995.

In an order dated October 30, 1996, the administrative law judge denied claimant's motion to limit the testimony of employer's expert witness, Dr. Patten, subject to claimant's opportunity to conduct either a telephone or in person deposition of Dr. Patten prior to the hearing. Thereafter, in his Decision and Order, the administrative law judge found invocation of the Section 20(a), 33 U.S.C. §920(a), presumption established, but after a review of the record, determined that employer successfully rebutted the presumption. Thus, the administrative law judge denied claimant's claim for compensation.

On appeal, claimant contends that the administrative law judge erred in concluding that claimant did not suffer a psychological injury as a result of the electrical shock he received on May 17, 1995. Claimant further argues that the administrative law judge erred in allowing Dr. Patten to testify at the November 4, 1996, hearing as employer's expert witness since, he asserts, employer failed to provide timely notification of this testimony prior to the hearing. Lastly, claimant requests that the case be remanded and the record reopened to allow the testimony of a witness who would corroborate claimant's version of the events surrounding the May 17, 1995, incident. Employer responds, urging affirmance of the administrative law judge's decision.

We will first address claimant's procedural contentions. On August 20, 1996, the administrative law judge issued a pre-trial order requiring, *inter alia*, that no later than 30 days prior to the hearing, which was scheduled for November 4, 1996, the parties should identify each witness testifying at the hearing. In its October 4, 1996, pre-trial statement, employer named Dr. Patten as a witness. On appeal, claimant contends that this untimely disclosure prejudiced his ability to obtain an additional supporting opinion from an electrical shock expert. We disagree. In his appeal,

claimant fails to explain how employer's disclosure of Dr. Patten failed to comply with the administrative law judge's pre-trial order.[1] According to employer, claimant did depose Dr. Patten prior to the hearing, although neither party submitted such a deposition into evidence. Additionally, employer contends, and it is undisputed, that claimant had the opportunity to request a continuance of the hearing, a request he made at least one time earlier in the proceedings.

It is well-established that the administrative law judge has the duty to fully inquire into matters at issue and receive into evidence all relevant and material testimony and documents. *See Olsen v. Triple A Machine Shops, Inc.*, 25 BRBS 40 (1991), *aff'd mem. sub nom. Olsen v. Director, OWCP*, 996 F.2d 1226 (9th Cir. 1993). As employer's disclosure of Dr. Patten was not untimely, and as claimant had the opportunity to depose Dr. Patten prior to the hearing and cross-examine him at the hearing, claimant's contention of error in this regard is rejected. *See Vonthronsohnhaus v. Ingalls Shipbuilding, Inc.*, 24 BRBS 154 (1990); *Chavez v. Todd Shipyards Corp.*, 24 BRBS 71 (1990), *aff'd in part and rev'd in part sub nom. Chavez v. Director, OWCP*, 961 F.2d 1409, 25 BRBS 134 (CRT)(9th Cir. 1992).

We next address claimant's contentions regarding the issue of causation. In order to be entitled to invocation of 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). It is well-established that the Section 20(a) presumption is applicable in psychological injury cases. *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380, 384 n.2 (1990). Claimant's psychological injury need only be due in part to work-related conditions to be compensable under the Act. *See Peterson v. General Dynamics Corp.*, 25 BRBS 78 (1991), *aff'd sub nom. Ins. Co. of North America v. U.S. Dept. of Labor, OWCP*, 969 F.2d 1400, 26 BRBS 14 (CRT)(2d Cir. 1992), *cert. denied*, 507 U.S. 909 (1993). Once claimant has established his *prima facie* case, he is entitled to invocation of the Section 20(a) presumption linking his harm to his employment. *See Stevens,* 23 BRBS at 191. Upon invocation of the presumption, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's

[1]Employer asserts that it disclosed Dr. Patten as a witness as early as September 30, 1996, in its Supplemental Answers to Interrogatories. This document, however, is not in evidence.

condition was not caused or aggravated by his 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).

In the instant case, the administrative law judge, based upon a finding that claimant may have received a minor shock while working on May 17, 1995, determined that claimant was entitled to the benefit of the Section 20(a) presumption. After fully considering all the evidence of record, the administrative law judge discredited claimant's testimony and the testimony of Leanne Seabrook, claimant's girlfriend, credited the testimony of Mr. Fuller, and gave greater weight to the opinion of Dr. Patten over those of Drs. Barnhart and Hofmann. The administrative law judge found that the opinion of Dr. Patten, as supported by his other credibility determinations, was sufficient to rebut the Section 20(a) presumption, and therefore, denied the claim.

After reviewing claimant's medical records and depositions associated with claimant's claim, Dr. Patten, a neurologist who specializes in electrical injuries, opined in a January 5, 1996 letter that the lack of any exit or entry wounds and the variable results of claimant's psychological tests convinced him that claimant is probably malingering with regard to his electrical shock injury. Cl. Ex. 13. At the hearing, Dr. Patten made several points in support of his opinion that claimant did not suffer from a significant electrical injury which resulted in any psychological condition. Tr. at 270. Specifically, with regard to neuropsychological tests administered to claimant by Dr. Pepping in 1995 which took claimant eight hours to complete, *see* Cl. Ex. 3, Dr. Patten stated that even severely brain damaged people can complete the tests in a shorter period of time. Tr. at 272. Dr. Patten also believed that claimant's ability to perform more complex tasks with relative ease, while having great difficulty with easy tasks, defied logic. Tr. at 271. Dr. Patten noted that claimant's failure to remember the actual shock is inconsistent with other patients he has treated with severe electrical injuries. Tr. at 279. Moreover, the failure of claimant's subsequent physicians and claimant's girlfriend to notice any burn marks, and claimant's ability to work immediately after the incident, indicated to Dr. Patten that if claimant had received a shock, it was a minor one. Tr. at 273, 302. Thus, Dr. Patten concluded that claimant suffers from a personality disorder of long standing nature and is malingering with regard to any effect of his electrical shock. Tr. at 270, 300.

In support of his contentions on appeal, claimant avers that since Dr. Patten conceded that claimant had received a shock, and that it is possible that a minor shock could cause trauma, his opinion is insufficient to establish rebuttal of the Section 20(a) presumption. We disagree. Contrary to claimant's contention, Dr.

Patten did not detract from his opinion that, in the instant case, claimant did not suffer from any psychological injury as a result of any shock he received on May 17, 1995. *See* Tr. at 300. As this opinion constitutes substantial evidence sufficient to rebut the presumption, we affirm the administrative law judge's finding that the Section 20(a) presumption is rebutted. *See Holmes v. Universal Maritime Service Corp.*, 29 BRBS 18 (1995); *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988). Moreover, any error committed by the administrative law judge in failing to expressly weigh the evidence of record as a whole is harmless, because the administrative law judge discussed all of the relevant medical evidence contained in the record, and rationally found the opinions of Drs. Barnhart, Hofmann and Pepping outweighed by the contrary opinion of Dr. Patten. *See generally Bingham v. General Dynamics Corp.*, 20 BRBS 198 (1988); s*ee also Director, OWCP v. Greenwich Collieries,* 512 U.S. 267, 28 BRBS 43 (CRT)(1994).

Lastly, we deny claimant's request that the record be reopened to allow the testimony of a previously unavailable witness who would now corroborate claimant's contention that he was knocked to the ground from the electrical shock on May 17, 1995, and thus contradict Mr. Fuller's account of this event. Should claimant wish to introduce new evidence, he may seek modification of the administrative law judge's Decision and Order contending a mistake of fact was made; this petition, however, must be filed with the administrative law judge.[2] *See generally Dobson v. Todd Pacific Shipyards Corp.*, 21 BRBS 174 (1988).

[2]It is noted that the exact identity of this witness was not provided by claimant.

Accordingly, the Ruling on Motion to Limit Testimony and Decision and Order Denying Benefits of the administrative law judge are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge