

BRB No. 11-0211

SANDRA SIMS)
)
 Claimant-Petitioner)
)
 v.)
)
 UNIVERSAL MARITIME SERVICE) DATE ISSUED: 09/29/2011
 CORPORATION)
)
 and)
)
 SIGNAL MUTUAL INDEMNITY)
 ASSOCIATION, LIMITED)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

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

Richard M. Winograd and Christopher Perez (Ginarte, O'Dwyer, Gonzalez, Gallardo & Winograd, LLP), Newark, New Jersey, for claimant.

Christopher J. Field (Field Womack & Kawczynski, LLC), South Amboy, New Jersey, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (2010-LHC-1018) of Administrative Law Judge Ralph A. Romano 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 hustler driver, alleges that a specific work incident occurred on October 19, 2009, which caused her to miss work until January 4, 2010. Specifically, claimant testified that on the day of this alleged incident she was struck by a truck driven by Mr. Marmolejo. Claimant stated that the impact of the truck spun her to the right but did not result in her falling to the ground. In contrast, Mr. Marmolejo and Mr. Espinosa, another truck driver present at the time of the alleged incident, testified that Mr. Marmolejo's vehicle did not strike claimant. Although claimant informed Mr. Soir, a checker with whom she was working at the time, that she was okay following the alleged incident, claimant testified that she soon experienced shoulder pain and that security personnel and an ambulance were summoned to the scene. Claimant filed a claim under the Act seeking temporary total disability benefits from the date of her alleged injury through January 3, 2010.

In his Decision and Order, the administrative law judge found that claimant was not a credible witness and that she failed to establish that an accident occurred as alleged. Accordingly, the administrative law judge denied the claim for benefits under the Act. On appeal, claimant contends that the administrative law judge erred in denying her claim, challenging the administrative law judge's finding that she was not struck by a truck while working for employer on October 19, 2009. Employer responds, urging affirmance of the administrative law judge's decision. Claimant filed a reply brief.

Claimant has the burden of proving the existence of an injury or harm and that a work-related accident occurred or that working conditions existed which could have caused the harm. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981). Claimant asserted that she was struck by a truck at work on October 9, 2009, which resulted in bruising and pain on her left side. After addressing the statements of three witnesses present at the time of the alleged incident, claimant's testimony, and the medical evidence obtained immediately following the alleged incident, the administrative law judge concluded that he was unable to credit claimant's version of the events. The administrative law judge found that claimant's testimony that she was struck by the truck was not corroborated by reliable evidence. The administrative law judge noted that contemporaneous medical records did not provide objective support for a finding of injury, CX 2,¹ and the administrative law judge declined to rely on the statement of Mr. Soir, who was also present and stated that the truck jerked forward and struck claimant,

¹The medical records from the date of the alleged accident state that claimant had no abrasions, no swelling and no bruising. CX 2. When claimant went to the emergency room the next day, a left arm contusion was noted. *Id.* at 7.

because employer was not given an opportunity to cross-examine this witness. Decision and Order at 4 – 5. The administrative law judge credited the testimony of Mssrs. Marmolejo and Espinosa, both of whom were in close proximity to the alleged incident, that the truck did not strike claimant as it is supported by the medical evidence. Tr. at 89, 115-116.

We affirm the administrative law judge's finding that claimant failed to establish that she was struck by a truck at work on October 19, 2009. It is well-established that the administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence; the Board is not empowered to reweigh 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 (2^d 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 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *see Bolden*, 30 BRBS 71. The administrative law judge rationally credited the testimony of Mssrs. Marmolejo and Espinosa and concluded that claimant did not establish that the October 19, 2009, work incident occurred as she alleged. *See Brown v. Pacific Dry Dock*, 22 BRBS 284 (1989). Therefore, as it is supported by substantial evidence, we affirm the administrative law judge's finding that claimant failed to establish an essential element of her *prima facie* case, and his consequent denial of claimant's claim for benefits. *See U.S. Industries*, 455 U.S. 608, 14 BRBS 631; *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27(CRT) (9th Cir. 1988); *Bolden*, 30 BRBS 71.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge