BRB No. 96-0793

BETTY J. RIPLEY	)	
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Claimant-Respondent	)	
	)	
v.	)	
	)	
DEPARTMENT OF NAVY/MWR	)	DATE ISSUED: _____
	)	
and	)	
	)	
THOMAS HOWELL GROUP, INCORPORATED	)	
	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

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

Gregory E. Camden (Rutter & Montagna), Norfolk, Virginia, for claimant.

Elisa A. Roberts (Hamilton, Westby, Marshall & Antonowich), Atlanta, Georgia, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order (95-LHC-786) of Administrative Law Judge Fletcher E. Campbell, Jr., rendered on a claim filed pursuant to the provisions of the Long shore 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). 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).

Claimant worked for employer as a head cook and kitchen supervisor. She left her employment on April 12, 1994, due to a psychological injury allegedly caused, at least in part, by the stress she experienced while working for employer. Claimant, who admittedly suffered from psychological and family problems that pre-dated her employment with employer, was diagnosed with a major depressive disorder in May 1994 by Dr. Buchanan. Elizabeth Bimsom, a licensed clinical social worker who treated claimant in conjunction with Dr. Buchanan, advised in September 1994 that it was unwise for claimant to return to her former employment duties with employer. Thereafter, claimant filed a claim under the Act seeking temporary total disability benefits.

In his Decision and Order, the administrative law judge found that claimant was entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption and, after determining that employer failed to rebut the presumption, found that claimant established causation under the Act. Specifically, the administrative law judge found that not all of claimant's job-related stress occurred as a consequence of legitimate personnel actions and, therefore, claimant's psychological injury was compensable. Having determined that claimant was unable to return to her usual employment duties with employer, the administrative law judge next found that employer failed to establish the availability of suitable alternate employment. Thus, the administrative law judge awarded claimant temporary total disability compensation from April 12, 1994 and continuing. 33 U.S.C. §908(b).

On appeal, employer contends that the administrative law judge improperly applied the Section 20(a) presumption of causation; alternatively, employer avers that the administrative law judge erred in finding that employer failed to rebut that presumption. Specifically, employer asserts that in invoking the Section 20(a) presumption, the administrative law judge failed to specify the working conditions which might have contributed to claimant's psychological problems. Citing *Marino v. Navy Exchange*, 20 BRBS 166 (1988), employer argues that any psychological injury claimant suffered as a result of her employment with employer was due to legitimate personnel actions, and is therefore not compensable. Claimant responds, urging affirmance of the administrative law judge's decision.

We reject employer's contention that the administrative law judge erred in finding that claimant's psychological condition is work-related and compensable. A psychological impairment which is work-related is compensable under the Act. *Sanders v. Alabama Dry Dock & Shipbuilding Co.*, 22 BRBS 340 (1989); *Turner v. Chesapeake and Potomac Telephone Co.*, 16 BRBS 255 (1984)(Ramsey, C.J., dissenting on other grounds). Furthermore, the Section 20(a), 33 U.S.C. §920(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 or aggravated the harm. *See Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990); *Perry v. Carolina Shipping Co.*, 20 BRBS 90 (1987). In the instant case, the administrative law judge found that claimant was entitled to the benefit of the Section 20(a) presumption inasmuch as claimant suffered a psychological injury, as documented by Dr. Buchanan, her treating physician, and that stressful working conditions existed which could have caused the harm.

The administrative law judge acknowledged that some of claimant's stress related to employer's 1994 reorganization, noting that this action increased claimant's duties and required her to move from the night shift to the day shift, which claimant found upsetting. However, the administrative law judge rationally distinguished the instant case from *Marino*, observing that much of claimant's job-related stress pre-dated employer's 1994 reorganization. In this regard, the administrative law judge credited the testimony of claimant's co-worker, Thelma Jones, and claimant's supervisors, Erica Castro and Robert Sexton, each of whom testified that claimant complained of work-related stress prior to the 1994 reorganization due to various reasons such as insufficient personnel to perform the job and the lack of support for her decisions by her supervisors. *See* Tr. at 14, 56-57, 71, 83-88. Claimant testified that in 1993 she suffered from headaches, nausea, loss of sleep, and feelings of worthlessness due to stress at work. *Id*. at 37-38. Dr. Buchanan testified that while numerous events contributed to claimant's depression, her job-related stress further aggravated her psychological condition. Buchanan Dep. at 54-55. As an injury need only be due in part to work-related conditions to be compensable under the Act, *see Peterson v. General Dynamics Corp.*, 25 BRBS 78 (1991), *aff'd sub nom. Ins. Co. of North America v. U.S. Dep't of Labor, OWCP*, 969 F.2d 1400, 26 BRBS 14 (CRT)(2d Cir. 1992), *cert. denied*, 113 S.Ct. 1253 (1993), we affirm the administrative law judge's determination that claimant established the "working conditions" element of her *prima facie* case, even if employer's legitimate personnel actions are not considered, as this finding is supported by substantial evidence.[1] *See generally U.S. Industries/Federal Sheet Metal v. Director, OWCP*, 455 U.S.

[1]This result is consistent with *Marino.* Although the Board in *Marino* held that an injury due to a reduction in force is not compensable, it also remanded the case for the administrative law judge to address claimant's allegations that his injury was due as well to

608, 14 BRBS 631 (1982); *Konno v. Young Brothers, Ltd.*, 28 BRBS 57, 61 (1994).

Alternatively, employer argues that the administrative law judge erred in finding that employer failed to rebut the Section 20(a) presumption. We disagree. Once the Section 20(a) presumption is invoked, the burden shifts to the employer to rebut the presumption with substantial evidence that claimant's condition is not caused or aggravated by his employment. *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); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990).

Finding that employer's independent physician agreed that claimant's problems are due in part to her work environment, the administrative law judge determined that employer failed to provide substantial evidence to rebut the Section 20(a) presumption. Employer's physician, Dr. Julius, listed claimant's job situation as a severe stressor, noting that claimant was in need of work-stress psychotherapy. Cl. Ex. 4. Thus, as there is no medical evidence to establish that claimant's psychological condition is not related, at least in part, to her work environment, we affirm the administrative law judge's finding that employer did not rebut the Section 20(a) presumption, and that claimant's psychological injury is work-related. *See, e.g., Manship v. Norfolk & Western Railway Co.*, 30 BRBS 175 (1996); *Bass v. Broadway Maintenance*, 28 BRBS 11 (1994); *see generally ITO Corp. v. Director, OWCP*, 883 F.2d 422, 22 BRBS 126 (CRT)(5th Cir. 1989).

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cumulative stress from supervising a number of locations, insufficient personnel to perform the job, working more than the required hours, and performing the duties of subordinates. *Marino*, 20 BRBS at 168. On remand, the administrative law judge awarded benefits on this theory, finding claimant's general working conditions were a cause of his injury. This decision was affirmed by the Board on appeal. *Marino v. Navy Exchange*, BRB No. 88-1720 (Dec. 12, 1990)(unpublished).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge