BRB No. 93-1090

LAWRENCE J. SHORETTE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
BATH IRON WORKS CORPORATION	)	DATE ISSUED:
	)	
and	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeal of the Decision and Order of Eric Feirtag, Administrative Law Judge, United States Department of Labor.

Marcia J. Cleveland (McTeague, Higbee, Libner, MacAdam, Case & Watson), Topsham, Maine, for claimant.

Kevin M. Gillis (Richardson & Trobh), Portland, Maine, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order (92-LHC-0544) of Administrative Law Judge Eric Feirtag 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 which are rational, supported by substantial evidence, and 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, who commenced employment with employer on March 23, 1981, was exposed to asbestos dust on several occasions during 1981 and 1982. An x-ray taken in 1982 was read as revealing a condition consistent with asbestosis. Subsequent x-rays taken in 1987, 1989, and 1991 were read as revealing interstitial fibrosis suggestive of asbestosis, probable asbestosis, and probable asbestosis with an ILO rating of 3/3, respectively. Although he remains presently employed with no

loss in wage-earning capacity, claimant filed a claim under the Act seeking medical benefits for his interstitial lung disease, including asbestosis.

In his Decision and Order, the administrative law judge found that employer failed to rebut the statutory presumption of causation; claimant was thus awarded medical benefits for his work-related condition. Employer now appeals, arguing that the administrative law judge erred in finding that it failed to rebut the Section 20(a), 33 U.S.C. §920(a), presumption. Claimant responds, urging affirmance.

Where, as in the instant case, claimant establishes his *prima facie* case, claimant is entitled to the presumption at 33 U.S.C. §920(a) that his injury or harm arose out of and in the course of his employment. *See Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1900); *Perry v. Carolina Shipping Co.*, 20 BRBS 90 (1987); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981). 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 caused or aggravated by his employment. *See Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84 (1995); *Sam v. Loffland Bros.*, 19 BRBS 288 (1987). 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 Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). The unequivocal testimony of a physician that no relationship exists between the injury and 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, the administrative law judge must weigh all 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 279 (1990).

The administrative law judge found that employer submitted no evidence sufficient to rebut the presumed causal link between the progression of claimant's lung disease as noted on his 1989 x-ray and his exposures to asbestos while working for employer in 1981 and 1982. The administrative law judge further found that none of the physicians "ruled out" the causal connection between asbestos exposure and the disease, citing *Brown v. Jacksonville Shipyards, Inc.*, 893 F.2d 294, 23 BRBS 22, 24 (CRT)(11th Cir. 1990). This finding is supported by the record, as neither the opinion of Dr. Kanwit nor Dr. Harder, upon whom employer relies in support of its contention, is sufficient to rebut the presumption. Specifically, Dr. Kanwit, without addressing claimant's 1989 x-ray, opined that while claimant had findings consistent with asbestosis as demonstrated by the x-ray findings of 1982, he would generally expect to see a period of several years from exposure to the development of radiological findings or any manifestation of asbestos related disease. Similarly, Dr. Harder opined only that it would be unusual to have x-ray evidence in 1982 so short a time following exposure in 1981 and/or 1982, and that it was unlikely that the x-ray changes at that time were caused by the described 1981-1982 exposures. As neither of these opinions are sufficient to rule out the presumed causal connection between the condition evidenced on claimant's x-ray and his employment, we affirm the administrative law judge's finding that claimant's lung condition is causally related to his employment, and his consequent award of medical benefits to claimant. *See Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge