BRB No. 02-0869

RONALD S. TAYLOR	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY	)	DATE ISSUED: 09/09/2003
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

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

Chanda W. Stepney (Rutter, Walsh, Mills & Rutter, L.L.P.), Norfolk, Virginia, for claimant.

Christopher R. Hedrick (Mason, Mason, Walker & Hedrick), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (2001-LHC-0467) 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 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).

On June 7, 1988, claimant sustained a work-related injury to his lower back while working for employer as a material handler. Employer's clinic records reflect that claimant was diagnosed with a back sprain and placed on light duty work for a few

weeks. CX 8d. Thereafter, claimant returned to his usual, full-time employment with employer, without restrictions.

In 1999, claimant experienced severe back pain and was diagnosed by Dr. Garner with a small disc herniation compressing the nerve root at L5. On January 19, 2000, claimant filed a claim for medical benefits, alleging that his pain is due to the 1988 work accident. Employer controverted the claim on the basis that claimant's current pain is unrelated to the 1988 work injury.[1]

In his Decision and Order, the administrative law judge found that claimant presented insufficient evidence to invoke the presumption under Section 20(a) of the Act, 33 U.S.C. §920(a), that his back condition is work-related. Therefore, the administrative law judge found that claimant is not entitled to medical benefits under Section 7 of the Act, 33 U.S.C. §907, for his current back problems, and denied his claim.[2]

On appeal, claimant contends that the administrative law judge erred in finding that the Section 20(a) presumption is not invoked, and therefore erred in denying medical benefits. Employer responds, urging affirmance.

A claim for medical benefits is contingent, *inter alia*, upon a finding that the claimant's injury is work-related. *Addison v. Ryan-Walsh Stevedoring Co.*, 22 BRBS 32 (1989). In establishing whether his injury is work-related, claimant is aided by the Section 20(a) presumption, which applies only after claimant establishes the existence of a harm and that a work-related accident occurred or working conditions existed which could have caused the harm. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); *see also U.S. Industries/Federal Sheet Metal v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). Once claimant establishes his *prima facie* case, Section 20(a) of the Act provides claimant with a presumption that his condition is causally related to his employment. The burden then shifts to employer to rebut it with substantial evidence establishing the absence of a connection between the injury and the employment. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT).

The administrative law judge found that claimant credibly testified that he suffers from back pain and that claimant's testimony is supported by the opinions of Drs. Garner and Kirven. Thus, the administrative law judge found the "harm" element of claimant's

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[1]Employer also contended that any claim for disability benefits is time-barred, pursuant to Section 13, 33 U.S.C. §913. The administrative law judge declined to address this issue, as claimant sought only medical benefits, and such a claim is never time-barred. *See Marshall v. Pletz*, 317 U.S. 383 (1943); *Siler v. Dillingham Ship Repair*, 28 BRBS 38 (1994)(decision on recon. *en banc*).

[2]The administrative law judge found that if the Section 20(a) presumption were invoked, employer's evidence is insufficient to establish rebuttal thereof.

prima facie case established. The administrative law judge also noted that the parties stipulated that claimant sustained an injury to his back in a work accident in 1988. However, given the passage of time between 1988 and claimant's current complaints, the administrative law judge stated that medical evidence of a *possible* causal connection between claimant's current pain and the work accident is necessary to take the claim beyond "mere fancy." *See Champion v. S & M Traylor Bros.*, 690 F.2d 285, 15 BRBS 33(CRT) (D.C. Cir. 1982). As there is no medical evidence of record addressing the relationship between claimant's pain and the work accident, the administrative law judge found that the Section 20(a) presumption is not invoked and he denied the claim.

We affirm the administrative law judge's denial of medical benefits. While claimant need not introduce affirmative medical evidence establishing an *actual* causal relationship between his harm and his employment in order to invoke the Section 20(a) presumption, *Sinclair v. United Food & Commercial Workers* (1989), the presumption is not invoked unless the harm *could have been* caused by the work accident in order to take the claim beyond "mere fancy." *Champion*, 690 F.2d 285, 15 BRBS 33(CRT); *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968). Case law does not address the precise scope of claimant's burden of production in this regard, *see Bath Iron Works Corp. v. Brown*, 194 F.3d 1, 33 BRBS 162(CRT) (1st Cir. 1999), although the requirements for invocation have been deemed "minimal" by one court. *Brown v. I.T.T./Continental Baking Co.*, 921 F.2d 289, 295-296, 24 BRBS 75, 80(CRT) (D.C. Cir. 1990). On the facts presented here, however, we cannot state that the administrative law judge erred in requiring medical evidence of a possible causal connection given the complete lack of any temporal nexus between claimant's pain and the work accident. The administrative law judge refused to infer that the claimant's current pain is related to the 1988 accident based solely on the anatomical location of the pain. Moreover, the administrative law judge rationally drew an adverse inference from claimant's failure to adduce any evidence supporting his claim despite his knowledge that the cause of his pain was at issue. *See generally Denton v. Northrop Corp.*, 21 BRBS 37 (1988). The administrative law judge's selection of this inference from among competing inferences must be affirmed if it is rational and in accordance with law, s*ee Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 29 BRBS 79(CRT) (5th Cir. 1995), and we cannot say that the administrative law judge ruled irrationally here. As the administrative law judge's findings are rational and the record is devoid of any medical evidence addressing a possible causal relationship between claimant's pain and the 1988 accident, we affirm the denial of medical benefits.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge