BRB No. 92-2319

ROBERT E. PARKER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
AMERICAN NATIONAL RED CROSS	)	DATE ISSUED:_____
	)	
and	)	
	)	
TRAVELERS INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Giles J. McCarthy, Administrative Law Judge, United States Department of Labor.

Robert E. Parker, Deerfield Beach, Florida, *pro se*.

Thomas M. Nosewicz (Jones, Walker, Waechter, Poitevent, Carrere & Denegre), New Orleans, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant, without the aid of counsel, appeals the Decision and Order (90-LHC-677) of Administrative Law Judge Giles J. McCarthy denying benefits 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 Defense Base Act, 42 U.S.C. §1651 *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 worked as an assistant field director for employer in Vietnam from late 1967 through June 1968. During this time, claimant alleges that he was exposed to Agent Orange and other defoliants, and that he was placed in combat situations where he was in fear for his life and had to defend himself. He resigned in June 1968, citing family obligations, but returned in January 1969, requesting assignment in Vietnam. Emp. Ex. 1; Tr. 37-38, 309. Claimant transferred to Japan in

1970, where he worked until 1972, when he was terminated for misappropriation of funds. Tr. at 80, 95-96. Claimant alleges he witnessed and participated in combat situations during his second tour in Vietnam. Between 1972 and 1980, claimant held a variety of sales positions for short periods of time. Emp. Exs. 2-3, 5, 7-8. He has not held a formal job since 1980, but he claims to have been hired by foreign governments to lecture medical professionals about the American health care system. Tr. at 162-175. Additionally, claimant alleges he has been working as a writer, documenting his experiences in Vietnam. *See, e.g.,* Emp. Ex. 42 at 34-35; Tr. at 642-644.

Claimant has suffered numerous medical problems, such as hydrocephalus, hyperthyroidism, and diverticulosis, and he has been diagnosed as being depressed and suicidal, as well as having a long-standing personality disorder. Emp. Exs. 19-22, 24-27, 29-31, 33-34, 42. Claimant contends his physical and mental conditions were caused by his experiences in Vietnam. Specifically, he alleges his physical problems were caused by his exposure to Agent Orange, and his psychological problems classify as post-traumatic stress disorder (PTSD) and were caused by the danger and combat he faced in Vietnam.[1]

The administrative law judge reviewed and discussed the evidence contained in this voluminous record and determined that claimant's claim for compensation was untimely filed. Decision and Order at 8. Assuming, *arguendo,* that the claim was filed in a timely manner, the administrative law judge held that claimant failed to establish that he was exposed to and sprayed with Agent Orange or other defoliants or that he has PTSD related to his Vietnam experiences. *Id.* at 9. Consequently, the administrative law judge denied benefits. *Id.* at 9-10. Claimant, appealing *pro se*, challenges the administrative law judge's findings, and employer responds, urging affirmance.

Claimant initially contends the administrative law judge erred in finding his claim to be untimely. Under the Act, a claim in a traumatic injury case must be filed within one year of the date of injury, which occurs when claimant becomes aware that his injury has resulted in an impairment to his earning capacity. 33 U.S.C. §913(a); *Abel v. Director, OWCP*, 932 F.2d 819, 24 BRBS 130 (CRT) (9th Cir. 1991); *Love v. Owens-Corning Fiberglas Co.*, 27 BRBS 148 (1993). A claim for compensation in an occupational disease case must be filed within two years of the date on which claimant became aware of the relationship between his employment, his disability, and his disease. 33 U.S.C.§913(b)(2); *Love*, 27 BRBS at 150. In this case, by claimant's own admission, he suspected he was disabled due to his Vietnam experiences in 1972 because of his alleged nightmares and flashbacks, and he testified he became more sure of the relationship by the late 1970s. Tr. at 410-412, 658, 681-684. The administrative law judge credited claimant on this matter and held that he became aware of a disability by 1972 or at the latest by 1980. Decision and Order at 8. Consequently, he held that claimant's 1986 claim, *see* ALJ Ex. 6, was not filed in a timely manner. As the administrative law jaw acted within his discretion in crediting claimant's opinion with regard to his date of awareness, and as claimant's claim for compensation was filed after the statute of limitations had run, we affirm the administrative law judge's conclusion that the claim for compensation herein is untimely.[2] *Wendler v. American Nat'l Red Cross*, 23 BRBS 408 (1990)

[1]Claimant cites troubles with nightmares, night sweats, tremors, and flashbacks. Tr. at 124-127, 363-364, 381-382.

[2]Section 30(f) of the Act, 33 U.S.C. §930(f), which tolls the statute of limitations on a claim until

(McGranery, J., concurring and dissenting).

Although claimant's claim for disability compensation is barred, a claim for medical benefits is never time-barred. 33 U.S.C. §907; *Wendler*, 23 BRBS at 414. Therefore, we shall address the administrative law judge's determination that claimant failed to establish a causal relationship between his mental and physical ailments and his employment. Claimant must have a work-related harm in order to be entitled to medical treatment at employer's expense. *Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989).

Claimant contends he is disabled due to health problems caused by exposure to Agent Orange and other defoliants, as well as by his traumatic combat experiences. In determining whether an injury is work-related, claimant is aided by the Section 20(a), 33 U.S.C. §920(a), presumption, which may be invoked only after he establishes a *prima facie* case. To establish a *prima facie* case, claimant must show that he sustained a harm or pain and that conditions existed or an accident occurred at his place of employment which could have caused the harm or pain. *Hartman v. Avondale Shipyard, Inc.*, 23 BRBS 201 (1990), *vacated in part on reconsideration*, 24 BRBS 63 (1990); *Bartelle v. McLean Trucking Co.*, 14 BRBS 166 (1981), *aff'd*, 687 F.2d 34, 15 BRBS 1 (CRT) (4th Cir. 1982); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981).

In this case, the administrative law judge discredited claimant's testimony with regard to both his alleged Agent Orange exposure and combat experiences.[3] Because claimant's discredited testimony is the only evidence of record of exposure to Agent Orange or other defoliants, the administrative law judge held that claimant failed to establish work-related exposure to Agent Orange. He found further support for this conclusion in Dr. Harbison's testimony. Dr. Harbison stated that if claimant had been exposed to the dioxin found in Agent Orange, he would have developed chloracne within one or two months of exposure, and the record contains no medical evidence of claimant's ever having suffered chloracne. Additionally, Dr. Harbison testified that claimant's Graves' disease (hyperthyroidism) and his alleged PTSD are not related to Agent Orange exposure. Tr. at 724, 750, 754-757. Based on the opinions of Drs. Robinson and Zager, the administrative law judge found that claimant does not suffer from PTSD. Drs. Robinson and Zager determined that claimant does not exhibit the symptoms or meet the criteria of PTSD. Emp. Exs. 34

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such time as the employer complies with the requirements of Section 30(a), 33 U.S.C. §930(a), and files a notice of injury with the district director, cannot be used to revive this claim because employer did not have knowledge of claimant's injury until after the statute of limitations had run. *See Wendler v. American Nat'l Red Cross*, 23 BRBS 408 (1990) (McGranery, J., concurring and dissenting); *Keatts v. Horne Brothers, Inc.*, 14 BRBS 605 (1982).

[3]The administrative law judge specifically found that claimant is not a credible witness due to his history of lying and the fact that there is no evidence of record to corroborate his story. Decision and Order at 9. He noted that claimant's testimony regarding his combat experiences "is not only not worthy of credibility, but is an insult to those . . . who have indubitably been faced with the traumatic experiences of actual combat." *Id.*

at 20-21, 42 at 40-43. Moreover, they testified that although claimant has a narcissistic personality disorder with anti-social traits, it is not related to his employment in Vietnam. Emp. Exs. 33-34, 42.

As questions of witness credibility are for the administrative law judge as the trier-of-fact, *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 administrative law judge's determination herein is supported by substantial evidence and is neither inherently incredible nor patently unreasonable, we affirm his finding that claimant has not established that he was exposed to Agent Orange or other defoliants or that he suffers from PTSD. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Consequently, as claimant has not established a *prima facie* case, the Section 20(a) presumption is not applicable, and the administrative law judge properly denied medical benefits. *See generally Romeike*, 22 BRBS at 59.

Moreover, employer has presented overwhelming evidence severing any connection there might be between claimant's condition and his employment in Vietnam. *See Peterson v. General Dynamics Corp.*, 25 BRBS 71, 78 (1991), *aff'd sub nom. Insurance Company of North America v. U.S. Dept. of Labor*, 969 F.2d 1400, 26 BRBS 14 (CRT) (2d Cir. 1992), *cert. denied*, 113 S.Ct. 1253 (1993); *Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990); *Obert v. John T. Clark and Son of Maryland*, 23 BRBS 157 (1990). In addition to the aforementioned doctors' opinions, the administrative law judge's conclusion is further supported by other medical and lay opinions of record. Emp. Exs. 20-22, 24, 27-30, 40-41; Tr. at 794-795.[4] As claimant has not established the existence of a work-related harm and as there is no causal relationship between his physical and mental conditions and his employment, claimant is not entitled to medical benefits.

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

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

[4]These exhibits include the opinions of numerous doctors, all of whom state that claimant's various medical problems are not related to alleged exposure to Agent Orange. Emp. Exs. 20-22, 24, 27, 29-30. Dr. Fredd testified that there are only three compensable diseases related to exposure to Agent Orange (Non-Hodgkin's lymphoma, soft tissue sarcoma, and chloracne) and that claimant has none of them. Emp. Ex. 28 at 8-10. The exhibits also include the testimony of claimant's ex-wife and two former supervisors, who testified that they were not aware of any Agent Orange exposure in Vietnam. Emp. Exs. 40-41; Tr. at 794-795.

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ROY P. SMITH
Administrative Appeals Judge

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NANCY S. DOLDER
Administrative Appeals Judge