BRB No. 99-0910

WILLIE SPELLER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY	)	DATE ISSUED:
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order and Order on Reconsideration of Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

John H. Klein (Montagna, Klein & Camden), Norfolk, Virginia, for claimant.

Christopher A. Taggi (Mason & Mason, P.C.), Newport News, Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order and Order on Reconsideration (98-LHC-1677) of Administrative Law Judge Fletcher E. Campbell, Jr., 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 painter, alleged he was injured on October 29, 1997, when he was climbing a ladder to put his tools away and he hit his right knee on the step above. He did not report the injury that day, but went home and noticed that the knee began to swell. The next day, claimant dressed to go to work and went down the steps of his home. Before he reached the bottom, his knee gave out, but he did not fall or hit his knee. Claimant attempted to go to work but had difficulty exiting his van in the shipyard parking lot. Consequently, he

reported to the emergency room instead. Initially, claimant sought treatment for his knee injury with Dr. Phillips, but later changed to Dr. Stiles. Claimant has been diagnosed with an anterior cruciate tear and a possible meniscal injury; both physicians have recommended knee surgery, which claimant has not yet undergone. Claimant returned to work after December 16, 1997, as a painter in the same department. He sought temporary total disability for the period from October 29, 1997, to December 16, 1997, as well as medical benefits.

In his decision, the administrative law judge found that it is undisputed that claimant suffered a harm, but that the evidence does not establish that the work injury could have caused his current knee condition. Thus, the administrative law judge found that the Section 20(a), 33 U.S.C. §920(a), presumption was not invoked linking claimant's knee condition to his employment. Alternatively, the administrative law judge found that Dr. Phillips's opinion would have established rebuttal of the Section 20(a) presumption. Weighing the evidence as a whole, he found that the evidence does not establish that claimant's knee disability was caused, even in part, by the job-related injury. Therefore, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in failing to invoke the Section 20(a) presumption regarding causation, as the evidence establishes that the work-related injury could have, at least in part, caused his knee condition. In addition, claimant contends that the administrative law judge erred in finding Dr. Phillips's opinion sufficient to establish rebuttal of the presumption. Employer responds, urging affirmance.

Initially, claimant contends that the administrative law judge erred in failing to invoke the Section 20(a) presumption that his disability is work-related. We agree. Section 20(a) provides claimant with a presumption that his injury is causally related to his employment, if claimant establishes that he has a physical harm, and that an accident occurred or working conditions existed that could have caused the harm. *Kubin v. Pro-Football, Inc.*, 29 BRBS 117 (1995). Once the presumption is invoked, the burden shifts to employer to rebut it with substantial evidence that claimant's disabling condition was not caused or aggravated by his employment. *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999)*; American Grain Trimmers v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999); *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). When employer produces such substantial evidence, the presumption drops out of the case, and the administrative law judge must weigh all of the evidence relevant to the causation issues, and render a decision supported by the record. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *MacDonald v. Trailer Marine Transport Corp.*, 18 BRBS 259 (1986), *aff'd mem. sub nom. Trailer Marine Transport Corp. v. Benefits Review Board*, 819 F.2d 1148 (11th Cir. 1987).

In the present case, the administrative law judge found that there is no medical evidence that claimant's work injury could have caused his disability. Decision and Order at 7. However, in a report dated November 20, 1997, Dr. Stiles reviewed claimant's symptoms and objective findings and concluded that claimant had an injury to his right knee in late October when he fell on the stairs at work. Cl. Ex. 1. He also opined that given the history of the injury at work and the acute swelling following the injury, claimant could have had an anterior cruciate tear and a meniscal injury as well. *Id*. Claimant need only show, in order to establish the second element of his *prima facie* case, that an accident occurred at work which *could* have caused the harm. Claimant's theory as to how the injury occurred must go beyond mere fancy, *see Champion v. S & M Traylor Bros.*, 690 F.2d 285, 15 BRBS 33(CRT) (D.C. Cir. 1982); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982), but a claimant is not required to prove by expert evidence, medical or otherwise, that in fact, his ailment is related to the conditions of his employment in order to invoke the presumption. *See, e.g., Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990); *Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989). As Dr. Stiles's report states a possible connection between claimant's symptoms and his work-related injury, we reverse the administrative law judge's finding that the evidence is insufficient to establish invocation of the Section 20(a) presumption. *Id.*

The administrative law judge also found, assuming, *arguendo*, invocation of the Section 20(a) presumption, that employer established rebuttal of the presumption. Dr. Phillips opined that it was possible that claimant's knee condition was caused by the injury claimant suffered coming down the stairs at home, Emp. Ex. 3, but he opined that the tear in claimant's knee did not occur at work and stated that it was unlikely claimant could have sustained an injury of this extent in bumping his knee. *Id.* We affirm the administrative law judge's finding that Dr. Phillips's opinion is sufficient to establish rebuttal of the presumption that claimant's disabling knee condition was directly caused by the "bumping" incident at work on October 29, 1997. *See Conoco,* 194 F.3d at 684, 33 BRBS at 187(CRT); *Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999). As he found the presumption rebutted, the administrative law judge reviewed the evidence as a whole in concluding that claimant's knee condition was not directly caused by the October 29, 1997, work injury. The administrative law judge found that Dr. Phillips's opinion was more persuasive than Dr. Stiles's opinion as it was well-reasoned and documented by the objective evidence of record. In addition, the administrative law judge accorded less weight to the opinion of Dr. Stiles as it is based on an account of the work injury which the administrative law judge found was inaccurate. We affirm this finding as it is rational and supported by substantial evidence. *Holmes v. Universal Maritime Service Corp.*, 29 BRBS 18 (1995)(Decision on Recon.).

However, when a claimant sustains an injury at work which is followed by the

occurrence of a subsequent injury or aggravation outside work, employer is liable for the entire disability and for medical expenses due to both injuries if the subsequent injury is the natural or unavoidable result of the original work injury. *See generally Plappert v. Marine Corps Exchange*, 31 BRBS 13 (1997), *aff'd on recon. en banc*, 31 BRBS 109 (1997). Claimant testified that his knee was swollen and sore the morning after the accident at work and that his knee "just gave out" on him as he walked down the stairs at home. H. Tr. at 23. Dr. Phillips reported this account and stated that, while it was unlikely that claimant sustained his injury coming down stairs and having his knee give way, it is possible for the tear to have occurred in this manner. Emp. Ex. 3. Subsequently, Dr. Phillips responded to a question in a letter from employer's counsel regarding the sort of trauma which usually produces the injuries sustained, stating it is "usually a sports injury. Occasionally a hyperflexion injury will cause it." Emp. Ex. 5. When asked in this letter whether the bumping injury at work pre-disposed claimant to a tearing injury like he suffered at home, Dr. Phillips answered, "possible, but not probable." Emp. Ex. 5. The administrative law judge did not address whether the subsequent event and injury were the natural or unavoidable result of the initial injury in finding that claimant's current knee condition is not work-related. Therefore, although we affirm the finding that the "bumping" injury which occurred at work is not the cause of claimant's disability, we remand the case to the administrative law judge for further consideration of the issue of whether the subsequent event claimant sustained the next morning at home was the natural or unavoidable result of the work injury, and if so, whether claimant's knee injury was related to this occurrence.[1] *See James v. Pate Stevedoring Co.*, 22 BRBS 271 (1989).

[1]Where a doctor gives an opinion to a reasonable degree of medical certainty that a condition is not work-related, the fact that he acknowledges other hypothetical possibilities will not prevent his opinion from rebutting Section 20(a). *See Bath Iron Works v. Director, OWCP*, 137 F.3d 673, 32 BRBS 45(CRT)(1st Cir. 1998); *see generally American Grain Trimmers, Inc. v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999). However, in this case, Dr. Phillips did not explicitly state that his opinion was based on a reasonable degree of medical certainty; the record contains only a report, office notes, and handwritten answers to employer's questions. The administrative law judge must determine whether employer has met its burden of production under Section 20(a).

Accordingly, the administrative law judge's finding that claimant's disabling condition is not work-related is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge