BRB No. 08-0279

E.A.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SIGNAL INTERNATIONAL, LLC	)	DATE ISSUED: 08/12/2008
	)	
and	)	
	)	
AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

Tommy Dulin (Dulin and Dulin), Gulfport, Mississippi, for claimant.

Jeffrey I. Mandel (Juge, Napolitano, Guilbeau, Ruli, Frieman & Whiteley), Metairie, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (2007-LHC-0734) of Administrative Law Judge Clement J. Kennington 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, a first-class shipfitter, suffered an injury on February 28, 2005, when his left shoulder was struck by an overhead crane and he was pushed into a handrail. Claimant suffered a fracture of his left clavicle for which he underwent surgery on March 11, 2005. Claimant had additional surgery on February 22, 2006, to remove hardware inserted in the first operation. Following his second surgery, claimant was released to full-duty work on May 16, 2006. Claimant requested medical leave on January 15, 2007, because he was suffering from neck pain. When claimant did not return to work on April 8, 2007, following twelve weeks of leave granted under the Family and Medical Leave Act, employer treated his absence as a voluntary resignation. EX 1. Claimant sought additional compensation and medical benefits for his alleged work-related cervical injury.

In his Decision and Order, the administrative law judge found that claimant failed to establish a *prima facie* case of a compensable neck injury. Accordingly, the administrative law judge denied benefits relating to claimant's alleged neck injury.[1]

Claimant appeals, arguing that the administrative law judge erred in finding that claimant did not establish a causal relationship between his neck condition and the work accident. Employer responds, urging affirmance of the administrative law judge's decision.

In establishing that an injury is work-related, a claimant is aided by Section 20(a) of the Act which provides a presumed causal nexus between the injury and the employment. 33 U.S.C. §920(a). In order to be entitled to the Section 20(a) presumption, however, claimant must establish a *prima facie* case by proving the existence of a harm and that a work-related accident occurred or that working conditions existed which could have caused the harm alleged. *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000). The claimant "must at least allege an injury that arose in the course of employment as well out of employment." *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 262, 31 BRBS 119, 123(CRT) (4th Cir. 1997), *quoting U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 625, 14 BRBS 631, 633 (1982). Claimant's theory as to how the injury

[1] Employer paid benefits for the clavicle injury. The administrative law judge concluded that claimant is not entitled to additional compensation other than that already paid by employer for this injury. Claimant sought an award under the schedule for a 12 percent impairment to his shoulder under Section 8(c)(1), 33 U.S.C. §908(c)(1). The administrative law judge denied such an award because the shoulder is not a body part listed in the schedule at Section 8(c). *Pool Co. v. Director, OWCP [White]*, 206 F.3d 543, 34 BRBS 19(CRT) (5th Cir. 2000), *reh'g en banc denied*, 232 F.3d 212 (5th Cir. 2000). These findings have not been appealed and are hereby affirmed.

occurred must go beyond "mere fancy." *Champion v. S & M Traylor Bros.,* 690 F.2d 285, 295 (D.C. Cir. 1982); *Wheatley v. Adler,* 407 F.2d 307, 313 (D.C. Cir. 1968). "The presumption is a broad one, and advances the facility with which claims are to be treated to further the Act's purpose of compensating injured workers regardless of fault." *Universal Maritime Corp.,* 126 F.3d at 262, 31 BRBS at 122(CRT); *Brown v. I.T.T./Continental Baking Co.*, 921 F.2d 289, 24 BRBS 75(CRT) (D.C. Cir. 1990) (referencing "minimal requirements" for invocation of the Section 20(a) presumption).

We agree with claimant that the administrative law judge's conclusion that claimant failed to establish a *prima facie* case cannot be affirmed. The administrative law judge's entire analysis of this issue consists of this sentence: "In this case, while it is possible that Claimant may have injured his neck on February 28, 2005, I find it highly unlikely due to the lack of medical records to support such an assertion." Decision and Order at 11. This statement cannot support the administrative law judge's conclusion as it indicates error in the application of the Section 20(a) presumption. *See Obert v. John T. Clark & Son of Maryland,* 23 BRBS 157 (1990).

In this case, it is uncontested that claimant was struck by a crane at work on February 28, 2005, with such force that his left clavicle was broken. Thus, claimant has satisfied the "accident" prong of his *prima facie* case. *See Quinones v. H.B. Zachery, Inc.,* 32 BRBS 6 (1998), *aff'd in part and rev'd on other grounds,* 206 F.3d 474, 34 BRBS 23(CRT)(5th Cir. 2000). It also is uncontested that claimant suffers a cervical disc herniation and pain. Claimant has been diagnosed as suffering with cervical spondylosis at C3, 4, 5, and a central disc herniation with spondylosis at C5-6. CX 18; EX 22 at 24-25. As "something has gone wrong with [claimant's] frame," claimant has established the "harm" element of his case. *See Kelaita v. Triple A Machine Shop,* 13 BRBS 326 (1981).

