

BRB No. 10-0509

PRINCE SADIQ	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SERVICE EMPLOYEES	)	DATE ISSUED: 03/17/2011
INTERNATIONAL, INCORPORATED	)	
	)	
and	)	
	)	
INSURANCE COMPANY OF THE STATE	)	
OF PENNSYLVANIA	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

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

Prince N. Sadiq, Houston, Texas, *pro se*.

John Schouest and Limor Ben-Maier (Wilson, Elser, Moskowitz, Edelman & Dicker LLP), Houston, Texas, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (2008-LDA-333) of Administrative Law Judge Patrick M. Rosenow rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). In an appeal by a claimant without representation by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and in accordance with law. If they are, they must be affirmed. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, who commenced employment with employer as a bus driver in Kuwait on October 16, 2005, alleges that two work incidents occurred which caused his current back, shoulder and hip conditions. Specifically, claimant testified that, on January 6, 2006, he fell down a flight of stairs, consisting of between 18 and 20 steps, landing on his back and hips. Claimant stated that, following this incident, he was taken to employer's clinic, given ibuprofen, and returned to work. Claimant, who continued to perform his usual employment duties with employer, testified that he subsequently sought treatment at employer's clinic for pain. On July 23, 2007, claimant allegedly fell from the top of a bus. Claimant testified that, when he visited employer's clinic the following morning, he was returned to work. On August 25, 2007, claimant returned to employer's clinic; an MRI performed at this time revealed a disc herniation at L4-5. Employer returned claimant to the United States on August 29, 2007, whereupon claimant sought medical care from his previous physician.

In contrast to claimant's testimony concerning these events, employer's investigation report dated September 24, 2007, states that claimant claimed he fell down six steps on January 6, 2006, and that thereafter he sought treatment at employer's clinic every three to four weeks. Regarding the July 23, 2007, incident, the report states that claimant alleged he fell while stepping off his bus, and that claimant stated he sought medical treatment the following day and returned to employer's clinic at least twice prior to his August 2007 visit. EXs 6, 7.

In his Decision and Order, the administrative law judge found that claimant is not a credible witness and that he failed to establish that the specific work incidents on January 6, 2006 and July 23, 2007 occurred as alleged. Accordingly, having found that claimant failed to establish his *prima facie* case, the administrative law judge denied the claim for benefits under the Act.

Claimant, without the benefit of counsel, appeals the administrative law judge's denial of his claim. Employer responds, urging affirmance of the administrative law judge's decision.

Claimant bears the initial burden of establishing the existence of an injury or harm and that a work-related accident occurred or that working conditions existed which could have caused his harm. See *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *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). Claimant experienced back pain and he introduced into evidence objective medical tests demonstrating physical harm to his back and hips. This evidence establishes the "harm" element of claimant's *prima facie* case. *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5<sup>th</sup> Cir. 2000). The administrative law judge found, however, that claimant failed to establish the work-related "accident" element.

Claimant asserted that incidents occurred at work on January 6, 2006, and July 23, 2007, which could have caused his present medical conditions. The administrative law judge found that claimant is not a credible witness, that his testimony is unreliable, and that, therefore, the specific work incidents did not occur as claimant alleged. The administrative law judge found that claimant gave inconsistent accounts of the January 6, 2006, fall with respect to the height and number of steps from which he fell.<sup>1</sup> The administrative law judge also found that although claimant testified that he went immediately to employer's clinic following the alleged January 6, 2006 incident, employer's clinic records indicate that claimant did not seek medical treatment until February 6, 2006, and that those records do not corroborate claimant's testimony that he needed ongoing treatment. *See* Decision and Order at 14; EX 5. The administrative law judge also found that claimant's testimony that he visited employer's clinic on the day following his alleged July 23, 2007, fall and did not return for treatment until August 25, 2007, differed from his statement to employer's investigator. In that report, claimant stated he obtained additional medical treatment at least twice between his initial visit on July 24 and August 25, 2007. The administrative law judge found that neither of these versions of treatment is corroborated by employer's clinic records, which indicate that claimant sought treatment for chronic low back and hip pain only on August 25, 2007, with no mention during that visit of any work-related fall. Decision and Order at 14 – 15; EX 5 at 10. In addressing claimant's credibility, the administrative law judge also found that while claimant denied having problems with his hips prior to commencing work for employer, the record contains evidence establishing that claimant complained of hip pain and was diagnosed with a hip condition in 2001, and that claimant had previously filed a disability claim for back and hip pain.<sup>2</sup> Decision and Order at 14; Tr. at 23, 40; EXs 11, 25.

Finding claimant's testimony to be inconsistent, uncorroborated, and contradicted by other evidence, the administrative law judge determined that claimant's "misstatements go far beyond minor inconsistencies that could be attributed to the passage of time or confusion over small details," and he therefore concluded that claimant failed to establish the occurrence of work incidents on January 6, 2006 and July 23, 2007, which could have caused or aggravated his present medical conditions. Decision and Order at 14 - 15. After a review of the record, we affirm the administrative law judge's findings because they are rational, supported by substantial evidence, and in accordance with law. It is well-established that, in arriving at his decision, the

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<sup>1</sup>Claimant testified at the hearing that he fell down approximately 12 steps. Tr. at 44. Claimant told employer's investigator 18 months after the alleged accident that he had fallen down six steps. EX 7 at 2.

<sup>2</sup>Similarly, the administrative law judge found that claimant first testified that he had no physical restrictions placed on him prior to his employment with employer, but later recalled that such restrictions had been placed by Dr. Mathurin.

administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence. *See 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). The administrative law judge's credibility determinations are not to be disturbed unless they are inherently incredible or patently unreasonable. *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); *see Bolden*, 30 BRBS 71. In this case, the administrative law judge addressed the inconsistencies in claimant's statements regarding the manner of his alleged falls and his testimony regarding his prior medical conditions and treatment, as well as employer's clinic records which do not corroborate claimant's testimony regarding his alleged post-incident medical treatment. The administrative law judge rationally concluded that claimant did not establish that the work accidents occurred as he alleged due to the lack of reliable corroborative evidence. Decision and Order at 15. On the basis of the record before us, the administrative law judge's decision to discredit the testimony of claimant is neither inherently incredible nor patently unreasonable. Therefore, we affirm the administrative law judge's finding that claimant failed to establish an essential element of his claim for benefits, and the administrative law judge's consequent denial of benefits. *See U.S. Industries*, 455 U.S. 608, 14 BRBS 631; *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27(CRT) (9<sup>th</sup> Cir. 1988); *Bolden*, 30 BRBS 71.

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge