BRB No. 91-467

WILLIAM STEVENS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SEA-LAND SERVICE, INCORPORATED	)	
	)	
and	)	
	)	DATE ISSUED:
CRAWFORD & COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

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

Mark C. Lewandowski (Baker, Garber, Duffy & Pedersen), Hoboken, New Jersey, for claimant.

Keith L. Flicker and Richard L. Garelick (Coti & Flicker), New York, New York, for employer/carrier.

Before: BROWN and DOLDER, Administrative Appeals Judges, and LAWRENCE, Administrative Law Judge.*

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits (89-LHC-3212) of Administrative Law Judge Ralph A. Romano 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 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).

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(1988).

Claimant, an insulin-dependent diabetic, fell while working for employer as a boatswain at 11 a.m. on April 28, 1989, hitting his head and fracturing his pelvis. He received emergency hospitalization and returned to his usual work on July 3, 1989. Claimant testified that his fall at work occurred when he tripped over a crane rail and hit his head as he was stepping backwards, away from the ship while signaling to a crane operator. Claimant's co-worker, Michael Manekas, an eyewitness to the accident, corroborated claimant's account of the manner in which the accident occurred. Claimant sought and was awarded temporary total disability compensation under the Act from April 29, 1989 through July 2, 1989 as well as interest, medical expenses, and attorney's fees and costs. On appeal, employer challenges the administrative law judge's award of compensation, arguing that the administrative law judge's finding that claimant's injury arose out of his employment with employer is not supported by substantial evidence.[1] Claimant responds, urging affirmance.

To establish a *prima facie* case for invocation of the Section 20(a) presumption, claimant must establish that he has sustained a harm or pain, and that working conditions existed or an accident occurred which could have caused the harm or pain. *See Caudill v. Sea Tac Alaska Shipbuilding*, 25 BRBS 92, 95 (1991). Upon invocation of the presumption, the burden shifts to employer to present specific and comprehensive evidence sufficient to sever the potential 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).

After careful review of the record, we affirm the administrative law judge's finding that claimant's pelvic injury was causally related to his employment. The administrative law judge properly found that claimant was entitled to the benefit of the Section 20(a) presumption as it is undisputed that he sustained an injury, *i.e.*, a fractured pelvis, and his fall at work constitutes an accident which could have caused the harm. The administrative law judge further noted that he found claimant's account of the accident, as corroborated by that of Mr. Manekas, credible and that this testimony supports the factual proposition that claimant tripped while engaged in movement related to the performance of his employment duty of signalling co-workers engaged in the loading of a vessel. Accordingly, the administrative law judge determined that claimant had demonstrated that his work-related circumstance could have caused the injury.

The administrative law judge then considered whether employer introduced evidence sufficient to rebut the presumed causal connection. Employer introduced the testimony of Gloria Archimandritis, the emergency room nurse who attended claimant after the fall, and of employer's Accident Prevention and Claims Specialist, Steven Huresky, in an attempt to establish that claimant's fall was

[1] Employer states in its brief and response brief that because the administrative law judge who decided the case did not also hear the case, his ability to assess claimant's credibility was "severely compromised." Resp. Br. at 6. In an Order dated May 15, 1990, reassigning the case, however, the Acting District Chief Judge noted that both counsel agreed that the judge to whom the case would be assigned could decide the case based on the evidence of record and the deposition of Dr. Feldman. Because employer consented to the reassignment to a different administrative law judge, employer is precluded from raising this issue as error on appeal.

caused by an episode of hypoglycemic shock unrelated to his employment with employer. Ms. Archimandritis testified that when claimant arrived at the hospital at 12:30 p.m. he was pale and shaking, that he stated he was having a reaction to insulin and that the last thing he remembered was having a piece of candy. When a finger stick test revealed that claimant's blood sugar level was down to 25, Ms. Archimandritis notified the emergency room doctor so that he would start intravenous measures to stabilize claimant's condition. Mr. Huresky, who did not see claimant's accident, testified that when he arrived at the scene minutes after it occurred,[2] claimant was on the ground 10 to 15 feet from the crane rail, was incoherent and disoriented and appeared to be having a seizure. Mr. Huresky further testified that claimant's condition improved prior to the time that the ambulance arrived and that claimant informed him at that time that he did not feel right and that he had a piece of candy. Mr. Huresky indicated that claimant did not state that he had the candy before he fell but that he had assumed that to be the case because claimant did not have the candy while he was there. Employer also presented the testimony of Dr. Feman who stated that it would be hard to go from a normal blood sugar level to a blood sugar level of 25 in an hour and a half but there is "no way to tell" how long it takes an individual's blood sugar level to fall from the onset of diabetic shock. Tr. 99, 101.[3]

After considering employer's rebuttal evidence, the administrative law judge found that employer failed to introduce "specific and comprehensive" countervailing evidence sufficient to overcome the Section 20(a) presumption. The administrative law judge determined that it was as likely that claimant's diabetic shock occurred at 12:30 p.m. by reason of the absence of his noon meal as claimant claims, as it was that such shock occurred for any other reason just before 11 a.m. D&O at 5. The administrative law judge noted that claimant denied having eaten any candy prior to 11 a.m.[4] and determined that as Nurse Archimandritis' testimony indicated only that claimant had

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[2]Although Mr. Huresky testified that he arrived at the accident minutes after it occurred, Mr. Manekas testified that he went to get help, and that when he returned to the ship 10 minutes later, Mr. Huresky still was not there. Tr. at 72.

[3]Dr. Jeffrey Feldman provided testimony on claimant's behalf. Dr. Feldman deposed that it was unlikely that claimant's blood sugar level was 25 at 11 a.m. on the morning of the accident as his insulin would have prevented such a drop at that time. Dr. Feldman indicated that had that been the case, his hypoglycemic symptomology would have been much more severe when he arrived at the hospital; he would have been in a coma rather than alert and oriented. He also indicated that if claimant had eaten some candy at 11 a.m. to counter diabetic shock, he would have obtained some temporary relief, but that he could not predict what claimant's clinical status would have been. In weighing the evidence relevant to the causation issue, the administrative law judge rejected both Dr. Feldman's and Dr. Feman's testimony as general and speculative.

[4]Claimant testified that on the morning of the accident he had eaten breakfast and had taken his insulin at approximately 8 a.m. and that accordingly, he was not required to eat until 4 hours later. He further indicated that upon arriving at the hospital at 12:30 p.m., he told Nurse Archimandritis that he was hungry and that he needed something to eat because he had missed his lunch. Claimant denied that he experienced an onset of diabetic shock prior to his fall and denied taking a piece of

eaten some candy prior to his arrival at the hospital, it did not constitute evidence sufficient to discredit claimant's testimony that his injury was occasioned by his tripping. Moreover, the administrative law judge noted that any statements claimant may have made to Mr. Huresky after the fall, when he was groggy, incoherent and delirious, were suspect and thus entitled to little, if any, probative recognition. The administrative law judge also found Mr. Huresky's testimony that he found claimant 10 to 15 feet from where claimant allegedly tripped non-determinative as no evidence was presented that claimant did not move or was moved away after his fall. Moreover, the administrative law judge found Mr. Huresky's testimony that to perform his job, claimant would have been backing up inshore consistent with claimant's testimony that he tripped while backing away from the ship. D&O at 6. The administrative law judge concluded that neither Ms. Archimandritis' nor Mr. Huresky's testimony was sufficient to discredit claimant's version of the accident, and that employer, in effect, was asking him to speculate that claimant's injury emanated from a non employment-related source which he was not at liberty to do. Accordingly, the administrative law judge found that claimant's injury was work-related.

Employer argues on appeal that the administrative law judge erred in not rejecting claimant's version of the accident and in failing to accord determinative weight to the testimony of Nurse Archimandritis and Mr. Huresky which establishes that claimant fell due to hypoglycemia. We disagree. It is within the administrative law judge's discretion as the trier-of-fact to accept or reject all or any part of any testimony according to his judgement. *See Perini Corp. v. Heyde*, 306 F. Supp. 1321 (D.R.I. 1969); *Norwood v. Ingalls Shipbuilding*, 26 BRBS 66 (1992). We will not disturb the administrative law judge's credibility determinations unless they are "inherently incredible or patently unreasonable." *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141, 145 (1991). Moreover, the administrative law judge properly found that the evidence submitted by employer is insufficient to establish rebuttal in this case. The presumption is not rebutted merely by suggesting an alternate way in which claimant's injury might have occurred. *See Sinclair v. United Food and Commercial Workers*, 23 BRBS 148 (1990). In addition, we note that an employer may be held liable where claimant is injured in a fall even though the fall was caused by a pre-existing idiopathic condition. *See Perry v. Carolina Shipping Co.*, 20 BRBS 90, 92 (1987); 1 Larson, *Workmen's Compensation Law* §12.14. We therefore affirm the administrative law judge's finding that employer failed to establish rebuttal and accordingly affirm his determination that claimant suffered a compensable work-related injury.[5]

Accordingly, the administrative law judge's Decision and Order - Awarding Benefits is

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candy at that time.

[5]The United States Court of Appeals for the Third Circuit, from which the present case arises, recently held that the Administrative Procedure Act, 33 U.S.C. §501 *et seq.*, prohibits application of the "true doubt" rule in cases involving benefits under the Longshore Act. *Maher Terminals, Inc. v. Director, OWCP*, F.2d , No. 92-3222 (3rd Cir. April 19, 1993). Although the administrative law judge in the present case states in his Decision that whatever factual doubt in the record must be, and is resolved in favor of claimant, Decision and Order at 6, his statement in this regard is superfluous as he did not find the evidence to be in equipoise.

affirmed.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

LEONARD N. LAWRENCE
Administrative Law Judge