

FRANK G. CLEGG)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
NORFOLK SHIPBUILDING AND)	DATE ISSUED:
DRYDOCK CORPORATION)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Fletcher E. Campbell, Jr., Administrative Law Judge,
United States Department of Labor.

Gregory E. Camden (Rutter & Montagna, L.L.P.), Norfolk, Virginia, for claimant.

Gerard E.W. Voyer and Donna White Kearney (Taylor & Walker, P.C.), Norfolk, Virginia,
for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (95-LHC-1490) of Administrative Law Judge Fletcher E. Campbell, 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 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 alleges that he sustained injuries to his neck and back when, on December 18, 1993, he stepped on an unsecured deck plate and fell through a shaft opening while working for employer. Claimant testified that although he received a tetanus shot at employer's clinic immediately following this incident, he did not immediately report his accident to either employer or his co-workers until December 27, 1993, the date on which claimant was informed that, due to downsizing, he was being reclassified from a supervisor to a rigging specialist. On December 26, 1993, claimant sought treatment at a local hospital for low back pain, which he related to a December 21, 1993, injury.

Employer paid temporary total disability benefits to claimant for the period from January 3, 1994, until April 14, 1994. 33 U.S.C. §908(b). In his Decision and Order, the administrative law judge found that claimant had failed to establish his *prima facie* case, *i.e.*, that an accident had occurred at work which could have resulted in his back/neck condition. Accordingly, he denied the claim for compensation.

On appeal, claimant challenges the administrative law judge's finding that he failed to establish his *prima facie* case. Employer responds, urging affirmance of the administrative law judge's decision.

Claimant challenges the administrative law judge's determination that the December 18, 1993, work incident described by claimant did not occur. Specifically, claimant argues that the administrative law judge erred in failing to find that an unsecured deck plate could have caused his present medical conditions. We disagree. It is well-established that claimant bears 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. *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); *Obert v. John T. Clark and Son of Maryland*, 23 BRBS 157 (1990); *Bartelle v. McLean Trucking Co.*, 14 BRBS 166 (1981), *aff'd*, 687 F.2d 34, 15 BRBS 1 (CRT)(4th Cir. 1982). 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); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. , 114 S.Ct. 2251, 28 BRBS 43 (CRT)(1994). Contrary to claimant's contention, the mere existence of an unsecured deck plate is insufficient to establish claimant's *prima facie* case; rather, claimant must establish that the incident involving the deck plate which formed the basis of his claim occurred. *See U.S. Industries/Federal Sheet Metal, Inc.*, 455 U.S. at 608, 14 BRBS at 631.

In the instant case, the administrative law judge, after addressing claimant's testimony in detail, discredited that testimony in concluding that the December 18, 1993, work incident as described by claimant did not occur. In rendering this determination, the administrative law judge specifically noted that claimant could not have reported the incident to employer's clinic on December 18, 1993, since the clinic was closed on that night, that claimant failed to report the alleged incident to either his co-workers or employer until December 27, 1993, and that claimant indicated an injury date of December 21, 1993, when subsequently seeking treatment at a local hospital on December 26, 1993. *See Decision and Order at 8-9.*

It is well-established that, in arriving at his decision, the 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 (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 (2d Cir. 1961). Accordingly, the administrative law judge's credibility determinations are not to be disturbed unless they are inherently incredible or 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). In the instant case, the administrative law judge considered the inconsistencies in claimant's testimony regarding the date of his alleged accident, his alleged visit to employer's clinic, and his failure to report the alleged incident to either his co-workers or employer until nine days later, and concluded that claimant did not, in fact, sustain a work-related accident as described on December 18, 1993. 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. Accordingly, we affirm the administrative law judge's determination that claimant failed to establish the existence of a work-related incident occurring on December 18, 1993, which could have caused his present back condition. As claimant failed to establish an essential element of his *prima facie* case, his claim for benefits was properly denied. *See U.S. Industries*, 455 U.S. at 608, 14 BRBS at 631; *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27 (CRT)(9th Cir. 1988).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge