BRB No. 05-0957

RICHARD VALERIANA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ELECTRIC BOAT CORPORATION	)	DATE ISSUED: 07/27/2006
	)	
Self-Insured	)	
Employer-Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

Scott N. Roberts, 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 McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2005-LHC-0243) of Administrative Law Judge Daniel F. Sutton 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).

Claimant worked as a tool room attendant. On July 13, 2004, he worked for approximately one hour and began having chest pains. He was taken to the hospital where he was diagnosed with unstable angina and a myocardial infarction, and he underwent a procedure to place a stent in his affected artery. Emp. Exs. 2-3; Tr. at 33, 47-51. Claimant was out of work for two months from July 13 through September 13, 2004, when Dr. Thomas, his treating physician, released him to return to his usual work

without restrictions. Claimant filed a claim for temporary total disability and medical benefits.

The administrative law judge reviewed the evidence, invoked the Section 20(a), 33 U.S.C. §920(a), presumption, found the presumption rebutted, and denied benefits based on the record evidence as a whole. He stated: "Claimant's employment played no role in either the development of his heart disease or the precipitation of the myocardial infarction that lead [sic] to his period of temporary disability." Decision and Order at 9. Claimant appeals the denial of benefits, and employer responds, urging affirmance.

Claimant contends the administrative law judge erred in finding that employer rebutted the Section 20(a) presumption that his condition was aggravated by his work. In determining whether an injury is work-related, a claimant is aided by the Section 20(a), 33 U.S.C. §920(a), presumption, which may be invoked only after he establishes a *prima facie* case. To establish a *prima facie* case, the claimant must show that he 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.[1] *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004); *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). Under the aggravation rule, if a work-related injury contributes to, combines with or aggravates a pre-existing condition, the entire resultant condition is compensable. *Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966); *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988). Once the claimant establishes a *prima facie* case, Section 20(a) applies to relate the injury to the employment, and the employer can rebut this presumption by producing substantial evidence that the injury was not related to the employment. *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33

[1]In its response brief, employer argues that claimant failed to establish a *prima facie* case, and it maintains that Dr. Thomas's opinion that claimant's condition was aggravated by his work does not meet the criteria set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), for the admissibility of expert opinions. As *Daubert* involves criteria under the Federal Rules of Evidence, its requirements are inapplicable in cases arising under the Act, 33 U.S.C. §923(a); *see also* 20 C.F.R. §§702.338, 702.339; 29 C.F.R. §18.401, and the administrative law judge properly found it inapplicable to the instant case. Moreover, the administrative law judge found that claimant has shown a harm, his heart condition and the myocardial infarction, as well as conditions at work which could have aggravated the underlying condition, a busy tool room and some lifting. These findings are rational. *See Quinones v. H.B. Zachery, Inc.*, 32 BRBS 6 (1998), *aff'd in pert. part, rev'd on other grounds*, 206 F.3d 474, 34 BRBS 23(CRT) (5th Cir. 2000). Accordingly, we reject employer's contentions.

BRBS 187(CRT) (5th Cir. 1999); *see also American Grain Trimmers v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999) (*en banc*), *cert. denied*, 528 U.S. 1187 (2000). Where aggravation of a pre-existing condition is at issue, the employer must establish that the work events neither directly caused the injury nor aggravated the pre-existing condition, resulting in the injury. *Bath Iron Works Corp. v. Director, OWCP [Shorette]*, 109 F.3d 53, 31 BRBS 19(CRT) (1st Cir. 1997); *Conoco*, 194 F.3d 684, 33 BRBS 187(CRT). 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 bearing the burden of persuasion. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

The administrative law judge found that employer rebutted the Section 20(a) presumption by establishing that Dr. Thomas's causation opinion contradicted his release for claimant to return to work. The administrative law judge also relied on claimant's admission of poor life-long dietary habits, a family history of heart disease, and his belief that his job was no more stressful than usual, and on claimant's co-worker's statement that her job in the tool room was not stressful or difficult. The administrative law judge stated that the medical evidence demonstrates a history of chest pain and that Dr. Thomas diagnosed claimant's coronary artery disease with a 90 percent blockage as the cause of his myocardial infarction. Decision and Order at 8-9; *see* Cl. Ex. 5; Emp. Ex. 2; Tr. at 64-70.

We agree with claimant that the evidence on which the administrative law judge relied is insufficient to rebut the Section 20(a) presumption that claimant's work aggravated his pre-existing cardiac condition. While the evidence establishes that claimant's condition was likely not *caused* by his working conditions, it does not refute claimant's assertion and Dr. Thomas's statement that work was an *aggravating* factor. *See Gardner v. Director, OWCP*, 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981) (no distinctions between aggravation of underlying disease and manifestation of symptoms; either is compensable). Additionally, claimant's dietary habits and family history of heart disease are insufficient to establish rebuttal. Although claimant's co-worker testified that she did not believe the job in the tool shop was stressful or difficult, her testimony also is insufficient, as it is how the job affected claimant that is significant.[2]

[2]For working conditions to be "stressful" to a claimant, they need not be circumstances universally recognized as "stressful;" they need only be occurrences that are stressful to that claimant. *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968). It is his reaction to the conditions and events that is relevant. *Konno v. Young Brothers, Ltd.*, 28 BRBS 57 (1994). Employers must accept "the frailties that predispose" their employees to injury. *J.V. Vozzolo, Inc. v. Britton*, 377 F.2d 144, 147-148 (D.C. Cir. 1967); *Vandenberg v. Leicht Material Handling Co.*, 11 BRBS 164, 169 (1979).

Marinelli v. American Stevedoring, Ltd., 34 BRBS 112 (2000), *aff'd*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001); *Cairns*, 21 BRBS 252. Similarly, the notes from the emergency room doctors which indicated that claimant had chest pain with activity approximately 1.5 weeks prior to the July heart attack does not preclude the work activity on July 13, 2004, from being an aggravating factor leading to claimant's symptoms or myocardial infarction.[3] *Gardner*, 640 F.2d 1385, 13 BRBS 101; *see also Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *Southern Stevedoring Co. v. Henderson*, 175 F.2d 863 (5th Cir. 1949).

The only remaining piece of evidence which could potentially rebut the Section 20(a) presumption is Dr. Thomas's September 9, 2004, letter in which he released claimant to return to his usual work.[4] Emp. Ex. 2. Employer argues that claimant's work cannot be an aggravating factor if the doctor is willing to let claimant return to that same work without restrictions. In the letter in question, Dr. Thomas stated that claimant's post-operative stress test was normal and that claimant feels well and has a regular heartbeat and no angina. He stated that claimant is taking prescriptions and will be seen in six months, but is "doing well from a cardiac standpoint," and that claimant can return to his usual work without restrictions. Emp. Ex. 2. The administrative law judge found that Dr. Thomas's letter releasing claimant to return to work contradicted his statement that claimant's job may have aggravated his coronary artery disease.[5] Decision and

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[3]Contrary to employer's statements, Emp. Brief at 9, the notes state that claimant's cardiac pain was not associated with a particular activity, Emp. Ex. 3 at 22, 59, not that the pain was not particularly associated with activity.

[4]Employer also offered Dr. Gaeta's opinion that claimant's heart condition is not work-related. Emp. Exs. 6-7. This evidence was excluded from the record because employer failed to obey the administrative law judge's order regarding when and how the doctor's report should be submitted to claimant. Employer does not challenge this ruling. Decision and Order at 4-5.

[5]In a separate September 9, 2004, letter, Dr. Thomas explained the medical findings which he felt necessitated the stent procedure, and he noted the benign follow-up stress test and his conclusion that claimant could return to work on September 13, 2004. The letter also stated that claimant's worst episode of chest pains occurred at work on July 13, 2004, and that, possibly, the physical demands and emotional stress at claimant's work could have exacerbated claimant's underlying coronary artery disease, leading to his hospitalization. Cl. Ex. 2. Contrary to employer's argument, whether claimant has introduced affirmative medical evidence establishing that his condition is related to his work is not relevant to rebuttal. *See Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989). As an employer must produce substantial evidence demonstrating

Order at 9. Contrary to the administrative law judge's finding, the letter releasing claimant to return to work did not address the issue of aggravation, and the release to return to work is relevant to the issue of the extent of claimant's disability – not to the issue of causation. Thus, the release to work letter, issued after corrective surgery, is also insufficient to rebut the Section 20(a) presumption.

There can be no rebuttal of the presumption if the doctor states that the claimant's work could have aggravated his condition, *Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84 (1995), and no other medical expert of record expressed an opinion contrary to Dr. Thomas's opinion that claimant's work may have aggravated his condition. As the record is devoid of substantial evidence that claimant's work did not aggravate his condition, the administrative law judge erred in finding that employer rebutted the Section 20(a) presumption. Therefore, we reverse the administrative law judge's finding that employer rebutted the Section 20(a) presumption, and we vacate his denial of benefits. We hold that claimant's heart condition is work-related as a matter of law, *see Preston*, 380 F.3d 597, 38 BRBS 60(CRT), and we remand the case to the administrative law judge for consideration of any issues still remaining.

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there has been no aggravation of claimant's pre-existing condition to rebut the Section 20(a) presumption, *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), it was improper for employer to assert, as its rebuttal "evidence," claimant's lack of definitive evidence of a causal relationship. *See Webb v. Corson & Gruman*, 14 BRBS 444 (1981).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is vacated, and the case is remanded for the administrative law judge to address any remaining issues.

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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REGINA C. McGRANERY
Administrative Appeals Judge