

BRB No. 95-2178

PATRICIA GULICK)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
ARMY CENTRAL INSURANCE FUND)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Vivian Schreter-Murray, Administrative Law Judge, United States Department of Labor.

Samuel A. Denburg (Baker, Garber, Duffy & Pedersen, P.C.), Hoboken, New Jersey, for claimant.

James M. Mesnard (Seyfarth, Shaw, Fairweather & Geraldson), Washington, D.C., for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (94-LHC-2314) of Administrative Law Judge Vivian Schreter-Murray 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.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant alleges that, while working for employer as a part-time cook, she tripped over a drain plug in a storeroom on January 16, 1992, and fell into a wall, simultaneously striking the left side of her head, her left shoulder, left arm and left elbow on the wall. *See* Tr. at 63-64. Claimant, who has not worked since the alleged accident, contends that as a result of the January 16, 1992, accident she suffers from left side carpal tunnel syndrome, for which surgery was performed in November, 1992 and May 1993, Emp. Ex. 17, and a herniated C5-C6 disk, which was subsequently diagnosed by Dr. Maser based on an MRI performed on January 20, 1995, Emp. Ex. 37.

Employer voluntarily paid temporary total disability compensation from January 17, 1992

until October 28, 1994, and paid for the medical bills associated with the treatment of claimant's carpal tunnel syndrome. Claimant sought reinstatement of temporary total disability benefits and Section 7, 33 U.S.C. §907, medical benefits. In her Decision and Order, the administrative law judge determined that the alleged work incident of January 16, 1992 never occurred, and that, consequently, claimant failed to establish a *prima facie* case for invocation of the Section 20(a) presumption, 33 U.S.C. §920(a). Accordingly, the administrative law judge denied claimant's claim. The administrative law judge further determined that even if the Section 20(a) presumption had been invoked, it had been rebutted.

On appeal, claimant challenges the administrative law judge's finding that she failed to establish her *prima facie* case, contending that the administrative law judge's finding that the January 16, 1992, accident did not occur, and her ultimate decision denying compensation, are irrational and not supported by substantial evidence. Employer responds, urging affirmance of the administrative law judge's decision.

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, in order to establish a *prima facie* case and invoke the Section 20(a) presumption. *Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1990); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981). It is claimant's burden to establish each element of his *prima facie* case by affirmative proof. *See Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989).

After consideration of the Decision and Order in light of the record evidence and claimant's assertions on appeal, we affirm the administrative law judge's finding that the alleged January 16, 1992, accident did not occur because it is rational, in accordance with applicable law and supported by substantial evidence. *See O'Keeffe*, 380 U.S. at 359. In the instant case, the administrative law judge found that claimant's testimony regarding the occurrence of the alleged accident was incredible because her testimony that she had no cervical spine complaints prior to the alleged accident conflicted with the medical reports of her chiropractor, Dr. Bartek, which reflected that claimant complained of neck pain on January 13, 1996, Cl. Ex. 11, and with the January 16, 1992, report of her family physician, Dr. Forward, which reflected that claimant reported waking up 5 days before the alleged accident with neck and back pain, Emp. Ex. 23. The administrative law judge also noted claimant failed to report such an incident to Dr. Forward when she saw him later that same day, that there were no eyewitnesses to the accident, and that claimant had informed two co-workers, Mary Anne Pearn and Elizabeth Provost, that she was okay immediately after the alleged accident, while at the same time testifying that thereafter she experienced shocking pain, Tr. at 64-65. Moreover, the administrative law judge found that claimant's assertion that she reported the accident to her supervisor, Mr. Rowett, on January 16th, Tr. at 89-90, conflicted with his testimony that no accident was reported until February 5, 1992, Tr. at 193-194. Finally, the administrative law judge noted that if the accident would have occurred as claimant alleged, some bruising or discoloration of the skin would reasonably be expected, but none was reported when Dr. Forward examined claimant's shoulder several hours later.

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.¹ See *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996). Accordingly, we affirm her determination that claimant failed to establish that the alleged work-related accident occurred on January 16, 1992.² See *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). As claimant failed to establish an essential element of her *prima facie* case, her claim for benefits was properly denied. See *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.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

¹Although the administrative law judge also found that the accident could not have occurred as claimant alleged based on application of principles of physics, we voice no opinion on the reasonableness of that determination. We note, however, that any error which the administrative law judge may have made in this regard would be harmless given the numerous valid reasons the administrative law judge provided to support her finding that the accident alleged did not occur.

²In light of our affirmance of the administrative law judge's determination that claimant failed to prove an essential element of her *prima facie* case, we need not address claimant's assertions regarding the administrative law judge's finding that Section 20(a) was rebutted.