BRB No. 99-0203

RICHARD L. MANEN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
EXXON CORPORATION	)	DATE ISSUED: Nov. 4, 1999
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

William C. Frye (Frye & Boyce, P.A.), Little Rock, Arkansas, for claimant.

Ira J. Rosenzweig (Smith Martin), New Orleans, Louisiana, for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order Granting Benefits (97-LHC-0964) of Administrative Law Judge James W. Kerr, Jr., 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 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, a maintenance specialist working on an oil platform off the coast of California, alleged that a work-related accident occurred on March 6, 1995, causing him to hurt his knee and back. Employer paid temporary total disability benefits from March 19, 1995 to June 24, 1995, and some medical benefits under Section 7 of the Act, 33 U.S.C. §907. Thereafter, claimant filed a claim under the Act alleging

that his work-related injuries have left him permanently and totally disabled.

In his decision, the administrative law judge found that claimant is entitled to invocation of the presumption at Section 20(a) of the Act, 33 U.S.C. §920(a), based on claimant's testimony concerning his accident, which the administrative law judge found supported by the medical evidence. Next, the administrative law judge found that employer produced insufficient evidence to establish rebuttal of the Section 20(a) presumption. The administrative law judge found that claimant reached maximum medical improvement on July 24, 1997, and that he is unable to return to his usual employment as a maintenance specialist but that employer established the availability of suitable alternate employment. Finally, the administrative law judge found that claimant failed to establish diligence in seeking alternate employment, and therefore awarded him temporary total disability benefits from March 7, 1995 to July 24, 1997, 33 U.S.C. §908(b), permanent total disability benefits from July 25, 1997 until May 13, 1998, the date employer established suitable alternate employment, 33 U.S.C. §908(a), and permanent partial disability benefits from May 14, 1998, and continuing. 33 U.S.C. §908(c)(21).

On appeal, employer challenges the administrative law judge's finding that claimant sustained a work-related injury. Claimant responds, urging affirmance.

Employer first contends that claimant did not establish the accident element of his *prima facie* case. Claimant must establish his *prima facie* case by demonstrating the existence of a bodily harm and an accident or working conditions that could have caused the harm. *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981). Once these two elements are established, Section 20(a) of the Act provides claimant with a presumption that his condition is causally related to his employment. *See Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1990).

We reject employer's contention that the administrative law judge erred in crediting claimant's testimony regarding the occurrence of an accident at work. In evaluating claims, it is well-established that an administrative law judge is entitled to weigh the credibility of all witnesses. *See Calbeck v. Strachan Shipping Co*., 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963). In the instant case, the administrative law judge credited claimant's testimony that he had been kneeling as he repaired an electrical outlet on the platform. Claimant testified that as he was climbing up a staircase after this activity, he felt a pop in his left knee, and twisted the knee to the left as he grabbed the handrail to keep from falling. TR at 21-25. Claimant thereafter began to suffer from right knee and back pain as well. The administrative law judge noted that this incident was unwitnessed, but found claimant's allegation corroborated by the consistent history he gave to various physicians. Moreover, claimant reported the accident the day he stated it occurred. Inasmuch as the administrative law judge's decision to credit claimant's testimony is neither inherently incredible nor patently unreasonable, we affirm the administrative

law judge's finding that an accident occurred at work.[1] *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir.1978), *cert. denied*, 440 U.S. 911 (1979); *see generally Quinones v. H.B. Zachery, Inc.,* 32 BRBS 6 (1998); *Simonds v. Pittman Mechanical Contractors, Inc*., 27 BRBS 120 (1993), *aff'd sub nom. Pittman Mechanical Contractors, Inc. v. Director, OWCP,* 35 F.3d 122, 28 BRBS 89 (CRT)(4th Cir. 1994); RX 3 at 2.

Employer next contends that the administrative law judge erred in finding that it did not present evidence sufficient to rebut the Section 20(a) presumption. Employer can rebut the Section 20(a) presumption upon the production of evidence demonstrating that claimant's employment did not cause, contribute to, or aggravate his condition. *See Swinton v. J. Frank Kelly,* 554 F.2d 1075, 4 BRBS 466 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 820 (1976); *Holmes v. Universal Maritime Service Corp*., 29 BRBS 18 (1995)*(*Decision on Recon.). Employer correctly argues that the administrative law judge erred in finding that it did not establish rebuttal of the Section 20(a) presumption. Dr. Murphy's opinion that claimant does not have a work-related injury is sufficient to establish rebuttal of the Section 20(a) presumption. EX C at 111; *see Duhagon v. Metropolitan Stevedore Co*., 169 F.3d 615, 33 BRBS 1 (CRT)(9th Cir. 1999). Nonetheless, any error in the administrative law judge's failure to find rebuttal is harmless because substantial medical evidence supports the administrative law judge's finding that claimant sustained a work-related injury. *See generally Thompson v. Lockheed Shipbuilding & Construction Co*., 21 BRBS 94 (1988); *Cairns v. Matson Terminals, Inc.,* 21 BRBS 252 (1988).

[1]Employer's contention that claimant had reason to fabricate an accident, *e.g.,* the denial of a transfer and a promotion, is an insufficient basis on which to overturn the administrative law judge's decision to credit claimant's testimony, as is its allegation that the accident is suspicious because claimant's brother alleged he sustained a work injury in the same general time frame.

Claimant's family physician, Dr. Collins, initially diagnosed claimant with tendinitis to his left knee, prescribed medication, and restricted claimant from returning to work for the next shift. CX 1 at 1-2. He stated that the injury "is workmans comp related." *Id.* Later, Dr. Collins diagnosed back pain caused by claimant's knee injury. Claimant was then referred by employer to Drs. Coker and Kendrick, orthopedic surgeons, who became claimant's treating physicians. Dr. Kendrick stated in a letter dated April 25, 1995, that he believed that claimant's problems with the knee began when he was in a squatted position and pushing on a wrench when he changed to an extended position. CX 2 at 12, 24. Dr. Coker checked the "yes" box on a form in answer to the question concerning whether claimant's injury is work-related. EX C at 34, 36. Dr. Hunt, an orthopedic surgeon, examined claimant on May 3, 1996, and reviewed his medical records. He found that claimant's description of the injury is consistent with his orthopedic evaluation of claimant and that claimant's disability to his knee and back is industrially related to the injury of March 6, 1995.[2] CX 9 at 72-74. Dr. Murphy is the only doctor who found that claimant had no work-related condition. Therefore, inasmuch as the administrative law judge's conclusion that claimant's injury is work-related is supported by substantial evidence, and as employer has raised no reversible error in the administrative law judge's decision, we affirm the administrative law judge's award of benefits. *See generally Meehan Seaway Service, Inc. v. Director, OWCP*, 125 F.3d 1163, 31 BRBS 114(CRT) (8th Cir. 1997), *cert. denied*, 118 S.Ct. 1301 (1998).

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

SO ORDERED.

ROY P. SMITH

[2]In addition, Drs. Lublin, Friedlander, Arnold, Bailey and Moore state that claimant indeed has knee pathology, and Dr. Freidlander found that claimant has lumbar pathology. These physicians, however, while noting claimant's recitation of how the injury occurred, do not personally opine that claimant's injuries are related to the work accident. *See generally Director, OWCP v. Greenwich Collieries,* 512 U.S. 257, 28 BRBS 43 (CRT)(1994).

Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge