BRB No. 98-1442

LOUIS NOEL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
AVONDALE INDUSTRIES INCORPORATED	)	DATE ISSUED: July 28, 1999
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Larry W. Price, Administrative Law Judge, United States Department of Labor.

William S. Vincent (Law Office of William S. Vincent), New Orleans, Louisiana, for claimant.

Joseph J. Lowenthal, Jr., Wayne Zeringue, Jr., and Michelle A. Bourque (Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P.), New Orleans, Louisiana, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, McGRANERY, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (98-LHC-0559) of Administrative Law Judge Larry W. Price 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 findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, who was employed as a laborer by employer, alleged that he began to

experience back pain on August 14, 1995, while carrying five gallon buckets of "float coat." Claimant continued to work through that day and the next, August 15, 1995; however, claimant testified that he felt pain in his back and right leg upon waking up from a nap that evening. Claimant was off work on August 16, 1995, during which time he saw Dr. Nguyen. On August 17, 1995, claimant asserts that he experienced additional pain after grinding rust in a confined area. Claimant sought medical treatment, and subsequently filed a claim under the Act seeking benefits based on these alleged incidents.

In his Decision and Order, the administrative law judge determined that the alleged work incidents described by claimant did not occur, and that, accordingly, claimant failed to establish a *prima facie* case sufficient to invoke the Section 20(a), 33 U.S.C. §920(a), presumption. Accordingly, the administrative law judge denied the benefits sought by claimant.

Claimant appeals, contending that the administrative law judge erred in denying his claim for benefits. Employer responds, urging affirmance of the decision.

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 his *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 & Son of Maryland*, 23 BRBS 157 (1990). 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. 267, 28 BRBS 43 (CRT)(1994). Once claimant has established his *prima facie* case, he is entitled to invocation of the Section 20(a) presumption linking his harm to his employment. *See Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990). Upon invocation of the presumption, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). If the administrative law judge finds that the Section 20(a) presumption is rebutted, the administrative law judge must weigh all of the evidence and resolve the causation issue based on the record as a whole. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990).

In rendering his decision, the administrative law judge analyzed claimant's testimony and determined that claimant's allegations of work incidents in August 1995 which resulted in back pain lacked credibility. In this regard, the administrative law judge found that, although claimant testified that he reported a work-related accident to employer's first aid

department, the evidence of record shows that claimant initially denied any work-related trauma, and that he did not report any job-related incident to Dr. Nguyen on August 16, 1995, to employer's first aid department, to the West Jefferson Medical Center, or to Dr. Shultz on August 17, 1995, or to Dr. Puente on August 21, 1995. Rather, the administrative law judge found that claimant first reported a work-related incident on September 6, 1995, three weeks after the alleged occurrences at work.[1] The administrative law judge considered claimant's failure to promptly report any of the alleged work incidents to employer to be significant in light of his knowledge of company policy regarding the filing of injury reports. Thus, the administrative law judge concluded that the alleged work-incidents in August 1995 did not occur. *See* Decision and Order at 9-13.

In adjudicating a claim, it is well-established that an administrative law judge is entitled to evaluate the credibility of all witnesses. *See Calbeck v. Strachan Shipping* Co., 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 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). The administrative law judge may discredit a claimant's testimony to find that an alleged accident arising out of the course of claimant's employment did not occur. *See Bartelle v. McLean Trucking Co.*, 14 BRBS 166 (1981)(Miller, J., dissenting), *aff'd*, 687 F.2d 34, 15 BRBS 1 (CRT)(4th Cir. 1982). 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 as his reasons for doing so are rational and supported by the evidence of record. *See generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied,* 440 U.S. 911 (1979). We therefore affirm the administrative law judge's determination that claimant failed to establish that the alleged occurrences in August 1995 occurred. *See, e.g., Bolden*, 30 BRBS at 73. 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).

[1]The administrative law judge noted that thereafter, on December 9, 1995, claimant, although complaining of neck and back pain, failed to mention the alleged work-related injury to Dr. Blamphin.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge