BRB No. 08-0103

D.D. (widow of E.D.)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ELECTRIC BOAT CORPORATION	)	DATE ISSUED: 08/14/2008
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Colleen A. Geraghty, Administrative Law Judge, United States Department of Labor.

Stephen C. Embry (Embry & Neusner), Groton, Connecticut, for claimant.

Edward W. Murphy (Morrison Mahoney, L.L.P.), Boston, Massachusetts, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2006-LHC-0806) of Administrative Law Judge Colleen A. Geraghty 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 administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The underlying facts of this case are not at issue. Decedent worked for employer in Groton, Connecticut, as a lead bonder and rigger for approximately 30 years. Former co-workers and his widow testified that he was exposed to lead, asbestos, welding fumes and solvents during the course of his employment. Decedent retired in 2001. He was diagnosed with kidney cancer on August 15, 2004. On October 6, 2004, he underwent a nephrectomy to remove his cancerous left kidney. On November 12, 2004, he underwent surgery to correct an obstruction, which was found to be cancerous, in the renal fossa

area where his kidney had been, and on November 17, he underwent another obstruction-correction surgery. He did not recover from the final surgery, and he died on November 23, 2004. The death certificate identified the cause of death as metastatic renal cancer and noted that an autopsy was not performed. Cl. Ex. 1.

Claimant filed this claim contending that decedent's exposure to the various injurious stimuli, either individually or in combination, caused his kidney cancer and his death. The administrative law judge found that claimant established a *prima facie* case causally relating decedent's death to his exposure to asbestos. However, she found that claimant did not establish a *prima facie* case with regard to decedent's exposure to lead, cadmium, benzene or other solvents or fumes. Decision and Order at 30. The administrative law judge then found that the opinions of Drs. Pulde and Harbison,[1] employer's experts, rebut the causal connection between the death and asbestos exposure. Decision and Order at 31. In weighing the evidence as a whole, the administrative law judge acknowledged the lack of direct evidence of a causal relationship between kidney cancer and asbestos exposure, as the parties relied on epidemiological studies.[2] She found instructive an administrative law judge decision, *B.L. v. Electric Boat Corp.*, 2005-LHC-2253 (April 19, 2007),[3] and a decision of the United States Court of Appeals for the Second Circuit, *In re Joint Eastern & Southern District Asbestos Litigation (Maiorana v. U.S. Mineral Products Co.) [Maiorana]*, 52 F.3d 1124 (2[d] Cir. 1995),[4] and she referred to

[1]Dr. Pulde is a practicing medical doctor who specializes in kidney diseases and transplants. He is a Professor at Harvard Medical School and Board-certified in internal medicine. Dr. Harbison has a Ph.D. and is a Board-certified toxicologist and Professor of Pharmacology, Pathology, Medicine and Environmental and Occupational Heath.

[2]The studies were not submitted into evidence. Decision and Order at 33 n.29.

[3]The Board recently vacated this decision and remanded the case for further consideration. *B.L. v. Electric Boat Corp.*, BRB No. 07-709 (May 14, 2008) (unpubl.).

[4]We reject claimant's assertion that the administrative law judge misapplied *Maiorana*. In that case, the Second Circuit vacated the district court's granting judgment as a matter of law because the evidence regarding the causal relationship between asbestos and the claimant's cancer raised credibility issues which were for the jury to decide. While the court addressed flaws in the lower court's analysis of the evidence, it did not require the evidence to be given any particular weight but left such determination to the fact-finder. The administrative law judge here, like the jury in *Maiorana*, has the authority to weigh the evidence to determine whether exposure to asbestos more likely than not caused or contributed to or aggravated decedent's cancer. Thus, *Maiorana* does not affect the outcome of this case.

several epidemiological reference guides to explain the "relative risk" between kidney cancer and asbestos exposure.[5] The administrative law judge found the epidemiological evidence inconclusive for a specific causal relationship, and she found that claimant's experts, Drs. Brautbar and Daum,[6] did not rule out or minimize any non-occupational causes of decedent's kidney disease. Thus, the administrative law judge found that claimant did not establish that exposure to any carcinogen at employer's facility caused, contributed to, or aggravated decedent's cancer and death, and she denied benefits. Decision and Order at 37.

Claimant contends there are numerous errors in the administrative law judge's decision. Claimant contends the administrative law judge erred in finding she did not establish her *prima facie* case with regard to lead, solvents, and cadmium. She also contends the administrative law judge erred in finding that the opinions of Drs. Harbison and Pulde rebutted the Section 20(a), 33 U.S.C. §920(a), presumption with regard to asbestos, as they are not qualified to render these opinions and their opinions are not supported by substantial evidence and/or are equivocal. Claimant also argues that the administrative law judge erred in requiring her to show a scientific causal relationship between decedent's cancer and his asbestos exposure, in requiring her to rule out non-occupational causes of the disease, in requiring her to produce evidence of actual asbestos fibers in decedent's kidney, and in failing to address whether exposure to the combination of harmful stimuli, as opposed to each individual substance, had a causal effect. Claimant seeks either remand for an award or remand for reconsideration with instructions for employer to produce records she requested.[7] Employer argues that the

[5]A "relative risk" is the correlation between exposure to harmful stimuli and a disease. If the relative risk is one, then the exposed individual has the same risk as unexposed individuals, so there is no correlation between the exposure and the disease. If the relative risk is greater than one, then the exposed individual is at a greater risk and there is a positive correlation or association between the exposure and the disease. Decision and Order at 32-33. Relative risk in asbestos litigation is also referred to as "standardized mortality ratio" or "SMR." *Id.* at 32.

[6]Dr. Brautbar is Board-certified in internal medicine, nephrology, and forensic medicine, with a focus on kidney disease, hypertension and dialysis. He is also a Professor of Medicine and Pharmacology at U.C.L.A. Dr. Daum is Board-certified in internal and occupational medicine.

[7]Claimant states that the administrative law judge did not compel the disclosure of production data sheets and information regarding the use of welding rods, solvents and other products used in the shipyard during decedent's employment. Claimant also requested information on whether these stimuli were known to cause kidney cancer and air quality studies of the facility. Cl. Brief at 10. According to employer, in a telephone

administrative law judge's detailed opinion is supported by substantial evidence and should be affirmed. In a supplemental brief, claimant asserts that *Rainey v. Director, OWCP*, 517 F.3d 632, 42 BRBS 11(CRT) (2d Cir. 2008), is instructive on the proper application of the Section 20(a) presumption. Employer argues that *Rainey* is inapplicable.

***Prima Facie* Case**

In determining whether an injury is work-related, a claimant is aided by the Section 20(a) presumption, which may be invoked only after she establishes a *prima facie* case. To establish a *prima facie* case, the claimant must show that decedent sustained a harm or pain and that conditions existed or an accident occurred at his place of employment which could have caused the harm or pain. *American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). In this case, it is undisputed that decedent suffered harm – kidney cancer and death. The issue is whether conditions existed at work which could have caused that harm.

Claimant contends the administrative law judge erred in finding that she failed to establish a *prima facie* case with regard to decedent's exposures to lead, cadmium, and benzene and other solvents. The record contains no evidence establishing that decedent was exposed to cadmium or solvents, including benzene. Decedent's questionnaire answers identify only exposure to asbestos and lead. Cl. Ex. 9 at 25, 27, 31, 32, 38, 40, 50-55. Testimony of former co-workers identifies exposures to asbestos, lead, and a solvent called "meltamatic" which is a combination of lead and tin. Tr. at 30-47, 56-67. The administrative law judge found that nothing in the record establishes exposure to solvents containing benzene or any solvent other than "meltamatic." Decision and Order at 30. Additionally, she found that there is no evidence showing that decedent was exposed to cadmium, a human carcinogen released during the welding process that uses welding rods. We hold, as regards decedent's exposure to cadmium and solvents, that the administrative law judge rationally found that claimant failed to establish the working conditions element of the *prima facie* case and properly denied invocation, as there is no

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conference on June 16, 2006, the administrative law judge found that claimant's request was overly-burdensome. Employer states no revised request was made. Emp. Brief at 17-18. Under these circumstances, we decline to order the administrative law judge to compel the request.

evidence of such exposure. *McAllister v. Lockheed Shipbuilding*, 39 BRBS 35 (2005); *see generally Brown v. Pacific Dry Dock*, 22 BRBS 284 (1989).

With regard to lead exposure, the administrative law judge stated that, in the absence of any evidence of a causal connection, she was unable to conclude that claimant demonstrated that exposure to lead could have caused decedent's harm. Decision and Order at 30. Specifically, she found that Dr. Brautbar declined to relate lead exposure to kidney cancer, and he acknowledged a study which concluded there was no such association. Cl. Ex. 11 at 80. Dr. Daum did not render an opinion on any relationship between lead and kidney cancer and death.[8] *See* Cl. Ex. 12. Although claimant established decedent's exposure to lead, she did not establish that "it could have caused decedent's harm." Therefore, the administrative law judge did not err in finding that claimant failed to establish a *prima facie* case.[9] *See generally Lacy v. Four Corners Pipe Line*, 17 BRBS 139 (1985).

Rebuttal

The administrative law judge found that claimant established a *prima facie* case with regard to decedent's asbestos exposure.[10] Decision and Order at 30. Once the claimant establishes a *prima facie* case, Section 20(a) applies to relate the disabling injury/death to the employment, and the employer can rebut this presumption by producing substantial evidence that the injury/death is not related to the employment. *Rainey*, 517 F.3d 632, 42 BRBS 11(CRT); *see also Marinelli*, 248 F.3d 54, 35 BRBS 41(CRT); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); *Bath Iron Works Corp. v. Director, OWCP [Shorette]*, 109 F.3d 53, 31 BRBS

[8]Dr. Pulde stated that lead and tin are not established risk factors for renal cell carcinoma. Emp. Ex. 6 at 33. Dr. Harbison did not discuss lead. Decision and Order at 25; Emp. Ex. 3.

[9]Moreover, although Dr. Pulde acknowledged that decedent had been exposed to lead, he stated that the amounts were not significant enough to cause lead intoxication resulting in any lead-related diseases. Emp. Ex. 1 at 26; Emp. Ex. 6 at 32.

[10]Dr. Brautbar stated that it is biologically possible for asbestos fibers to get into the kidney and, relying on various epidemiological studies, he concluded that exposure to asbestos was a substantial contributing factor in decedent's disease and death. Cl. Ex. 4, 11. Dr. Daum also relied on a number of epidemiological studies to conclude that decedent's exposure to asbestos was a significant contributing factor in the development of his kidney cancer. Cl. Ex. 12.

19(CRT) (1st Cir. 1997). In order to establish rebuttal, the employer is not required to rule out any possible causal connection between the decedent's employment and his condition and death, but it must produce "substantial evidence" that the work injury is not due, even in part, to the work exposures, *Bath Iron Works Corp. v. Director, OWCP [Harford]*, 137 F.3d 673, 32 BRBS 45(CRT) (1st Cir. 1998), not that claimant failed to show that a relationship exists, *Jones v. Aluminum Co. of America*, 35 BRBS 37 (2001).

The administrative law judge found that the opinions of Drs. Pulde and Harbison rebut the Section 20(a) presumption. Decision and Order at 31. Dr. Pulde stated that the established risk factors for renal cell carcinoma are smoking, obesity, hypertension and acquired cystic kidney disease associated with end-stage renal disease. Emp. Ex. 1 at 15. He stated that the medical literature does not support an association between asbestos exposure and kidney cancer.[11] Specifically, he stated that asbestos fibers do not concentrate in the kidneys to a significant enough level to promote carcinogenesis and that decedent did not have a significant enough exposure to cause an asbestos-related malignancy as there is no clinical or pathological evidence of asbestosis or interstitial lung disease. Consequently, with a reasonable degree of medical certainty, Dr. Pulde stated that decedent's work-place exposure to asbestos did not cause, contribute to or accelerate his kidney cancer or death. Emp. Ex. 1 at 20, 23-24, 29; Emp. Ex. 6 at 20.

Dr. Harbison testified that there is no scientific basis for concluding that asbestos or any other work-place exposure caused decedent's kidney cancer. He stated that kidney cancer is related to non-occupational factors, such as cigarette smoking, age, medical history, and lifestyle, and that scientific literature does not support a claim that asbestos can cause kidney cancer. Emp. Ex. 3 at 4, 6. Dr. Harbison also noted there is no evidence that the levels of decedent's exposure to asbestos were significant enough to cause cancers. *Id.* at 5.

Claimant first asserts that Dr. Harbison is not qualified to provide rebuttal evidence regarding the specific cause of decedent's condition and death because he is a toxicologist and not a medical doctor who treats patients or makes diagnoses.[12] The

[11]Dr. Pulde stated that reliance on the Selikoff study by Drs. Brautbar and Daum was misplaced, as the quantities and types of asbestos were not comparable to decedent's situation and as Selikoff's own co-author was critical of the methodology of the experiment. Decision and Order at 19; Emp. Ex. 6 at 16-18. Moreover, he said the results were not supported by more recent studies. Emp. Ex. 1 at 21.

[12]The Board noted Dr. Harbison's extensive qualifications and experience and rejected a similar argument in *B.L.*, slip op. at 5 n.5.

administrative law judge noted Dr. Harbison's extensive qualifications, Decision and Order at 22-23, though she did not address them specifically. Nevertheless, Dr. Harbison's credentials are impressive, Emp. Exs. 3-4, and claimant has offered no evidence to discredit them. *See Casey v. Georgetown Univ. Med. Ctr.*, 31 BRBS 147 (1997). Moreover, employer must produce substantial evidence to rebut the presumption but is not required to produce opinions of medical doctors. *See generally Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). Therefore, we reject this argument.

Claimant also contends the opinions of Drs. Harbison and Pulde do not constitute substantial evidence rebutting the Section 20(a) presumption because the administrative law judge found the foundations of their opinions are flawed. Claimant argues that, as this case arises within the jurisdiction of the Second Circuit, the decision in *Rainey* is controlling. In *Rainey*, the claimant sought to establish that the decedent's lung cancer was due to his work-related exposure to asbestos. The administrative law judge found that the employer had rebutted the Section 20(a) presumption based on the opinions of Drs. Teiger and Pulde. However, the court held that their opinions did not constitute substantial evidence rebutting the presumption. Rather, the court held that Dr. Teiger's opinion more closely supported the opinion of the claimant's expert and did not foreclose the likelihood that the cancer was work-related, so it could not rebut the Section 20(a) presumption. *Rainey*, 517 F.3d at 635-636, 42 BRBS at 13(CRT). Additionally, the court stated that the administrative law judge specifically found that Dr. Pulde's statement that the decedent's asbestos exposure was indirect and clinically insignificant contradicted her finding that the testimony regarding the decedent's exposure to asbestos was credible and undisputed. The court noted that the administrative law judge also had rejected Dr. Pulde's theory that lung cancer is due to the scarring caused by asbestosis and not just the exposure to asbestos. As the administrative law judge had discounted aspects of Dr. Pulde's report because of its "inadequacies," the court stated that a reasonable mind would not accept the report as evidence rebutting a causal relationship. *Id.* 517 F.3d at 636-637, 42 BRBS at 14(CRT). Thus, the *Rainey* court held that where the premise for a medical opinion is false or depends on discredited theories, the opinion cannot, as a matter of law, constitute substantial evidence in rebuttal of the Section 20(a) presumption.[13] *Id.*, 517 F.3d at 633, 42 BRBS at 13-14(CRT). Absent rebuttal evidence, the court reversed the decision and remanded the case for an award of benefits. *Id.*, 517 F.3d at 637, 42 BRBS at 14(CRT).

[13]"[A]n employer cannot satisfy its burden of production simply by submitting any 'evidence' whatsoever." *Rainey*, 517 F.3d at 637, 42 BRBS at 14(CRT).

In this case, Drs. Harbison and Pulde both reported not only that the scientific literature does not support a connection between asbestos exposure and kidney cancer but that decedent's exposure to asbestos was not clinically significant. In finding rebuttal, the administrative law judge cited to both of these aspects of their opinions. Decision and Order at 25-27, 31. As claimant asserts, the administrative law judge did not address the foundation of the doctors' opinions in context with her subsequent finding that decedent was, in fact, "subjected to substantial asbestos exposure" at work based on the reliable and uncontradicted testimony of decedent's widow and his former co-workers. Decision and Order at 34. Further, the administrative law judge found that decedent had developed pleural thickening or pleural plaques in his lungs associated with asbestos exposure. Thus, her findings contradict a portion of the doctors' opinions on which she relied to find rebuttal.

Drs. Harbison and Pulde stated that the scientific literature does not support a relationship between asbestos exposure and renal cell carcinoma, and this testimony arguably could constitute substantial evidence rebutting the Section 20(a) presumption.[14] *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000). However, because the administrative law judge also relied on the doctor's statements that decedent's exposure was not significant enough to cause cancer, which conflicts with the administrative law judge's finding that decedent had substantial exposure, her rebuttal finding cannot be affirmed. *Rainey*, 517 F.3d at 637, 42 BRBS at 13-14(CRT). As the administrative law judge did not reconcile her findings with the bases for the doctors' opinions, we must vacate the administrative law judge's finding that employer rebutted the Section 20(a) presumption and remand the case for her to reconcile her findings with the doctors' opinions and determine anew whether the opinions constitute substantial evidence to rebut the Section 20(a) presumption. *See Rainey*, 517 F.3d at 636, 42 BRBS at 14(CRT); *American Grain Trimmers v. Director, OWCP [Janich]*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999), *cert. denied*, 528 U.S. 1187 (2000). For the sake of judicial efficiency, we shall address claimant's arguments regarding the administrative law judge's weighing of the evidence as a whole.

Weighing the Evidence as a Whole

If the employer rebuts the presumption, it no longer controls and the issue of causation must be resolved on the evidence of record as a whole, with the claimant

[14]Although claimant asserts that such a general finding is not specific enough to decedent's situation to constitute rebuttal, a reasonable person could accept a general epidemiological statement of "no association" as evidence of the specific "no association in this case."

bearing the burden of persuasion.[15] *Moore*, 126 F.3d 256, 31 BRBS 119(CRT); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). In this case, in considering the evidence as a whole, the administrative law judge first considered "whether the epidemiological evidence conclusively establishes a relative risk or SMR or odds ratio of more than 2.0 for asbestos exposure which would permit an inference of specific causation in the Claimant's case." If not, then she would consider whether the ratio was greater than one, which, in combination with the clinical evidence, would eliminate other factors and strengthen the asbestos-cancer connection. Decision and Order at 33. An SMR of greater than one demonstrates a positive association indicating that exposure to a substance increases the subject's risk of developing the disease; however, the administrative law judge was looking for reliance on studies with SMR values greater than two. In doing so, she arguably required claimant to establish a greater scientifically demonstrable link between decedent's cancer and his asbestos exposure than required by the Act. As claimant must establish causation by a preponderance of the evidence, which requires that she provide more convincing evidence than employer, *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996), the administrative law judge arguably held claimant to a greater standard by requiring an SMR greater than one, the number which may suffice to show a positive relationship. However, as the administrative law judge ultimately concluded that the epidemiological studies were inconclusive, and she relied on the expert opinions in rendering her decision, any error is harmless.

The administrative law judge next addressed whether claimant met her burden of persuasion by determining whether the opinions of Drs. Brautbar and Daum that kidney cancer related to asbestos exposure outweighed the opinions of Drs. Harbison and Pulde to the contrary. Decision and Order at 34. The administrative law judge found that decedent was exposed to substantial amounts of asbestos and that he had developed pleural thickening or pleural plaques consistent with asbestos exposure.[16] Because two "opposing" experts, Drs. Brautbar and Pulde, both stated that for asbestos to cause kidney cancer, asbestos fibers would have had to reach decedent's kidneys, and because those laboratory tests were not performed, the administrative law judge found that the absence

[15]Contrary to claimant's argument, establishing a *prima facie* case and establishing rebuttal are burdens of production, not persuasion. Determining that evidence is sufficient to invoke the Section 20(a) presumption does not require the administrative law judge to credit that evidence when weighing the evidence as a whole. *See Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171, 173 (2001).

[16]Decision and Order at 34; *see also* Cl. Ex. 6 (Sept. 1994); Cl. Ex. 7 (diagnosis of asbestos-related pleural thickening/fibrosis Sept. 2000); Cl. Ex. 9 at 30 (1997 x-ray report diagnosing pleural scarring, pleural plaques related to asbestos exposure).

of this evidence weakened claimant's case. *Id.* at 35. In addition, she weighed the experts' opinions by considering the studies on which they based their opinions. She rejected Dr. Brautbar's reliance on the animal studies but credited Dr. Harbison's opinion relying on the Sali study.[17] *Id.*

Next, the administrative law judge found that decedent met several of the non-occupational risk factors for kidney cancer: smoking for 16-20 years, obesity, history of hypertension, and use of medication to treat hypertension. Decision and Order at 36. Despite the fact that decedent quit smoking approximately 20 years before he died, the administrative law judge credited Dr. Pulde's opinion that a 16 – 20 pack year history nevertheless constitutes at least a twofold increase in the risk of developing renal cell carcinoma. Decision and Order at 35; Emp. Ex. 6 at 11-12. The administrative law judge also credited Dr. Brautbar's statement that obesity, coupled with cigarette smoking, is responsible for 30 percent of kidney cancer in men, Cl. Ex. 11 at 68-69, and she accepted that, according to Drs. Brautbar, Daum, and Pulde, hypertension and the medications therefor are risk factors. Decision and Order at 35-36. The administrative law judge determined that Drs. Brautbar and Daum "have arguably 'ruled in' asbestos exposure as a possible cause of the Decedent's kidney cancer and death, [but they] have not 'ruled out' or minimized the possible non-occupational causes of smoking, hypertension and obesity." *Id.* at 36. Because they failed to "rule out" these causes, the administrative law judge found the opinions of claimant's experts insufficient to prove claimant's case. She stated:

> Based on this record of multiple risk factors, inconclusive epidemiological evidence, lack of evidence that asbestos was actually present in the Decedent's kidney, and the opinions of four experts, I find that the Claimant has not met her burden of proving that asbestos exposure "more likely than not" caused, contributed to, or aggravated Decedent's kidney cancer.

Decision and Order at 37.

It is well established that an administrative law judge is entitled to evaluate the credibility of all witnesses and has considerable discretion in evaluating and weighing the evidence of record. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert.*

[17]Claimant argues that Dr. Harbison misrepresented the Sali study, as he quoted only a portion of the study's conclusion. Unfortunately for claimant, none of the studies is in evidence, and claimant's inclusion of the quotation constitutes an attempt to introduce new evidence before the Board, which is not permitted. 20 C.F.R. §802.301(b).

denied, 372 U.S. 954 (1963); *John W. McGrath Corp. v.* Hughes, 289 F.2d 403 (2d Cir. 1961); *Perini Corp. v.* Heyde, 306 F.Supp. 1321 (D.R.I. 1969). However, an employment exposure need not be the sole cause of the employee's injury or death to be compensable. *See Director, OWCP v. Vessel Repair, Inc.*, 168 F.3d 190, 193, 33 BRBS 65, 67(CRT) (5th Cir. 1999)("The only legally relevant question is whether the work injury is *a cause* of [the] disability," not whether it is the sole cause) (emphasis in original); *SAIF Corp./Oregon Ship v. Johnson*, 908 F.2d 1434, 23 BRBS 113(CRT) (9th Cir. 1990) (employer liable for entire disability despite fact respiratory impairment was due in part to cigarette smoking, as well as the work exposure to asbestos); *Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1990) (under aggravation rule, if work played any role in manifestation of disease, entire disability is compensable; non-work-relatedness of underlying disease is irrelevant); *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988) (same). In requiring claimant to minimize or rule out decedent's non-occupational risk factors, the administrative law judge effectively required claimant to show that asbestos alone caused decedent's disease and death. This conclusion thus cannot be affirmed as it is contrary to law. *Id.*

As the administrative law judge erred in requiring claimant to eliminate or minimize the non-occupational factors as causes, her decision cannot be affirmed. We must, therefore, vacate the administrative law judge's denial of benefits and remand the case for further consideration. On remand, the administrative law judge must re-evaluate the evidence as a whole under the applicable legal standard to determine whether claimant has established her claim by a preponderance of the evidence. Claimant is not required to eliminate all other potential causes of decedent's cancer in order for his death to be work-related, as asbestos need only be *a cause* of his cancer. Thus, the administrative law judge must ascertain which evidence is more convincing and determine whether decedent's exposure to work-place asbestos caused or contributed to decedent's kidney cancer and resultant death.

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge