

CONSTANCE BERGERON)	
)	
Claimant-Respondent)	
)	
v.)	
)	
RED FOX COMPANY OF)	DATE ISSUED:
NEW IBERIA)	
)	
and)	
)	
LIBERTY MUTUAL INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

Appeal of the Decision and Order of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Christopher B. Siegrist, Houma, Louisiana, for claimant.

Philip J. Borne (Christovich & Kearney, L.L.P.), New Orleans, Louisiana, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order (95-LHC-606) of Administrative Law Judge C. Richard Avery 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).

On December 10, 1980, while working on a barge as a draftsman, claimant hit her head on a piece of pipe as she stood up. Claimant reported the accident to employer's office and was examined at the clinic. After the examination, claimant returned to work, but testified that her head and neck began hurting once she returned home. Claimant attempted to work for several weeks but sought

medical treatment when she experienced difficulty lifting her arms. Pursuant to her doctor's orders, claimant remained out of work for several months, but returned on a part-time basis in the spring or summer of 1981. However, as claimant missed work due to continued severe headaches and pain in her arms with numbness in her neck and hands, she lost her job in November 1981. Due to continued complaints of pain, claimant underwent surgery on her cervical spine at C4-5 and C5-6 in 1984. Thereafter, claimant's neck pain and headaches continued, and Dr. Sagrera diagnosed chronic pain syndrome. Claimant has not been employed or received any wages since the surgery, but has attempted to help at her family's business, for which she received no wages. Claimant sought temporary total disability benefits under the Act.

In his Decision and Order, the administrative law judge found that claimant established that she has a neck injury which was caused by the 1980 accident at work, and that both treating physicians, Drs. Sagrera and Jackson, opined that claimant's neck injury and subsequent symptoms are related to the 1980 accident. Thus, the administrative law judge found that claimant invoked the Section 20(a), 33 U.S.C. §920(a), presumption that her neck injury is work-related, and there is no evidence that severs the connection between claimant's neck condition and her work-related accident in 1980. In addition, the administrative law judge found that claimant has not reached maximum medical improvement and that claimant has established that she is unable to return to her usual and regular employment as a draftsman, as well as establishing that she is unable to work at all in her present condition. Thus, the administrative law judge found that claimant is entitled to temporary total disability benefits. Lastly, the administrative law judge found that the two outstanding visits to Dr. Sagrera, the anti-depressant and stomach medication, the travel expenses for medical purposes, the hospital bill and the diagnostic interpretation, and the treatment from a chronic pain clinic must be paid by employer since the treatments were necessary and reasonable and arose out of the work-related neck injury in 1980.

On appeal, employer contends that the administrative law judge erred in finding under Section 20(a) that employer is liable for a disability that was not caused by, nor was the natural progression of, the work accident or surgery. In addition, employer contends that the administrative law judge erred in finding that claimant was totally disabled as a result of the 1980 injury, and in finding employer responsible for the increase in medication and treatment resulting from the increase in symptoms unrelated to the original injury. Claimant responds, urging affirmance of the administrative law judge's Decision and Order.

Employer contends that claimant's current disability and medical condition is a result of degenerative disc changes at C3-4 and C6-7, which, it is not disputed, are unrelated to the work accident in 1980.¹ Thus, employer contests its liability for total disability benefits and continuing medical benefits under the Act. After consideration of the administrative law judge's Decision and

¹Employer also contends on appeal that the administrative law judge erred in finding that the parties stipulated that claimant was temporarily totally disabled from December 1, 1980 to December 21, 1993. It appears that employer merely stipulated that it paid claimant temporary total disability benefits for this period, and not that she actually was disabled. *See* Tr. at 11-12. However, as the administrative law judge reviewed the evidence and independently found that the evidence establishes that claimant was temporarily totally disabled during this period, any error is harmless.

Order, the arguments raised on appeal, and the evidence of record, we hold that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error.

Section 20(a) of the Act, 33 U.S.C. §920(a), provides claimant with a presumption that her disabling condition is causally related to her employment. *Kubin v. Pro-Football, Inc.*, 29 BRBS 117 (1995). As it is undisputed that claimant suffered a harm, *i.e.*, a head and neck injury, and that a work accident occurred, we affirm the administrative law judge's finding that the Section 20(a) presumption is invoked. *See generally White v. Peterson Boatbuilding co.*, 29 BRBS 1 (1995). Once the Section 20(a) 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 the employment event. *Sam v. Loffland Bros.Co.*, 19 BRBS 228 (1987). In a case where employer alleges a subsequent intervening cause of claimant's condition, employer may also rebut the presumption by proving that the disabling condition was not the natural and unavoidable result of the work injury.² *See White*, 29 BRBS at 9. The administrative law judge found that employer did not provide substantial evidence to sever the connection between claimant's condition and the work accident.

Contrary to employer's contentions that it rebutted the Section 20(a) presumption, while Dr. Jackson testified that claimant saw him in 1993 with added complaints that were probably explained by the non work-related degenerative changes in C3-4, he also noted that as claimant "never really got over her symptoms," his treatment and recommendations grow out of the 1980 work-related accident. Emp. Ex. 1 at 74-75, 85. In addition, Dr. Sagraera testified that claimant has been completely disabled from either full-time or part-time employment since the surgery in 1984 and that claimant's complaints and symptoms upon examination have not changed very much since the surgery. Cl. Ex. 1 at 46. Thus, we affirm the administrative law judge's finding that employer has not ruled out the work accident as a cause of claimant's condition. *Bridier v. Alabama Dry Dock & Shipbuilding Co.*, 29 BRBS 84 (1995).

²We agree with employer that the administrative law judge misplaced reliance on *Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966), as it is not alleged that claimant suffered from a pre-existing condition which was aggravated by the work-related injury. Rather, employer alleges that claimant's disability is due solely to subsequent degenerative disc disease, and that she had no permanent disability as a result of the work-related injury.

Moreover, Dr. Sagrera did fill out a work evaluation form in which he stated claimant could work four hours a day, but in his deposition he noted that claimant would not be able to work consecutive days and her ability to work would vary depending on how she felt that day. Cl. Ex. 1 at 33. He concluded that in claimant's present condition, which includes symptoms from both her degenerative changes and residual symptoms from her 1980 injury, claimant could not engage in competitive gainful employment. *Id.* Dr. Jackson stated that at times claimant would be able to work in jobs identified by the vocational counselors, but he also deferred to Dr. Sagrera on the issue of claimant's employability. Emp. Ex. 1 at 68-70. As the administrative law judge's findings that claimant has not fully recovered from disabling symptoms related to her injury at C4-5 and C5-6 is rational based on his evaluation of the evidence, we affirm the administrative law judge's award of temporary total disability and medical benefits.³ *See generally Lostanau v. Campbell Industries, Inc.*, 13 BRBS 227 (1981), *rev'd on other grounds sub nom., Director, OWCP v. Campbell Industries, Inc.*, 678 F.2d 836, 14 BRBS 974 (9th Cir. 1982), *cert. denied*, 459 U.S. 1104 (1983).

Accordingly, the Decision and Order of the administrative law judge awarding benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

³Dr. Sagrera testified that claimant needs anti-depressants and stomach medications as a result of her pain syndrome and medication therefor. He also stated that claimant may benefit from treatment at a pain clinic.