The administrative law judge further erred both factually and legally in concluding that claimant did not establish a *prima facie* case based on the "lack of medical evidence" linking claimant's neck condition to the accident. It is well established that claimant is not required to affirmatively connect his harm to the work accident via medical evidence in order to establish his *prima facie* case. *See, e.g., Ramey v. Stevedoring Services of America,* 134 F.3d 954, 31 BRBS 206(CRT) (9th Cir. 1998); *Hampton v. Bethlehem Steel Corp.,* 24 BRBS 141 (1990); *Stevens v. Tacoma Boatbuilding Co*., 23 BRBS 191 (1990). Rather, once claimant proves the two elements of a *prima facie* case, the Section 20(a) presumption provides the link between them. *Bath Iron Works Corp. v. Preston,* 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004). In addition, contrary to the administrative law judge's statement, claimant did, in fact, introduce medical evidence supportive of his claim. For example, Dr. Black stated that he associated claimant's neck pain with the clavicle fracture, and that this pain was consistent with claimant's original injury. CX 27

at 37-38, 50. Dr. Cooper also attributed claimant's neck pain to the work accident. CX 18; EX 21 at 51-52.

The fact that claimant's neck problem may not have immediately manifested itself is an insufficient basis on which to find that the presumption was not invoked as the Act recognizes latent traumatic injuries. *See LeBlanc v. Cooper/T. Smith Stevedoring, Inc.*, 130 F.3d 157, 31 BRBS 195(CRT) (5th Cir. 1997). The record reflects that claimant reported immediate "minor" discomfort in his neck and upper back in the emergency room. CX 20 at 18. Dr. Black stated claimant complained of radiating arm pain and upper back pain in September 2005, seven months after the accident, CX 27 at 29-32, and this is borne out by contemporaneous treatment records.[2] CX 26 at 11. Claimant clearly alleged he sustained a neck injury arising out of the work accident and the claim thus comes within the scope of Section 20(a), as such injuries *could have* been caused by his being struck by the crane. Therefore, claimant established his *prima facie* case and is entitled to the Section 20(a) presumption that his neck condition is related to the accident at work. *H.B. Zachry Co. v. Quinones,* 206 F.3d 474, 34 BRBS 23(CRT) (5th Cir. 2000); *see also Hunter,* 227 F.3d 285, 34 BRBS 96(CRT). The administrative law judge's finding to the contrary is reversed.

The administrative law judge further stated, assuming, *arguendo,* that the presumption was invoked, employer established rebuttal thereof. Decision and Order at 11. Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition is not due, even in part, to the work accident. *See, e.g., Ortco Contractors, Inc. v. Charpentier,* 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert. denied*, 540 U.S. 1056 (2003); *Conoco, Inc. v. Director, OWCP,* 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). In finding that employer established rebuttal, the administrative law judge stated only that that his conclusion was based on the records and testimony of Drs. Black, White, Cooper and Crotwell. Decision and Order at 11.

We cannot affirm this alternate finding, as not all of these doctors opined that claimant's neck injury is not related to the work accident. Dr. Black and Dr. Cooper opined that claimant's neck condition is directly attributable to the work injury. CX 26 at

[2] The administrative law judge discredited claimant's testimony that he complained of severe neck pain consistently since the date of the injury, as it is unsupported by the medical records. While there is no evidence of complaints of severe pain, the record indicates that claimant did complain of radiating arm pain and upper back pain to Dr. Black sooner than one year after the accident. Dr. Black stated that these complaints could have been referable to a neck injury. CX 27 at 29-32.

6; CX 18 at 1. Dr. White stated that it is a "50/50 proposition" that claimant's neck condition is work-related, depending on the reliability of claimant's complaints of pain since the accident.[3] CX 33 at 37-38. Therefore, we must remand this case to the administrative law judge for additional findings. Specifically, the administrative law judge must address whether employer produced substantial evidence that claimant's neck condition is not related to the work accident, consistent with applicable law.[4] *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998).

Accordingly, the administrative law judge's finding that claimant did not invoke the Section 20(a) presumption is reversed. The administrative law judge's Decision and Order denying benefits is vacated, and the case is remanded for further 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

[3] Dr. White stated that, upon reviewing Dr. Black's treatment notes, claimant has been complaining about his neck for quite some time. CX 33 at 2.

[4] If, on remand, the administrative law judge finds that employer established rebuttal of the Section 20(a) presumption, he must then weigh all of the evidence and resolve the causation issue on the record as a whole, with claimant bearing the burden of persuasion. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997).