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 Claimant-Respondent )  
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 v. )  
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 ITT INDUSTRIES, INCORPORATED ) DATE ISSUED: 05/13/2009  
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 and )  
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 ACE AMERICAN INSURANCE )  
 COMPANY )  
 )  
 Employer/Carrier- )  
 Petitioners ) DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

David C. Barnett (Barnett & Lerner, P.A.), Dania Beach, Florida, for claimant.

Mark K. Eckels and Blake J. Hood (Boyd & Jenerette, P.A.), Jacksonville, Florida, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order (2007-LDA-0314) of Administrative Law Judge Ralph A. Romano 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 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant began working for employer as a mechanic at Camp Arifjan in Kuwait on February 28, 2005. Claimant, who was born in Lebanon but later became a naturalized citizen of the United States, testified that in March 2005 his co-workers began calling him disparaging names because of his Arabic heritage. He also testified that his supervisors took no corrective action and, in some cases, were involved in the behavior. Tr. at 20, 22-25, 42-47; *see also* Cl. Ex. 1. Claimant stated that, after seven months, he sought treatment with a psychiatrist because he was feeling nervous. In March 2007, claimant was moved to an off-site camp but the harassment continued, and claimant's doctor, Dr. ALAnsari, increased claimant's medication. Jt. Ex. 6; Tr. at 27-29, 42. The situation worsened, as claimant testified he began occasionally hearing the harassment in his sleep, and he stayed home from work for five days. His roommate took him to the doctor, and the doctor told him to return to the United States for treatment. Claimant sought treatment but attempted suicide and was hospitalized for five days. Since his release, claimant continues with therapy and medication, as he has been diagnosed with a variety of psychological problems including depression, anger, post-traumatic stress disorder (PTSD), and anxiety. Emp. Ex. 1; Jt. Exs. 4-8, 12. Claimant filed a claim for benefits.

The administrative law judge found that claimant demonstrated a psychological injury as well as working conditions that could have caused that injury. Thus, he found the Section 20(a), 33 U.S.C. §920(a), presumption invoked. He also determined that the opinion of Dr. Mercier, employer's expert, that claimant has schizophrenia unrelated to his work, rebuts the presumption. Emp. Ex. 1. However, on the record as a whole, the administrative law judge found that claimant suffers from depression, anxiety and PTSD related to the harassment by his co-workers. The administrative law judge gave less weight to Dr. Mercier and credited the opinions of Drs. ALAnsari, Ramakrishna, Demerieles, and Salameh to find that claimant is inflicted with work-related PTSD and depression. Decision and Order at 10-12. The administrative law judge, accordingly, awarded claimant temporary total disability benefits from March 17, 2007, and medical benefits. *Id.* at 12-13. Employer appeals, and claimant responds, urging affirmance.

Employer contends the administrative law judge erred in finding that claimant established a *prima facie* case, as it argues that claimant did not present substantial evidence of a psychiatric injury. Alternatively, employer contends the administrative law judge erred in finding that claimant sustained a work-related psychiatric injury based on the record as a whole. Specifically, employer argues that no doctor diagnosed claimant with PTSD or anxiety or depression in a manner that is consistent with the definition and the diagnostic criteria set forth in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition* (DSM). Moreover, it argues that only Dr. Mercier properly utilized the DSM, and he eliminated a diagnosis of PTSD and confirmed a diagnosis of schizophrenia, which he stated is not work-related. Employer analogizes the DSM to an

MRI and other objective tests used to confirm physical injuries and states that the DSM is critical to confirming psychological injuries. Employer asserts that, as no doctor utilized the DSM to properly render a psychological diagnosis related to claimant's work, claimant does not suffer a work-related psychological harm, and the administrative law judge erred in finding otherwise. Employer also alleges the administrative law judge's decision is not rational because the opinions he credited rely on claimant's inconsistent statements.

In determining whether an injury is work-related, a claimant is aided by the Section 20(a), 33 U.S.C. §920(a), presumption, which may be invoked only after he establishes a *prima facie* case. To establish a *prima facie* case, the claimant must show that he sustained a harm or pain and that conditions existed or an accident occurred at his place of employment which could have caused the harm or pain. *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1<sup>st</sup> Cir. 2004); *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9<sup>th</sup> Cir. 1999); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5<sup>th</sup> Cir. 1998); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); see also *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). Once the claimant establishes a *prima facie* case, Section 20(a) applies to relate the injury to the employment, and the employer can rebut this presumption by producing substantial evidence that the injury was not related to the employment. *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5<sup>th</sup> Cir. 1999); see also *American Grain Trimmers v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7<sup>th</sup> Cir. 1999) (*en banc*), *cert. denied*, 528 U.S. 1187 (2000). If the employer rebuts the presumption, it no longer controls and the issue of causation must be resolved on the evidence of record as a whole, with the claimant bearing the burden of persuasion. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4<sup>th</sup> Cir. 1997); see also *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

A psychological injury constitutes a "harm" within the meaning of the Act.<sup>1</sup> *Butler v. District Parking Management*, 363 F.2d 682 (D.C. Cir. 1966); *American National Red Cross v. Hagen*, 327 F.2d 559 (7<sup>th</sup> Cir. 1964); *Sewell v. Noncommissioned Officers Open Mess, McCord Air Force Base*, 32 BRBS 127 (1997) (McGranery, J.,

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<sup>1</sup>For a psychological harm to be caused by "stressful" working conditions, the working conditions need not be circumstances universally recognized as "stressful", they need only be occurrences that are stressful to that claimant. *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968); see also *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1<sup>st</sup> Cir. 2004). It is his reaction to the conditions and events that is relevant. *Konno v. Young Brothers, Ltd.*, 28 BRBS 57 (1994).

dissenting), *aff'd on recon. en banc*, 32 BRBS 134 (1998) (Brown and McGranery, JJ., dissenting); *Konno v. Young Brothers, Ltd.*, 28 BRBS 57 (1994). Contrary to employer's argument, the Act does not require use of the DSM in assessing whether a claimant has suffered a psychological injury either in establishing a *prima facie* case or in proving the work-relatedness of an injury based on the record as a whole. Rather, the administrative law judge must base his decision on the evidence of record, assessing it in terms of weight and credibility. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5<sup>th</sup> Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5<sup>th</sup> Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2<sup>d</sup> Cir. 1961); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). The administrative law judge may not substitute his judgment for those of the physicians involved. *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 84(CRT) (2<sup>d</sup> Cir. 1997).

In this case, Dr. ALAnsari, who treated claimant in Kuwait, diagnosed claimant with depressive disorder, noting psychosocial and occupational stressors. He stated that claimant had symptoms of insomnia and lack of concentration, and he put claimant on medications. Jt. Ex. 6. Dr. Demerieles examined claimant in March 2007 and stated he could not return to work, as he was being treated for anxiety and PTSD. Jt. Ex. 7. Dr. Ramakrishna, claimant's treating psychiatrist, took over claimant's treatment in June 2007 and diagnosed major depression and anxiety related to the harassment and name-calling he suffered in Kuwait. Dr. Ramakrishna stated that, as of September 24, 2007, the date of his deposition, they were still adjusting claimant's medication to pull him out of his depression. Jt. Ex. 12. Dr. Mercier examined claimant on October 2, 2007, and diagnosed psychosis suspected to be schizophrenia unassociated with work, and he rejected a diagnosis of PTSD, as he said there was no event to trigger this condition. Emp. Ex. 1. Dr. Salameh, a psychologist, evaluated claimant on March 11, 2008, and opined that claimant has chronic PTSD based on work-related racial discrimination and harassment. Jt. Ex. 5.

The administrative law judge found that claimant is a credible witness and that his testimony is consistent with his reports to the doctors. Based on his testimony, as well as the doctors' reports which state that claimant suffered psychological injury, the administrative law judge found that claimant established the harm element of his *prima facie* case. Decision and Order at 10-11. As a review of the evidence establishes that all the doctors agree that claimant suffers from some form of psychological harm, the administrative law judge properly found that claimant has established this element of his *prima facie* case. *Sewell*, 32 BRBS 127. As employer does not specifically challenge the administrative law judge's finding that conditions existed at claimant's work which could have caused this harm, claimant also has established the second prong of his *prima facie*

case.<sup>2</sup> We affirm the administrative law judge's determination that claimant is entitled to the benefit of the Section 20(a) presumption. *Id.*

Because the administrative law judge's determination that employer presented substantial rebuttal evidence is unchallenged, we next address employer's argument that the administrative law judge erred in considering the record as a whole. In this regard, the administrative law judge found that claimant "clearly suffers from depression and anxiety" and that several doctors agreed that co-worker harassment could cause or contribute to these conditions. Decision and Order at 11; *see* Jt. Exs. 5-7, 12. The administrative law judge determined that Dr. Mercier's opinion that claimant has schizophrenia unrelated to his employment is entitled to little weight because it dismissed harassment as a cause of claimant's problems, failed to indicate why claimant's symptoms were inconsistent with depression, and failed to explain why schizophrenia was an appropriate diagnosis when there was no personal or familial history of such condition. To the contrary, the administrative law judge found that Dr. Salameh gave a well-reasoned opinion as to why claimant was not schizophrenic and why his symptoms were consistent with the diagnoses of depression and PTSD.<sup>3</sup> Thus, based on the opinions of Drs. ALAnsari, Ramakrishna, Demerieles, and Salameh, the administrative law judge concluded that claimant "was inflicted with depression and PTSD as a result of the harassment by his coworkers during his employment with Employer in Kuwait."

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<sup>2</sup>Employer asserts in its brief that claimant inconsistently reported the nature and duration of the alleged harassment as well as his symptoms to the doctors, and that this, therefore, renders the doctors' reports internally inconsistent and not worthy of the weight the administrative law judge gave them. We reject this argument as the administrative law judge specifically found claimant's testimony to be credible and consistent with his reports to the doctors. Decision and Order at 10; *Lennon v. Waterfront Transport*, 20 F.3d 658, 28 BRBS 22(CRT) (5<sup>th</sup> Cir. 1994); *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9<sup>th</sup> Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Employer also states that the inconsistencies establish that claimant did not confirm any alleged incidents of harassment. These assertions were made within the scope of its argument that the administrative law judge should not have credited and given weight to the opinions and diagnoses of doctors other than Dr. Mercier. To the extent this is a challenge to the working conditions finding, the record contains substantial evidence to support the finding that harassment occurred as alleged which could have caused or contributed to claimant's psychological injury. *See* Decision and Order at 5, 11; Cl. Ex. 1 (deposition of co-worker who corroborates claimant's testimony of harassment).

<sup>3</sup>Dr. Salameh also stated that claimant's symptomatology fits the diagnostic parameters of PTSD as set forth in the DSM. Jt. Ex. 5 at 37.

Decision and Order at 12. As the administrative law judge is authorized to weigh the evidence and make credibility determinations, and as his findings are supported by substantial evidence and are rational, we affirm his conclusion that claimant suffers from a work-related psychological condition. *See Sewell*, 32 BRBS 134.

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge