BRB No. 07-0186

J.F.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NABORS OFFSHORE DRILLING, INCORPORATED	)	DATE ISSUED: 07/27/2007
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

George A. Flournoy (Flournoy & Doggett), Alexandria, Louisiana, for claimant.

Kevin A. Marks and Jason F. Giles (Galloway, Johnson, Tompkins, Burr & Smith), New Orleans, Louisiana, for self-insured employer.

Before: SMITH, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2006-LHC-0601) of Administrative Law Judge Clement J. Kennington 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 alleged injuries to his lower back, neck, and upper extremities as a result of an accident that occurred in the course of his work for employer on or about August 26, 2002. Following this incident, claimant saw Dr. Cenac who observed, on August 29 and September 3, 2002, that claimant exhibited subjective complaints unsubstantiated by

objective findings, and opined that claimant was capable of returning to full-duty work without any restrictions or need for further medical treatment. Claimant never returned to work for employer.

Claimant next treated with Dr. Blanda who diagnosed, on September 24, 2002, myofascial neck and back sprains. Claimant's reports of cervical and lumbar spasms continued into August 2003, at which point Dr. Blanda stated he had nothing further to offer claimant. Dr. Blanda referred claimant to Dr. Friedberg, a clinical psychologist, for an evaluation as to depression, and to Dr. Hodges, a physical medicine specialist, who performed conduction studies on May 4, 2004, that revealed median and ulnar nerve entrapment in the upper extremities. Dr. Blanda related claimant's nerve entrapment to the August 2002 fall at work based on claimant's alleged complaints of hand numbness from the onset, and he subsequently performed a carpal tunnel release on the left hand on October 28, 2004, and recommended a release on the right hand.

Meanwhile, on March 20, 2003, claimant was examined by Dr. Murphy, who opined that claimant was at maximum medical improvement for his neck and back, that he was not in need of any further treatment, and that he could return to full-duty work without restrictions. Claimant was also evaluated by a psychiatrist, Dr. Culver, on October 15, 2004, who diagnosed claimant as a malingerer. After Dr. Blanda's surgical procedure on claimant's left hand, Drs. Murphy and Cenac separately examined claimant again and each opined that the carpal tunnel syndrome was not related to the August 2002 accident because claimant had not presented a history of trauma to his wrists or hands at the time of the injury and had, in fact, specifically denied such trauma.

Claimant originally filed a claim for benefits in 2002, for alleged injuries to his low back and neck, but apparently put that claim on hold for some time in order to pursue a third-party lawsuit against the owners/operators of the crew boat. Claimant's third-party suit was dismissed with prejudice by court order dated October 13, 2005. *Fontenot v. McCall's Boat Rentals, Inc.*, 2005 WL 3541038 (E.D.La., Oct. 13, 2005). Claimant filed a second claim for benefits, on February 21, 2005, alleging neck and lower back pain, as well as carpal tunnel syndrome, which employer controverted. In his decision, the administrative law judge found that claimant did not establish a *prima facie* case with regard to any of his alleged injuries and thus he concluded that claimant was not entitled to invocation of the Section 20(a) presumption, 33 U.S.C. §920(a). The administrative law judge therefore denied claimant's claim for benefits as he did not establish the essential elements of his claim for benefits.

On appeal, claimant challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance.

Claimant argues that the administrative law judge erred in finding that he did not establish his *prima facie* case under Section 20(a). Claimant contends his testimony regarding the accident, which he maintains is fully corroborated by the testimony of the boat captain and his brother, when considered in conjunction with the medical evidence of his neck, back and carpal tunnel syndrome injuries, is sufficient to entitle him to invocation of the Section 20(a) presumption. Claimant also argues that the administrative law judge's crediting of the opinions of Drs. Murphy, Cenac and Culver over the contrary opinions of his treating physicians, Drs. Blanda, Hodges and Friedberg, is not rational.

In determining whether an injury is work-related, a claimant is aided by the Section 20(a) presumption, which may be invoked only after the claimant establishes a *prima facie* case, *i.e.*, the claimant demonstrates that he suffered a harm and that an accident occurred, or conditions existed at work which could have caused the harm. *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998). A claimant's subjective complaints of pain alone may be sufficient to establish the "harm" element of the *prima facie* case. *Welch v. Pennzoil Co.*, 23 BRBS 395 (1990); *Harrison v. Todd Pacific Shipyards Corp.*, 21 BRBS 339 (1988). An "accident" has been defined as an exposure, event or episode. *Perry v. Carolina Shipping Co.*, 20 BRBS 90 (1987).

The administrative law judge concluded, with regard to invocation of the Section 20(a) presumption, that "I do not credit claimant that he fell as alleged. Consequently, I find claimant failed to establish a *prima facie* case and deny the instant claim as lacking merit." Decision and Order at 14. The administrative law judge observed that claimant's brother, P.F., who was in the immediate vicinity of the alleged fall had not witnessed the incident.[1] Decision and Order at 6, 12. In addition, the administrative law judge found that the record contains numerous inconsistencies in claimant's testimony, such as a gross discrepancy between his subjective complaints of pain and the objective medical findings, and misrepresentations, including his initial consistent denials of any prior back or neck incidents or that he had previously filed a workers' compensation suit prior to employer's discovery of such incidents,[2] as well as that he had "misrepresented his past

[1] P.F. testified that at the time of the alleged incident, he, claimant and another deckhand had been back-loading the vessel, and that the three workers crossed over the pipes to move from the back of the vessel to the personnel basket. HT at 109-110. At some point, P.F. turned around and saw claimant getting up off the stack of pipes. HT at 111.

[2] Claimant admitted lying on his employment application for employer regarding his level of education, HT at 179, 180, and the record establishes that he initially falsely denied having any prior back injury, filing a lawsuit, and/or having received workers' compensation related to a 1992 work injury. HT at 180-183.

history of significant substance abuse." Decision and Order at 12. Moreover, the administrative law judge found that his decision to reject claimant's testimony is bolstered by the opinion of Dr. Culver, who opined that claimant was consciously and deliberately exaggerating and/or fabricating his symptoms, at least insofar as they pertain to his alleged back and neck injuries. Decision and Order at 10-11.

Additionally, the administrative law judge rationally credited the opinions of Drs. Murphy and Cenac that claimant's alleged neck and back injuries and carpal tunnel syndrome did not arise out his August 26, 2002, work for employer over the contrary opinions put forth by claimant's treating physicians, Drs. Blanda and Hodges. Contrary to claimant's position, the opinions of his treating physicians are not entitled to greater weight since, as the administrative law judge found in this case, their opinions are challenged by substantial evidence to the contrary. *See generally Newton v. Apfel*, 209 F.3d 448 (5th Cir. 2000); *see also Black & Decker Disability Plan v. Nord*, 538 U.S. 822 (2003); *cf. Pietrunti v. Director OWCP*, 119 F.3d 1035, 1042, 31 BRBS 84, 89(CRT) (2d Cir. 1997) (administrative law judge bound by opinion of treating physician unless it is contradicted by substantial evidence to the contrary). In this regard, the administrative law judge found that Drs. Murphy and Cenac found no medical basis to establish any connection between the alleged accident and the reported symptoms.[3] The administrative law judge noted that their opinions are better supported by the underlying objective medical tests. In contrast, the administrative law judge rejected the opinions of Drs. Blanda, Hodges, Tassin, and Friedberg, because they lacked full knowledge of claimant's prior injuries, and because "none of them explained the overwhelming lack of objective data to support claimant's assertions." Decision and Order at 12.

The Board is not empowered to reweigh the evidence, but must accept the rational inferences and findings of fact of the administrative law judge that are supported by the record. *See, e.g., Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994); *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 30(CRT) (9th Cir. 1988). As credibility determinations are solely within the purview of the administrative law judge, *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961), and as his decisions to reject claimant's testimony regarding his alleged work accident is rational, *see Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962), his finding that claimant is not entitled to invocation of the Section

[3] Contrary to claimant's contention, Dr. Cenac stated that he examined claimant twice, and that he "specifically asked [claimant] if he had any injury or symptoms of numbness and tingling in his arms and hands" and that claimant "denied that." EX 53, Dep. at 10.

20(a) presumption is affirmed.[4] *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *Mackey v. Marine Terminals Corp.*, 21 BRBS 129 (1988). As claimant did not establish an essential element of his claim, we affirm the administrative law judge's denial of benefits. *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

[4] Moreover, the administrative law judge's decision to credit the opinions of Drs. Murphy, Cenac, and Culver that claimant does not have any work-related medical conditions over the contrary opinions of Drs. Blanda, Hodges, Tassin and Friedberg, is also rational. Thus, even if Section 20(a) were invoked, these opinions would rebut the presumption and establish the absence of a causal connection on the record as a whole.