BRB No. 01-0540

IONA ABROM	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DEPARTMENT OF THE AIR FORCE	)	DATE ISSUED: Feb. 28, 2002
	)	
and	)	
	)	
AIR FORCE CENTRAL FUND	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Iona Abrom, College Park, Georgia, *pro se*.

Peter F. Gedraitis, Office of Legal Counsel Air Force Services Agency, San Antonio, Texas, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Benefits (98-LHC-704) of Administrative Law Judge Richard D. Mills 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.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). As claimant appeals without representation by counsel, we will review the administrative law judge's findings of fact and conclusions of law to determine whether they are supported by substantial evidence, are rational, and are in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3); 20 C.F.R. §§802.211(e), 802.220. If they are, they must be

affirmed.[1]

Claimant worked at Elmendorf Air Force base in Alaska from March 9, 1981, until 1995. She was working as head cashier in the club at the base, when, in the summer of 1991 Stephen Hogancamp was hired as the club manager and became claimant's supervisor. Claimant's duties, as described in an October 10, 1995, Civilian Position Description, and a February 10, 1993, Position Guide, included hiring and arranging schedules for the cashiers, maintaining control of change funds and assuring the cash is safeguarded in a safe, issuing statements for banks from daily operations, collecting and counting money at the end of the shift, and checking for accuracy the daily balance sheets turned in by the cashiers. EX 10a, b. Claimant testified that she continually encountered problems in her working relationship with Mr. Hogancamp, stemming from his encroachment into her sphere of responsibility. During this period Mr. Hogancamp regularly uncovered problems in claimant's paperwork and reconciling of the accounts, which claimant attributed to his undermining of her authority and to a newly instituted computerized register system which claimant had difficulty mastering.

[1]Employer asserts in its response brief that the Board should dismiss claimant's appeal because of lack of jurisdiction due to its untimely filing, or, in the alternative, because it was so procedurally defective that employer was materially prejudiced in its effort to respond. We reject the first argument for the reasons stated in the Board's Order dated June 22, 2001. With respect to the second argument, the Board's June 22 Order informs the parties that as claimant is without legal representation, the Board will review the administrative law judge's decision under its general standard of review. The Board's regulations specifically allow for less formal proceedings where a party appears *pro se.* 20 C.F.R. §802.211(e). Moreover, the Board allowed employer 30 days from the date of its receipt of the Order in which to respond, which is the same amount of time employer would have had to respond had claimant filed a brief. 20 C.F.R. §802.212.

Claimant testified to the following occurrences which she found stressful. Effective February 24, 1993, claimant's hours were cut from 35 to 30 per week. Claimant alleged that Mr. Hogancamp frequently left her notes pointing out mistakes she made; that he gave Shyrel Griswold, claimant's subordinate, claimant's paperwork to check when the accounts did not balance, allegedly because Ms. Griswold was familiar with the recently-installed computerized cashier system. Tr. at 149. Claimant admitted that she did not know whether she actually made mistakes or not, but asserted that, in any case, the mistakes were minor; she acknowledged that Mr. Hogancamp returned her paperwork corrected, but stated that she was never shown the correct way to complete the paperwork. She testified that Mr. Hogancamp directed her to schedule Ms. Griswold's schedule around Ms. Griswold's husband's work schedule. According to claimant, after Mr. Hogancamp's arrival, her performance ratings declined from around 48, the highest rating attainable, to 16, which was the last rating she received from employer. Claimant stated that Mr. Hogancamp removed the padlock from the safe in her office, so the people knowing the combination could open it, and she was afraid she would be blamed for any missing funds. Claimant received monetary performance awards on three separate occasions from October 1992 to July 1994, although she alleged that she remembers receiving only two, and said that these awards were ones which all of the other employees in the club also received.[2]

On January 19, 1995, claimant left work with chest pains. She was admitted to the hospital to rule out a myocardial infarction. Dr. Green saw claimant in a follow-up visit and kept her off work until March 30, 1995. EX 5a-e. Claimant never returned to work. She was diagnosed with depression by Drs. Alberts and Winn, and at the Anchorage Community Mental Health Services. Tr. at 29; JX 1; EXs 7d, 13. Claimant resigned from her job on July 14, 1995, and on July 21, 1995, she filed a claim under the Act alleging that she suffers from psychiatric problems as a result of stress associated with problems with her supervisor, culminating on January 19, 1995. EXs 2, 3.

In his decision, based on *Marino v. Navy Exchange*, 20 BRBS 166 (1988), the

[2]In June 1994, claimant filed an EEO complaint based on harassment and retaliation. *See* Tr. at 49. In that complaint, claimant alleged, among other things, that Mr. Hogancamp yelled at her in public, and meticulously monitored her 1875 and 1876 forms, which claimant had to fill out on a daily basis, and which he alleged she consistently filled out incorrectly. The outcome of this complaint is not in the record.

administrative law judge found that while there is medical evidence that claimant has a psychological condition, she failed to establish her *prima facie* case under Section 20(a) of the Act, 33 U.S.C. §920(a). Thus, the administrative law judge denied the claim. On appeal, claimant, representing herself, challenges the administrative law judge's denial of her claim. Employer responds, urging affirmance.

A psychological impairment which is work-related is compensable under the Act. *Tampa Ship Repair & Dry Dock Co.,* 535 F.2d 936, 4 BRBS 243 (5th Cir. 1976); *American National Red Cross v. Hagen,* 327 F.2d 559 (7th Cir. 1964); *Sewell v. Non-Commissioned Officers' Open Mess, McChord Air Force Base,* 32 BRBS 127 (1997) (McGranery, J., dissenting), *aff'd on recon. en banc*, 32 BRBS 134 (1998)(McGranery and Brown, JJ., dissenting); *Sanders v. Alabama Dry Dock & Shipbuilding Co.*, 22 BRBS 340 (1989); *Turner v. Chesapeake & Potomac Telephone Co.*, 16 BRBS 255 (1984)(Ramsey, C.J., dissenting on other grounds). Furthermore, the Section 20(a) presumption is applicable in psychological injury cases. *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380, 384 n.2 (1990). In order to be entitled to the Section 20(a) presumption, however, claimant must establish a *prima facie* case by showing that she suffered a harm and that either a work-related accident occurred or that working conditions existed which could have caused the harm or aggravated a pre-existing condition.[3] *See Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998). Claimant's psychological injury need only be due in part to work-related conditions to be compensable under the Act. *See generally Peterson v. General Dynamics Corp.*, 25 BRBS 78 (1991), *aff'd sub nom. Ins. Co. of North America v. U.S. Dept. of Labor, OWCP*, 969 F.2d 1400, 26 BRBS 14(CRT) (2d Cir. 1992), *cert. denied*, 113 S.Ct. 1253 (1993). For the reasons that follow, we reverse the administrative law judge's determination that claimant failed to establish her *prima facie* case.

In *Marino*, the Board held that a psychological injury resulting solely from a termination of employment is not compensable under the Act. Nevertheless, drawing a distinction between the termination and work-related cumulative stress, the Board in *Marino* remanded the case for the administrative law judge to address the claimant's allegation that his injury was due as well to work-related cumulative stress from supervising a number of locations, insufficient personnel to perform the job, working more than required hours, and

[3]It is undisputed that claimant established the first prong of her *prima facie* case, *i.e.*, the existence of a harm, as the uncontroverted medical evidence establishes that she suffers from a psychological condition, depression.

performing the duties of subordinates. *Id.* On remand, the administrative law judge awarded the claimant benefits on this theory, finding that the claimant's general working conditions were a cause of his psychological injury. This decision was affirmed by the Board on appeal. *Marino v. Navy Exchange*, BRB No. 88-1720 (Dec. 12, 1990) (unpublished).

The administrative law judge in the instant case found that while there is medical evidence that claimant has a psychological condition, she failed to establish her *prima facie* case under Section 20(a) of the Act, because employer's actions which she alleges were stressful were in fact legitimate personnel actions, and thus any stress which caused claimant's condition is not compensable. With respect to the actions which claimant alleged were stressful, the administrative law judge found claimant's version of the events belied by more credible evidence indicating that claimant was one of several employees whose hours were cut; that Mr. Hogancamp first went to claimant when she produced deficient work, allowing her an opportunity to correct her mistakes, and other cashiers were directed to go to her first and to only go to Mr. Hogancamp as a last resort; that repeated requests by Mr. Hogancamp that claimant correct mistakes in paperwork were justified because a performance evaluation by an auditing team and credited testimony of other employees consistently indicated poor job performance by claimant; that employer provided training and offers of assistance by other employees to assist claimant in mastering the new register system and to help claimant become more efficient, but that claimant turned down the offer; that cashiers were able to work out scheduling needs in agreeable fashion, and that problems encountered were of claimant's own doing, because she ignored clearly delineated limitations in each cashier's availability and scheduled them when they could not work, thereby creating tension and confrontation, and that claimant was difficult to get along with. *See* Decision and Order at 13-14.

In reviewing the administrative law judge's analysis of the evidence, it is clear that the administrative law judge considered whether Mr. Hogancamp's daily interactions with claimant were "legitimate," or justified, but that he nevertheless found that the alleged actions took place. When considering a claim based on stressful work conditions, however, the issue is not whether employer's actions were "legitimate," or justified, but whether claimant's working conditions were stressful, *i.e.*, whether claimant experienced cumulative stress in her general working conditions which could have caused or aggravated her psychological injury. The Act does not require employer misconduct, or fault, in order for a claimant to have sustained a compensable injury. *See Sewell*, 32 BRBS at 130. Thus, whether there are valid reasons for Mr. Hogancamp's actions begs the question of whether claimant perceived her working conditions as stressful.

In this regard, the uncontradicted medical evidence attributes claimant's psychological condition, at least in part, to stress at work. Dr. Alberts, claimant's treating psychiatrist, stated that claimant told him that her new supervisor severely criticized her, that almost every

morning there would be a piece of paper telling her what she had not done, and that she interpreted this as harassment "about not even minor problems." Tr. at 30, 33. In Dr. Alberts's opinion, stressful events in a person's life do not supersede, but add to, the psychological condition, and he said "[I]t's the way people interpret the cause of the depression. That is, of course, something I cannot question. That is how they see the world and what is causing their depression." *Id.* at 44, 46; *see also* Jt. Ex. 1 at 8 (Dr. Alberts's depo.). Dr. Alberts steadfastedly insisted that no matter what other stressors were present in claimant's personal life, what she perceived as harassment from Mr. Hogancamp contributed to her depression. *Id.* Dr. Winn deposed that while claimant reported that her depression was due to what she perceived as conflicts in the work setting, she admitted to other stressors in her life, EX 13 at 8, 15, and he disagreed that claimant's personal issues precipitated the depression, stating that while the alleged non-work stressors all contributed to her depression, it was multi-causal, and that because of other stressors, she would be even more vulnerable to stress factors at work.[4] EX 13 at 19-21.

The stress which a claimant experiences need not be "unusually" stressful. *See Sewell,* 32 BRBS at 129; *see generally Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968). Even if the work-related stress may seem relatively mild, the issue is the effect of the incidents on claimant. *See Konno v. Young Bros., Ltd.*, 28 BRBS 57 (1994). Moreover, it is irrelevant that other factors also may have contributed to the claimant's depression. *Id.* Significantly, in this case, there is no medical opinion that claimant's work did not contribute to her depression.[5] *Sewell,* 32 BRBS at 132. Thus, the administrative law judge's conclusion that "the record does not support the contention that [work] was so stressful, even cumulatively, that it gave rise to psychological injuries," Decision and Order at 5, is not supported by any evidence of record. Accordingly, as the administrative law judge erroneously focused on whether employer's actions were justified, and did not find that the

[4]The administrative law judge found that claimant was not candid with her physicians concerning her prior mental health problems, stemming from domestic issues. Both Dr. Alberts and Dr. Winn nonetheless accounted for other stresses in claimant's life, and maintained their opinions that claimant's work was a cause of her current depression. *See Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 84(CRT) (2d Cir. 1997).

[5]Beginning on October 11, 1994, prior to the alleged injury in this case, claimant sought counseling at South-Central Counseling Center in Anchorage. Dr. Brown, of South Central, completed a mental health conference form reflecting domestic issues as the basis for claimant's depression. EX 4(c). Employer argues that these reports establish that the cause of claimant's depression was not work-related. Although these reports do not refer to claimant's work conditions, they do not establish that claimant's mental condition was not caused or aggravated by her work conditions.

alleged stressful conditions did not exist, and all medical evidence of record supports claimant's allegation that these work conditions could have caused her depression at least in part, we reverse the administrative law judge's conclusion that claimant did not establish a *prima facie* case under Section 20(a) that her psychological condition is work related. *Sewell,* 32 BRBS at 131.

Once Section 20(a) is invoked, employer bears the burden of producing substantial evidence that the claimant's condition was not caused or aggravated by her employment. *See Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999). If it does so, the presumption falls from the case and the administrative law judge must weigh all of the evidence, with claimant bearing the burden of persuasion on the issue of the work-relatedness of her condition. *See, e.g., Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). The administrative law judge did not reach the issue in his decision. However, as none of the medical reports states that claimant's psychological condition was not caused or aggravated by her employment, we hold that, as a matter of law, the Section 20(a) presumption is not rebutted and, consequently, that claimant's condition is work-related. *See generally Sewell,* 32 BRBS at 132. The case must therefore be remanded for the administrative law judge to address the nature and extent of claimant's disability and any other remaining issues.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL

Administrative Appeals Judge