BRB No. 93-1029

JANE PATRICIA HUGHES-GRANT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MOISTURE PROTECTION SYSTEMS ANALYSTS	)	DATE ISSUED:_____
	)	
and	)	
	)	
AETNA CASUALTY AND SURETY COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Robert G. Mahony, Administrative Law Judge, United States Department of Labor.

Jane Patricia Hughes-Grant, Philadelphia, Pennsylvania, *pro se*.

Roger S. Mackey, Fairfax, Virginia, for employer/carrier.

Before: BROWN, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (85-DCW-141) of Administrative Law Judge Robert G. Mahony 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.* (1982), as extended by the District of Columbia Workmen's Compensation Act, 36 D.C. Code §§501, 502 (1973) (the Act). In an appeal by a claimant without legal representation, we will review the administrative law judge's decision to determine if the findings of fact and conclusions of law 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).

In 1982, claimant was injured at work when her neck and back were hit by roofing debris. She was diagnosed with cervical strain, and the administrative law judge awarded temporary total

disability and medical benefits from July 20, 1982, through December 23, 1986.[1] In April 1988, claimant injured her nose in a Las Vegas casino when she pulled a towel rack into her face. Claimant then requested a new hearing, alleging she is now permanently totally disabled and is entitled to further disability and medical benefits. Claimant contended her 1988 injury was caused by a seizure which resulted from the 1982 injury and aggravated her work-related condition. Employer responded, arguing that claimant fully recovered from the 1982 incident and is able to return to work; therefore, any disability she may have is related solely to the April 1988 non-work incident which intervened and severed the connection to her employment.

Administrative Law Judge Mahony conducted the new hearing. He invoked the Section 20(a), 33 U.S.C. §920(a), presumption linking claimant's alleged disability to the work accident, but found that employer presented sufficient evidence to rebut it. He found that claimant fully recovered from her 1982 work injury as of January 29, 1988, and he concluded that the April 1988 accident is not work-related and constitutes an intervening event. Judge Mahony also found that claimant is no longer disabled and can return to her usual work. Therefore, he awarded claimant additional temporary total disability and medical benefits through January 29, 1988, and he denied all benefits thereafter. Decision and Order at 7-10. In this appeal, claimant contends the administrative law judge erred in denying benefits after January 29, 1988, because her present condition is permanent and is the result of a work-related aggravation. Employer responds, urging affirmance.

Initially, neither party challenges the administrative law judge's extension of disability and medical benefits through January 29, 1988, or invocation of the Section 20(a) presumption. Claimant, however, contends the administrative law judge erred in finding that the incident with the towel rack constitutes an intervening event. In a case involving a subsequent injury, employer can rebut the presumption by showing that claimant's condition was caused by a subsequent event, not related to her work, provided employer also proves that the subsequent event was not caused by claimant's work-related injury. *Bass v. Broadway Maintenance*, 28 BRBS 11 (1994); *James v. Pate Stevedoring Co.*, 22 BRBS 271 (1989). If an employer submits substantial countervailing evidence to sever the connection between the injury and the employment, the Section 20(a) presumption no longer controls and the issue of causation must be resolved on the whole body of proof. *Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990).

[1]Administrative Law Judge Neusner awarded claimant benefits in a decision dated December 18, 1986. He amended the decision on April 3, 1987, but did not change his award. Employer appealed these decisions to the Board, and the Board vacated certain findings and remanded the case for further consideration of whether claimant can return to her usual work and whether employer is liable for medical expenses. *Hughes-Grant v. Moisture Protection Systems Analysts*, BRB No. 87-1141 (Oct. 31, 1989) (unpublished). On remand, Judge Neusner reaffirmed his award of temporary total disability and medical benefits. Decision and Order after Recon. on Remand (Dec. 24, 1991). These decisions are not the subject of this appeal.

The administrative law judge determined that claimant's casino accident was not work-related and, in fact, was an intervening event which severed the connection between claimant's work and her alleged disability. This conclusion is supported by the evidence of record. The administrative law judge relied on Dr. Emich's opinion to find that claimant had fully recovered from her 1982 injury before the casino accident, Emp. Ex. 12, and this is a reasonable interpretation of the evidence.[2] Moreover, he considered claimant to be an unreliable witness. He discredited claimant's allegations regarding the 1988 casino incident, finding no medical evidence to substantiate her claims of seizures and finding her account of the incident questionable.[3] We thus affirm the administrative law judge's conclusion that the 1988 casino incident is an intervening event which severs any connection between claimant's alleged disability and her employment. *See Wright v. Connolly-Pacific Co.*, 25 BRBS 161 (1991), *aff'd mem. sub nom. Wright v. Director, OWCP*, 8 F.3d 34 (9th Cir. 1993); *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988). As questions of witness credibility are for the administrative law judge as the trier-of-fact, *U.S. Industries v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *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 the credibility determinations in this case are neither inherently incredible nor patently unreasonable, *see Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979), we affirm the administrative law judge's determination that claimant's 1988 injury is not work-related.

We also reject claimant's contention that she has a residual disability from the 1982 injury after January 29, 1988. Medical reports dated between 1989 and 1992 indicate there is no objective evidence to support claimant's subjective complaints of pain and that there is no permanent disability. Emp. Exs. 13F, 28-29. Specifically, the administrative law judge credited Dr. Emich's opinions that noted tenderness on examination, but he otherwise generally found that claimant's condition was stable with no neurological deficit. Emp. Exs. 14-16, 18. The administrative law judge also credited Dr. Johnson who concluded that claimant no longer suffers from a disability and needs no further treatment.[4] Emp. Ex. 29. Additionally, Dr. Emich's reports indicate claimant was

[2]The administrative law judge described the record as showing that Dr. Emich indicated a steady progress toward recovery between 1984 and January 29, 1988. Emp. Exs. 9-12 (2d hearing); Emp. Ex. 15 (1st hearing). From 1987, there were no objective findings to support the subjective complaints of pain. On January 29, 1988, Dr. Emich concluded that claimant's symptoms were well-controlled and her examination was within normal limits. Emp. Ex. 12. Further, the administrative law judge noted that claimant did not show up for her next appointment. Decision and Order at 7-8; Emp. Ex. 13.

[3]In a lawsuit against the casino, claimant alleged the towel rack was defective. The casino settled this suit for $1,000. In this claim under the Act, claimant contends a work-related seizure caused her to grab and pull the towel rack into her face. Tr. at 41.

[4]Based on this assessment, we also affirm the administrative law judge's denial of medical benefits after January 29, 1988. *See generally Brooks v. Newport News Shipbuilding & Dry Dock Co.*, 26 BRBS 1 (1992), *aff'd sub nom. Brooks v. Director, OWCP*, 2 F.3d 64, 27 BRBS 100 (CRT)(4th Cir.

working in construction and was capable thereof during the course of his treatment, and Dr. Johnson stated that claimant can return to her usual work. Emp. Exs. 11, 16, 29. Based on these reports, the administrative law judge found that claimant has failed to establish that she is incapable of returning to her usual employment. Therefore, we affirm the administrative law judge's conclusion that claimant has not been disabled after January 29, 1988 and is not entitled to continuing benefits.[5] *See generally Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56 (1985); *Peterson v. Washington Metropolitan Area Transit Authority*, 13 BRBS 891 (1981).

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

SO ORDERED.

_____

JAMES F. BROWN
Administrative Appeals Judge

_____

NANCY S. DOLDER
Administrative Appeals Judge

_____

REGINA C. McGRANERY
Administrative Appeals Judge

1993).

[5]We also reject claimant's arguments regarding her entitlement to the true doubt rule and to "penalty interest" on her "medical bills." In light of the Supreme Court's decision in *Director, OWCP v. Greenwich Collieries*, ___ U.S. ___, 114 S.Ct. 2251, 28 BRBS 43 (CRT) (1994), the true doubt rule no longer applies to cases arising under the Act. Further, the Section 14(e), 33 U.S.C. §914(e), penalty is not applicable to medical expenses, and interest cannot apply to medical expenses claimant has not paid. *Scott v. Tug Mate, Inc.*, 22 BRBS 164 (1989); *Caudill v. Sea Tac Alaska Shipbuilding*, 22 BRBS 10 (1988), *aff'd on other grounds mem. sub nom. Sea Tac Alaska Shipbuilding v. Director, OWCP*, 8 F.3d 29 (9th Cir. 1993); *Collington v. Ira S. Bushey & Sons*, 13 BRBS 768 (1981). Claimant's remaining civil and criminal allegations do not fall within the Board's jurisdiction.