BRB No. 97-566

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| MARY BRADFORD<br>(Widow of GORDON BRADFORD)<br><br>Claimant-Respondent<br><br>v.<br><br>HARVEY & COMPANY, INCORPORATED<br><br>and<br><br>CIGNA/INSURANCE COMPANY OF NORTH AMERICA<br><br>Employer/Carrier-Petitioners<br><br>DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR<br><br>Respondent | ) | DATE ISSUED:<br><br>DECISION and ORDER |

Appeal of the Decision and Order Awarding Benefits of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Andrew P. McFarland (Maynard, O'Conner, Smith, Catalinotto & D'Agostino), Albany, New York, for claimant.

Keith L. Flicker (Flicker, Garelick & Associates), New York, New York, for employer/carrier.

LuAnn B. Kressley (J. Davitt McAteer, Acting Solicitor of Labor; Carol A. DeDeo, Associate Solicitor; Janet R. Dunlop, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (94-LHC-2414) of Administrative Law Judge Ainsworth H. Brown 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 Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge if they 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 February 18, 1993, Gordon Bradford died due to a myocardial infarction sustained during the course of his employment for employer in Kampala, Uganda, where he was working to facilitate a debt for equity swap with the government of Uganda. Claimant subsequently filed a claim for death benefits under the Act. *See* 33 U.S.C. §909.

In his Decision and Order, the administrative law judge found that claimant is entitled to the Section 20(a), 33 U.S.C. §920(a), presumption as she established that decedent sustained a fatal heart attack during the course of his employment with employer. Finding the medical opinion of Dr. Friedman insufficient to rebut Section 20(a), the administrative law judge determined that employer failed to rebut the presumption. Accordingly, the administrative law judge concluded that decedent's death was work-related, and claimant was thus awarded death benefits under the Act. Finally, the administrative law judge denied employer's petition for relief pursuant to Section 8(f) of the Act, 33 U.S.C. §908(f), finding that Dr. Friedman's opinion failed to establish that the decedent's pre-existing coronary artery disease contributed to decedent's heart attack and death.

On appeal, employer challenges the administrative law judge's findings that claimant invoked the Section 20(a) presumption and that it failed to rebut the presumption. Moreover, employer contends that claimant failed to establish causation based on the record evidence as a whole. Finally, employer challenges the administrative law judge's denial of its request for Section 8(f) relief. Claimant responds, urging affirmance of the administrative law judge's finding of a work-related injury and the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the administrative law judge's denial of Section 8(f) relief.

Employer initially contends that the administrative law judge erred in invoking the Section 20(a) presumption; specifically, employer argues that claimant failed to establish the existence of working conditions which could have resulted in decedent's fatal heart attack. It is well-established that claimant bears the burden of proving the existence of an injury or harm and that a work-related accident occurred or that working conditions existed which could have caused the harm in order to establish a *prima facie* case. *See U. S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP,* 455 U.S. 608, 14 BRBS 631 (1982); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1990); *Bartelle v. McLean Trucking Co.*, 14 BRBS 166 (1981), *aff'd,* 687 F.2d 34, 15 BRBS 1 (CRT)(4th Cir. 1982). It is claimant's burden to establish each element of her *prima facie* case by affirmative proof. *See Kooley v. Marine*

*Industries Northwest*, 22 BRBS 142 (1989); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT)(1994). Contrary to employer's contention, however, claimant is not required to introduce affirmative medical evidence proving that the working conditions in fact caused decedent's death; rather, claimant must show only the existence of working conditions which could have caused decedent's death. *See generally U. S. Industries/Federal Sheet Metal, Inc.,* 455 U.S. at 608, 14 BRBS at 631. In this regard, the United States Court of Appeals for the Eighth Circuit has stated that the presumption applies in cases where, as here, death occurs in the course of employment. *Bell Helicopter Int'l, Inc. v. Jacobs*, 746 F.2d 1342, 17 BRBS 13 (CRT)(8th Cir. 1984); *see Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968)(wherein the court stated that an injury need not involve an unusual strain or stress, and that it makes no difference that the injury might have occurred elsewhere).

In the instant case, the administrative law judge found that decedent was in the course of his employment when he sustained his fatal heart attack. Moreover, the administrative law judge rationally credited, *inter alia*, claimant's testimony that decedent experienced work-related stress while he was employed in Uganda. *See* discussion *infra.* Claimant also introduced the opinion of Dr. Okullo, the hotel physician who attended decedent, that decedent's work contributed to his death. CX 1-3 at 39, 46-48. Thus, contrary to employer's assertion, the administrative law judge's finding that claimant established her *prima facie* case is supported by substantial evidence and is consistent with law. Accordingly, we affirm the administrative law judge's invocation of the Section 20(a) presumption. *See Jacobs*, 746 F.2d at 1342, 17 BRBS at 13 (CRT); *Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989).

Once the Section 20(a) presumption is invoked, the burden shifts to the employer to rebut it with substantial evidence. *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 Board has held that an administrative law judge may find the presumption is not rebutted where a doctor's opinion is not well-reasoned or lacks a proper foundation. *See Hampton v. Bethlehem Steel Corp.,* 24 BRBS 141 (1990); *see also Sinclair,* 23 BRBS at 148.

In the case at bar, the opinion of Dr. Friedman is the only medical report of record stating that decedent's heart attack was not caused by his employment. The administrative law judge found this report insufficient because it was based on the assumption that decedent's employment in Uganda was not unusually stressful to him. The administrative law judge, however, credited claimant's testimony that decedent complained to her on the evening of February 16 that he could be returning home soon because he believed that certain Ugandan ministers were not pleased with him, there were not enough staff working for employer on the project, and his hotel had no air conditioning. The administrative law judge found that Dr. Friedman was not aware of these facts and that his testimony demonstrated that many relevant factors were not included in the information provided to

him as a basis for his opinion. We hold that the administrative law judge acted within his authority as trier-of-fact in finding Dr. Friedman's opinion insufficient to meet employer's burden of presenting specific and comprehensive evidence establishing the lack of a causal relationship. Accordingly, in the absence of other evidence of record severing the connection between decedent's heart attack and his employment, claimant has established that decedent's death was work-related. *See Clophus v. Amoco Production Co.,* 21 BRBS 261 (1988).

Employer additionally challenges the administrative law judge's finding that it failed to establish entitlement to relief pursuant to Section 8(f) of the Act; specifically, employer alleges that the administrative law judge erred in failing to find that decedent's pre-existing coronary artery disease contributed to decedent's fatal heart attack. Section 8(f) shifts the liability to pay compensation for permanent total disability and/or death after 104 weeks from the employer to the Special Fund established in Section 44 of the Act, 33 U.S.C. §944. In a death benefits case, Section 8(f) relief is available to employer if employer establishes the following: 1) the decedent had a pre-existing permanent partial disability which 2) combines with a subsequent work-related injury to result in death, and 3) the pre-existing disability was manifest to employer. *See* 33 U.S.C. §908(f); *Director, OWCP v. Luccitelli*, 964 F.2d 1303, 26 BRBS 1 (CRT) (2d Cir. 1992), *rev'g Luccitelli v. General Dynamics Corp.*, 25 BRBS 30 (1991); *Armstrong v. General Dynamics Corp.*, 22 BRBS 276 (1989).

In the instant case, the administrative law judge, stated, *in toto*:

> The employer mounts a brief argument as an alternative position to limit its liability to two years of benefits. While there appears to be not much of an issue as to the existence of a manifest partial disability as shown by the little medical evidence contained in the record, Dr. Friedman's opinion is employ (sic) any language that the fatal cardiac event was "not" solely responsible for a total disability or death. If anything, Dr. Friedman's testimonial conclusions seem to stand for the proposition that the death was the natural progressions (sic) of an earlier "silent" cardiac event.

*See* Decision and Order at 4. Decisions rendered under the Act are subject to the Administrative Procedure Act which requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions and the reasons or basis therefor, on all material issues of fact, law or discretion presented in the record." 5 U.S.C. §557(c)(3)(A). Thus, the administrative law judge must adequately detail the rationale behind his decision and specify the evidence upon which he relied. *See Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988). In the instant case, the administrative law judge's failure to explicitly set forth the evidence upon which employer relies makes it impossible to apply the Board's standard of review. Moreover, we note the Director's response that employer's evidence fails to satisfy the manifest element for establishing entitlement to Section 8(f) relief. *See Caudill v. Sea Tac Alaska Shipbuilding,* 25 BRBS 92 (1991), *aff'd mem. sub nom. Sea Tac Shipbuilding v. Director, OWCP*, 8 F.3d 29 (9th Cir.

1993). Accordingly, we vacate the administrative law judge's denial of Section 8(f) to employer, and we remand the case to the administrative law judge for him to consider and discuss all of the evidence relevant to employer's contentions on this issue.

Accordingly, the administrative law judge's denial of Section 8(f) relief is vacated and the case is remanded for further proceedings consistent with this opinion. In all other respects, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge