

R.L.)	
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Claimant-Petitioner)	
)	
v.)	
)	
JONES STEVEDORING COMPANY)	DATE ISSUED: 12/31/2007
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Claim for Benefits of Paul A. Mapes, Administrative Law Judge, United States Department of Labor.

Meagan A. Flynn (Preston Bunnell & Flynn, LLP), Portland, Oregon, for claimant.

William M. Tomlinson (Lindsay, Hart, Neil & Weigler, L.L.P.), Portland, Oregon, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Claim for Benefits (2004-LHC-2792) of Administrative Law Judge Paul A. Mapes 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).

On August 24, 2000, claimant was working as a crane operator for employer when he was involved in an altercation with the union's business manager, Mr. Smith. This altercation was witnessed by a fellow employee, Mr. Wolfe, who then threatened to beat claimant and requested that claimant meet him in the terminal parking lot. Claimant followed Mr. Wolfe into the parking lot where a fight ensued. In the course of the fight, Mr. Wolfe pushed his thumb into claimant's eye and claimant was alleged to have

threatened Mr. Wolfe with a gun. After the fight was broken up by the other employees present, neither party chose to pursue criminal charges against the other.¹ However, citing claimant's initial altercation with Mr. Smith, employer filed a complaint with the union's Labor Relations Committee charging that claimant had engaged in assault, grievous misconduct, insubordination, failure to work as directed, and deliberate bad conduct. As a result of an arbitrator's decision finding that claimant had assaulted Mr. Smith, the labor relations committee suspended claimant from all longshore employment for a total of 410 days. Subsequently, in March 2001, claimant sought medical treatment from Dr. Pena, who diagnosed claimant as suffering from depression and anxiety, due in part to his suspension from work. Cl. Ex. 32. Claimant also sought medical treatment from Dr. Smith, an optometrist, due to a vision problem. Cl. Ex. 37. Dr. Smith referred claimant to Dr. Ma, an ophthalmologist, who operated on claimant for "rhegmatogenous retinal detachment, splitting the fovea." Cl. Ex. 39. Dr. Smith opined that claimant's fight with Mr. Wolfe "played a role" in his retinal detachment. Cl. Ex. 79. Claimant sought benefits under the Act for temporary total disability from May 25, 2001 to December 25, 2001, permanent partial disability pursuant to the schedule, 33 U.S.C. §908(c)(5), for the injury to his right eye, and ongoing temporary total disability benefits for his psychological impairment, which, he alleged, was due in part to the fight with Mr. Wolfe.

In his decision, the administrative law judge found that claimant intended to injure Mr. Wolfe when he went to the parking lot to fight on August 24, 2000, and therefore, claimant's claim is barred pursuant to Section 3(c) of the Act, 33 U.S.C. §903(c). In addition, after weighing the evidence pursuant to Section 20(a), 33 U.S.C. §920(a), the administrative law judge found that claimant's injuries did not arise in the course of his employment because claimant abandoned his job duties to engage in prohibited conduct off employer's premises. The administrative law judge also found that there is no causal relationship between claimant's injuries and the fight with Mr. Wolfe on August 24, 2000. Therefore, the administrative law judge denied benefits under the Act.

On appeal, claimant contends that the administrative law judge erred in finding that employer rebutted the Section 20(d) presumption that claimant did not willfully intend to injure another, as there was no stated intent to fight and no threatening gestures were proven. In addition, claimant contends that the administrative law judge erred in finding that employer rebutted the Section 20(a) presumption that claimant's injuries were incurred in the course of his employment as claimant was on the payroll when the fight occurred on a covered site. Moreover, claimant avers that the administrative law judge erred in finding that claimant's eye condition and temporary psychiatric condition were not causally related to the fight with Mr. Wolfe. Employer responds, urging

¹ In addition, claimant did not seek medical treatment following the fight.

affirmance of the administrative law judge's denial of benefits. Claimant has filed a reply brief.

Section 3(c) of the Act provides, in relevant part, that no compensation is payable if the injury was the result of the willful intention of the employee to injure or kill another employee. 33 U.S.C. §903(c); *see Green v. Atlantic & Gulf Stevedores*, 18 BRBS 116 (1986); *Rogers v. Dalton Steamship Corp.*, 7 BRBS 207 (1977). Section 20(d) of the Act states that “[i]n any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary . . . , that the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.” 33 U.S.C. §920(d); *see Arrar v. St. Louis Shipbuilding Co.*, 780 F.2d 19, 18 BRBS 37(CRT) (8th Cir. 1985).

Claimant contends that at the time he left his work premises to meet Mr. Wolfe in the parking lot, he wanted merely to continue the discussion with Mr. Wolfe regarding why he thought claimant's job should be at risk. He alleges that Mr. Wolfe was the aggressor who began the physical altercation and that claimant never stated an intent to fight or made a threatening gesture. In a case under Section 3(c), the administrative law judge must determine whether the necessary willful intent to injure another person exists, considering such factors as the claimant's physical actions and speech at the time of the incident. *See, e.g., Williams v. Healy-Ball-Greenfield*, 22 BRBS 234 (1989) (Brown, J., dissenting); *Kielczewski v. The Washington Post Co.*, 8 BRBS 428 (1978).

The administrative law judge found that employer rebutted the Section 20(d) presumption based on claimant's testimony before the arbitrator that he agreed to meet Mr. Wolfe in the parking lot after Mr. Wolfe's stated an intent to fight.² Decision and Order at 16. The administrative law judge found that the most reasonable interpretation of claimant's agreement was a willful intent to engage in a fight, and thus to injure another. The administrative law judge noted that claimant has a history which demonstrates his inability to control his temper, including legal violations and a series of work-related incidents which resulted in disciplinary actions. The administrative law judge found incredible claimant's hearing testimony that he had no expectation of a fight when he went to meet Mr. Wolfe in the parking lot. In this regard, the administrative law judge noted the inconsistency between claimant's testimony at the arbitration hearing and that before him, and that claimant failed to reveal to his doctors his legal troubles which could have contributed to his psychological condition. The administrative law judge concluded that the weight of the evidence demonstrates an implicit agreement between

² Claimant acknowledged that Mr. Wolfe had said “You're a piece of shit and I'm going to kick your ass,” Tr. at 69-76, and that he answered “Oh really?” and left the work site to meet Mr. Wolfe at another location. Emp. Ex. 82 at 366.

Mr. Wolfe and claimant to leave the work site to engage in “mutual, premeditated, combat.” This fight in fact occurred, and was broken up by other workers and necessitated a call to the police when claimant threatened to shoot Mr. Wolfe.³ Cl. Ex. 11.

We affirm the administrative law judge’s finding that there is substantial evidence in the record to rebut the Section 20(d) presumption and to support the denial of benefits pursuant to Section 3(c). The administrative law judge rationally relied on claimant’s testimony at the arbitration hearing to find that claimant agreed to meet Mr. Wolfe in order to engage in a fight, and that this fight, in fact, occurred. The administrative law judge’s finding is bolstered by claimant’s history of incidents involving his failure to control his temper. Claimant’s disagreement with the administrative law judge’s weighing of the evidence is not a sufficient reason for the Board to overturn it, as it is axiomatic that the Board is not permitted to reweigh the evidence but may ascertain only whether substantial evidence supports the administrative law judge’s decision. *Compton v. Avondale Industries, Inc.*, 33 BRBS 174 (1999). It is well established that the administrative law judge has the authority to address questions of witness credibility and to weigh the evidence. The administrative law judge’s determinations concerning claimant’s testimony and behavior are not 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). Therefore, as it is supported by substantial evidence, we affirm the administrative law judge’s finding that claimant is not entitled to compensation for his injuries pursuant to Section 3(c) as he willfully intended to injure another. *Green*, 18 BRBS 116; *O’Connor v. Triple A Machine Shop*, 13 BRBS 473 (1981). Because we affirm the administrative law judge’s findings under Section 3(c), we need not address claimant’s contentions regarding the administrative law judge’s other findings.

³ The police searched claimant’s car and did not find any weapons. Cl. Ex. 11.

Accordingly, the administrative law judge's Decision and Order Denying Claim for Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge