BRB No. 05-0912

JOHN L. RANDLE, SR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BOLLINGER SHIPYARDS, INCORPORATED	)	DATE ISSUED: 07/26/2006
	)	
and	)	
	)	
THE AMERICAN LONGSHORE MUTUAL ASSOCIATION, LIMITED	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

Stephen S. Stipelcovich (Law Offices of Michael J. Samanie), Houma, Louisiana, for claimant.

Alan G. Brackett and Derek M. Mercer (Mouledoux, Bland, Legrand & Brackett, LLC), New Orleans, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (2005-LHC-00087) of Administrative Law Judge Patrick M. Rosenow 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).

Claimant, a shipyard worker, asserts that he was working for employer in the hold of a vessel in January 2003 when a fellow employee struck him on the head with an object. Claimant did not report the injury to employer at that time. Subsequently, claimant developed cervical problems and, in September 2003, he informed employer that he had suffered an injury in January 2003. Claimant underwent cervical surgery in September 2003.[1] Claimant filed a claim for benefits under the Act in December 2003.

In his decision, the administrative law judge found that claimant failed to establish that working conditions existed or an accident occurred that could have caused his cervical condition. Thus, the administrative law judge concluded that claimant failed to establish invocation of the Section 20(a) presumption that his condition is work-related. 33 U.S.C. §920(a). The administrative law judge found, in the alternative, that employer established rebuttal of the Section 20(a) presumption and that the evidence weighed as a whole does not establish that claimant's cervical condition is work-related. Therefore, the administrative law judge denied benefits under the Act.

On appeal, claimant contends that the administrative law judge erred in finding that he failed to establish his *prima facie* case that his condition is work-related. In addition, claimant contends that the administrative law judge erred in finding in the alternative that employer established rebuttal of the Section 20(a) presumption and that the evidence, weighed as a whole, does not establish that claimant's cervical condition is work-related. Employer responds, urging affirmance of the administrative law judge's decision.

Section 20(a) of the Act aids a claimant in proving that his injury is work-related. In order to invoke the Section 20(a) presumption, claimant must show that he sustained a harm and that either an accident occurred at work or working conditions existed which could have caused the harm. *See Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998)*; see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). It is claimant's burden to establish each element of his *prima facie* case by affirmative proof. *See Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996).

Claimant contends that the administrative law judge erred in finding that claimant was not hit on the head at work. The administrative law judge found that claimant was not a credible witness as he related a number of different versions of the alleged work incident. In his claim for compensation, claimant alleged that he was hit with a wire

[1] Claimant underwent a C3-C4 discectomy and fusion on September 16, 2003, performed by Dr. Richardson. On November 13, 2005, Dr. Richardson performed a cervical laminoplasty at C3 to C6. Cl. Ex. 12.

spool weighing approximately 50 pounds while he was in the hold of the vessel. Emp. Ex. 3. At the hearing, claimant testified that he was hit with either a bucket or a washboard and that he was knocked down for 5 or 10 minutes. H. Tr. at 25. However, no witnesses recalled seeing claimant knocked down. *Id.* at 111. The administrative law judge also questioned claimant's credibility inasmuch as he claimed his girlfriend as his wife on an insurance form. Decision and Order at 15, n.16. The administrative law judge accorded the testimony of Robert Rollins, one of claimant's co-workers, with determinative weight. Mr. Rollins testified that Harry Coleman was lowering an empty bucket on a rope to claimant in the hold of a vessel. H. Tr. at 103-104. He stated that the bucket tapped claimant "very slight[ly]" on the hard hat and that Coleman yanked it back up. *Id*. at 110. Mr. Rollins further testified that claimant and Coleman began cursing at each other, but that it was in a joking manner and that they always talked like that. *Id.* at 112. The other witnesses who testified were not present at the time of the incident and thus did not have firsthand knowledge of the sequence of events.

The administrative law judge found it relevant that claimant did not report the incident to employer for many months, and although claimant sought treatment with his general practitioner within one week of the incident for stiffness in his hands and legs, he did not state that he had had a work-related accident and Dr. Bass did not find any evidence of an injury. Emp. Exs. 8; 12. Dr. Bass diagnosed arthritis. Emp. Ex. 12. Claimant began treatment with Dr. Richardson in September 2003, but did not tell him he had been hit on the head with a bucket until April 2004. Cl. Ex. 12. The administrative law judge found that Dr. Richardson opined that claimant's neck injury could have been caused by his being struck on the head with a one to two pound bucket falling two to three feet. However, the administrative law judge concluded that claimant did not establish that this scenario had occurred.

It is well established that the administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inference and conclusions from the evidence. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). The administrative law judge's credibility determinations are not to be disturbed unless they are inherently incredible or patently unreasonable, and the Board is not empowered to reweigh the evidence. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). In the instant case, the administrative law judge considered the inconsistencies in claimant's testimony regarding the work incident in January 2003, as well as claimant's failure to report the alleged incident to his supervisor or Dr. Bass in January 2003, and concluded that, in fact, a work-related accident did not occur in January 2003 which could have caused claimant's cervical condition. On the basis of the record before us, the administrative law judge's credibility determinations are rational and his findings of fact are supported by substantial

evidence. Therefore, we affirm the administrative law judge's finding that claimant failed to establish the existence of a work-related incident in January 2003 which could have caused his present cervical condition. *Bolden,* 30 BRBS 71. As claimant failed to establish an essential element of his *prima facie* case, we need not address claimant's contentions regarding the administrative law judge's finding that employer established rebuttal of the Section 20(a) presumption and we affirm the administrative law judge's denial of benefits. *See U.S. Industries*, 455 U.S. at 608, 14 BRBS at 631; *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 30(CRT) (9th Cir. 1988); *Bolden*, 30 BRBS at 73.

Accordingly, the Decision and Order of the administrative law judge 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