BRB No. 97-0636

MIGUEL BELTRAN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
OCEANIC STEAMSHIP COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION LIMITED	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Ileana Marcos (Marcos & Rothman, P.A.), Miami, Florida, for claimant.

Lawrence B. Craig III and Frank J. Sioli (Valle & Craig, P.A.), Miami, Florida, for employer/carrier.

Before: SMITH, BROWN and DOLDER, Administrative Appeals Judges.

SMITH, Administrative Appeals Judge:

Employer appeals the Decision and Order - Awarding Benefits (95-LHC-2433) of Administrative Law Judge Donald W. Mosser 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 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 suffered a cerebrovascular incident, specifically a stroke, while working for employer as a lander on March 23, 1993; he has not returned to work since that time. The issues before the administrative law judge were whether claimant's condition was causally related to his employment and the computation of his average weekly wage for

compensation purposes.

In his Decision and Order, the administrative law judge found that claimant, based upon his diagnosed condition and the work which he was performing shortly before he suffered his stroke, was entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption. The administrative law judge next found that employer failed to rebut this presumption; accordingly, as it is uncontested that claimant is incapable of returning to gainful employment, the administrative law judge awarded claimant permanent total disability compensation.[1]

Employer now appeals, challenging the administrative law judge's determination that its evidence is insufficient to establish rebuttal of the Section 20(a) presumption. Claimant responds, urging affirmance of the administrative law judge's decision.

Once, as in the instant case, the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Brown v. Jacksonville Shipyards, Inc.,* 893 F.2d 294, 23 BRBS 22 (CRT)(11th Cir. 1990); *Manship v. Norfolk & Western Railway Co.*, 30 BRBS 175 (1996). It is employer's burden on rebuttal to present specific and comprehensive evidence sufficient to sever the causal connection between the injury and the employment. *See Peterson v. General Dynamics Corp.*, 25 BRBS 71 (1991), *aff'd sub nom. Ins. Co. of North America v. U.S. Dept. of Labor*, 969 F.2d 1400, 26 BRBS 14 (CRT)(2d Cir. 1992), *cert. denied*, 113 S.Ct. 1253 (1993); *see also Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C.Cir.), *cert. denied*, 429 U.S. 820 (1976). Where aggravation of a pre-existing condition is at issue, employer must establish that work events neither directly caused the injury nor aggravated the pre-existing condition resulting in injury. *See, e.g., Cairns v. Matson Terminals,* 21 BRBS 252 (1988). In establishing rebuttal of the presumption, however, proof of another agency of causation is not necessary. *See Stevens v. Todd Pacific Shipyards*, 14 BRBS 626 (1982)(Kalaris, J., concurring and dissenting), *aff'd mem.*, 722 F.2d 747 (9th Cir. 1983), *cert. denied*, 467 U.S. 1243 (1984). Rather, the testimony of a physician that no relationship exists between an injury and a claimant's employment is sufficient to rebut the presumption. *See Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984). If the administrative law judge finds that the Section 20(a) presumption is rebutted, he must weigh all of the evidence and resolve the causation issue based on the record as a whole. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 270 (1990).

[1]The administrative law judge determined that claimant's average weekly age was $975.26; this finding is not challenged on appeal.

We affirm the administrative law judge's finding that employer failed to rebut the Section 20(a) presumption. The administrative law judge's finding is supported by the record, as he rationally found the opinion of Dr. Sayfie, upon whom employer relies in support of its contention of error, insufficient to rebut the presumption. The administrative law judge specifically addressed Dr. Sayfie's testimony that it was his opinion within a reasonable degree of medical certainty that claimant's stroke was not caused by his work, but he concluded that the doctor's testimony did not rebut the Section 20(a) presumption after review of his entire testimony. The administrative law judge found that Dr. Sayfie's "further explanatory testimony regarding the matter is more equivocal than his ultimate conclusion," and that Dr. Sayfie did not unequivocally rule out the possibility that claimant's employment had an aggravating effect on his condition. Decision and Order at 8. In this regard, the administrative law judge found that Dr. Sayfie acknowledged the absence of other risk factors such as hypertension, which could have caused claimant's stroke, and concluded that his testimony *en toto* supports the conclusion reached by Dr. Linden that no one actually knows why claimant's stroke occurred when it did.[2] Dr. Sayfie in fact conceded during his deposition testimony that, at times, he was required to hypothesize regarding claimant and that, although it is his opinion that claimant's employment more likely did not cause his stroke than that it did, it was possible that such a causal connection existed. *See* EX 1 at 31-33.

[2]Dr. Sayfie did not examine claimant; rather, the physician rendered his opinion based upon a review of claimant's medical reports and evidence regarding claimant's work on the day of his stroke.

In order to constitute substantial evidence for rebuttal of Section 20(a), a doctor's opinion must be credible; where it is rationally discredited by the administrative law judge, an opinion cannot rebut Section 20(a).[3] *Sinclair v. United Food & Commercial Workers,* 23 BRBS 148, 154-155 (1989). Thus, the Board has held that an administrative law judge may find that a doctor's opinion is insufficient to rebut where it is not well-reasoned or lacks a proper foundation. *Hampton v. Bethlehem Steel Corp.,* 24 BRBS 141 (1990). As the administrative law judge here rationally discredited Dr. Sayfie's conclusion that claimant's stroke was not caused by his employment, it cannot rebut Section 20(a). Moreover, as the administrative law judge fully considered Dr. Sayfie's testimony, it would be an impermissible reweighing of the evidence for the Board to disturb the administrative law judge's findings on this issue, and we decline to do so. Accordingly, we hold that, as the administrative law judge's decision accurately reflects the evidence of record, the administrative law judge acted within his authority as trier-of-fact in finding Dr. Sayfie's opinion insufficient to meet employer's burden of presenting specific and comprehensive evidence establishing the back of a causal relationship between claimant's stroke and his employment. We therefore affirm the administrative law judge's finding that employer failed to rebut the Section 20(a) presumption. In the absence of other evidence of record severing the connection between claimant's stroke and his employment, claimant has established that his stroke is work-related. *See Clophus v. Amoco Production Co.,* 21 BRBS 261 (1988).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

I concur:

NANCY S. DOLDER
Administrative Appeals Judge

BROWN, Administrative Appeals Judge, dissenting

[3]The administrative law judge here properly evaluated the testimony of Dr. Sayfie, consistent with the "bursting bubble" theory, *see Del Vecchio v. Bowers,* 296 U.S. 280 (1938), and did not engage in impermissible weighing of the evidence. *See Sinclair v. United Food & Commercial Workers,* 23 BRBS 148, 154-155 (1989).

I respectfully dissent from my colleagues' decision to affirm the administrative law judge's determination that employer failed to rebut the Section 20(a), 33 U.S.C. §920(a), presumption. I would reverse the administrative law judge's finding that employer failed to establish rebuttal of the Section 20(a) presumption, hold that employer established rebuttal based upon the opinion of Dr. Sayfie as a matter of law, and remand the case to the administrative law judge for reconsideration of the issue of causation within the parameters enunciated by the Supreme Court in *Director, OWCP v. Greenwich Collieries*, 521 U.S. 267, 28 BRBS 43 (CRT)(1994).

A physician's medical opinion is sufficient to establish rebuttal if it is specific and comprehensive. *See Neeley v. Newport News Shipbuilding & Dry Dock Co.*, 19 BRBS 138 (1986). Moreover, in establishing rebuttal of the presumption, proof of another agency of causation is not necessary. *See Stevens v. Todd Pacific Shipyards*, 14 BRBS 626 (1982)(Kalaris, J., concurring and dissenting) *aff'd mem.*, 722 F.2d 747 (9th Cir. 1983), *cert. denied,* 467 U.S. 1243 (1984). In the instant case, in a letter dated May 1, 1995, Dr. Sayfie stated that it was his opinion that there was no association between the work claimant was performing on March 23, 1993, and the cardiovascular process which caused his stroke, *see* JX 2; moreover, on deposition, Dr. Sayfie reiterated his opinion that claimant's employment duties did not have a causative effect on his stroke. *See* EX 1 at 18-19, 32. Although, on cross-examination, Dr. Sayfie stated that "anything is possible," *see id.* at 32-33, this admission does not undermine that physician's conclusion so as to render his opinion insufficient to rebut the Section 20(a) presumption. A statement that "anything is possible" has no probative value. Dr. Sayfie's correspondence and deposition testimony clearly established that it is his opinion, within a reasonable degree of medical certainty, that claimant's March 23, 1993, stroke was not related to his employment activities on that day. This physician further stated that he did not believe claimant's work had a causative effect on his stroke, *see id.* at 18; Dr. Sayfie's statements regarding "no association" and "no causative effect" appear to be all inclusive and thus supportive of an opinion that claimant's work did not aggravate his condition. Accordingly, I believe that this opinion is sufficient to establish that claimant's work did not cause or aggravate his condition. Inasmuch as the opinion of Dr. Sayfie is sufficient to sever the presumed causal link between claimant's employment duties and his stroke, I would reverse the administrative law judge's finding that employer failed to rebut the Section 20(a) presumption.

Moreover, in finding Dr. Sayfie's opinion insufficient to establish rebuttal, I believe that the administrative law judge weighed the medical evidence and, in effect, discounted Dr. Sayfie's opinion based upon the contrary testimony of Dr. Linden, who opined that no one could establish a cause for claimant's stroke. This is error, as the weighing of evidence is to be done only after the administrative law judge has found that a medical opinion, in and of itself, establishes rebuttal. Dr. Sayfie's opinion that claimant's work activities did not result in his stroke, standing alone, establishes rebuttal and should not be found to be insufficient at this time juncture merely because Dr. Linden states that it is his opinion that it is impossible to determine the cause of claimant's stroke. In this regard, Dr. Linden's opinion that no one can establish the cause of claimant's stroke does not necessarily

render Dr. Sayfie's opinion that claimant's work activities were not the cause equivocal. For these reasons, I would hold that the presumption has been rebutted as a matter of law, and I would remand the case for the administrative law judge to weigh all of the evidence of record regarding the issue of causation within the parameters of *Greenwich Collieries*.

JAMES F. BROWN
Administrative Appeals Judge