BRB No. 99-954

MATTHEW NEWGARDEN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
GENERAL DYNAMICS CORPORATION	)	DATE ISSUED: _____
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order – Denying Benefits of David W. Di Nardi, Administrative Law Judge, United States Department of Labor.

Matthew Shafner (O'Brien, Shafner, Stuart, Kelly & Morris, P.C.), Groton, Connecticut, for claimant.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (98-LHC-2093) of Administrative Law Judge David W. Di Nardi 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 was injured on December 13, 1996, at employer's facility approximately one hour after he began his work for the day. He stated that, after checking the men's room in the machine shop and identifying what he would need to clean it, he went to a storage room at one end of that building to get his supplies. Once inside he closed the door and proceeded to look for the items. Approximately one-half hour later, claimant sustained a compression fracture at L1, L2, a fractured left arm and elbow, a sprained left wrist and a sprained right knee, due to a fall. Cl. Ex. 5. The fact of the injury is not in dispute. Rather, the events leading to, and circumstances surrounding the fall are fiercely debated.

Claimant contends the door to the supply room became stuck, and, although he tried to open it by pulling, pushing and kicking it for 15-20 minutes, he was unable to open it. He states he began to panic, and he thought he could climb into the loft of the supply room, exit through one of the windows, walk on a ledge to an adjoining room with windows and climb in, so he could get back to work. Once in action, he realized the error of his plan and how precarious his footing was on the ledge. Instead of an uncontrolled fall, he attempted a controlled jump, but, nevertheless, was hurt. Emp. Ex. 16 at 25-31; Tr. at 97-100, 106-109. Employer disputes that claimant's accident occurred while he was legitimately looking for supplies. It contends that although claimant originally entered the storage room for a legitimate purpose, he then went on a personal frolic, panicked, and jumped out the loft window to avoid being caught. Thus, employer asserts that claimant was violating company rules by taking an unauthorized break, and his injuries are not work-related.

The issue before the administrative law judge was whether claimant's injury occurred within the course of his employment. The administrative law judge found that claimant's injury occurred "on the clock" and within an adjoining area; however, he found that claimant, after initially entering the storage room for a legitimate reason, went on an unauthorized break or personal frolic, thereby taking his injury out of the course of his employment. Decision and Order at 42-43. The administrative law judge discredited claimant's reasons for his prolonged presence in the storage room, and he held that employer's evidence and assertions are more believable. *Id.* at 44-46. Therefore, he denied benefits.[1] Claimant appeals the administrative law judge's decision. Employer has not responded.

Under the Act, an injury occurs within the course of employment if it occurs within the time and space boundaries of employment and in the course of an activity whose purpose is related to the employment. *Durrah v. Washington Metropolitan Area Transit Authority*, 760 F.2d 322, 17 BRBS 95(CRT) (D.C. Cir. 1985); *Compton v. Avondale Industries, Inc.*, 33 BRBS 174 (1999); *Boyd v. Ceres Terminals*, 30 BRBS 218 (1997). The Section 20(a), 33 U.S.C. §920(a), presumption applies to this question. *Id.; Wilson v. Washington Metropolitan Area Transit Authority*, 16 BRBS 73 (1984). If an employee deviates from his work for personal reasons, the activity may not have occurred in the course of employment and his employer would not be held liable for any resulting injuries. *Bobier v. The Macke Co.*, 18 BRBS 135

[1]In the event a reviewing body were to "hold otherwise[,]" the administrative law judge made alternate findings regarding disability, average weekly wage, etc. Decision and Order at 47-53.

(1986), *aff'd mem.*, 808 F.2d 834, 19 BRBS 58(CRT) (4th Cir. 1986). That is, if the employee goes so far from his employment and becomes so thoroughly disconnected from the service to the employer that it would be unreasonable to say that the injury occurred in the course of employment, then the activity is no longer in the course of employment. *O'Leary v. Brown-Pacific-Maxon*, 340 U.S. 504 (1951); 99 C.J.S. Workers' Compensation §222 (1958). For example, if the employee violates an express prohibition, acts without authorization, acts for purely personal reasons or has abandoned his employment duties and embarked on a personal mission, then the employment nexus may be severed. *Willis v. Tital Contractors, Inc.*, 20 BRBS 11 (1987); *Mulvaney v. Bethlehem Steel Corp.*, 14 BRBS 593 (1981).

Claimant contends the administrative law judge erred in finding that the Section 20(a) presumption was rebutted, that claimant was on a personal mission, and in failing to find that claimant's duties created a "zone of special danger."[2] We reject claimant's assertion that the administrative law judge erred in finding the Section 20(a) presumption rebutted and in finding that claimant was on a personal mission. Although the administrative law judge did not specify which evidence of record rebuts the presumption, his omission is harmless, as the record contains substantial evidence to support his conclusion that employer established that claimant's injury is not work-related. *See Reed v. The Macke Co.*, 14 BRBS 568 (1981). Specifically, the administrative law judge credited evidence establishing that the door, which claimant alleges got stuck, had a defective lock and did not secure easily, Emp. Exs. 16 at 15-17, 17 at 19; Tr. at 100; that claimant was seen climbing to the loft area directly after entering the storage room, Emp. Ex. 18 at 6, 8, 13-14; that the loft area contained a make-shift bed of cushions and pornographic magazines directly under the window claimant exited, Emp. Ex. 17 at 9-10, 16-18; Tr. at 129, 140-141; and that claimant initially lied about how his injury occurred, Cl. Exs. 1, 4-5; Emp. Ex. 16 at 23-33; Tr. at 107.[3] The administrative law judge relied on

[2]We reject claimant's assertions regarding application of the "zone of special danger" doctrine. The "zone of special danger" doctrine applies only in cases arising under the Defense Base Act and the District of Columbia Workmen's Compensation Act. Thus, it is inapplicable here. Moreover, it cannot be said that claimant's job as a laborer cleaning restrooms exposed him to the inherent risks of falling off ledges of buildings. *See Forlong v. American Security & Trust Co.*, 21 BRBS 155 (1988); *McNamara v. Mac's Pipe & Drum, Inc.*, 21 BRBS 111 (1988).

[3]Claimant first reported to co-workers and medical practitioners that he had fallen down 25 stairs and walked a short distance until he collapsed from his injuries. Cl. Exs. 1, 4-5; Emp. Ex. 16 at 23-33; Tr. at 107.

these facts in finding that the weight of the evidence lies against claimant. Decision and Order at 42-44; *see Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994) (an administrative law judge may draw inferences from the evidence credited). Thus, the evidence credited rebuts the Section 20(a) presumption. Consequently, the presumption falls out, the case must be decided on the record as a whole, and claimant bears the burden of persuading the administrative law judge that his injury occurred during the course of his employment. *See Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994); *Santoro v. Maher Terminal, Inc.*, 30 BRBS 171 (1996).

In this case, as the administrative law judge's findings are supported by substantial evidence of record, they will not be disturbed. Claimant's disagreement with the administrative law judge's conclusion is not sufficient reason to overturn it, as it is axiomatic that the Board is not permitted to reweigh the evidence but may only ascertain whether substantial evidence supports the administrative law judge's decision. *Director, OWCP v. Jaffe New York Decorating*, 25 F.3d 1080, 28 BRBS 30(CRT) (D.C. Cir. 1994); *Miffleton v. Briggs Ice Cream Co.*, 12 BRBS 445 (1980), *aff'd*, No. 80-1870 (D.C. Cir. 1981). Rather, 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); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969), and determinations in this regard must be affirmed unless they are "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). The administrative law judge credited employer's evidence over claimant's, and he found, on the record as a whole, that claimant's version of the incident was not persuasive. Based on the evidence herein, the administrative law judge rationally discredited claimant. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Cordero*, 580 F.2d at 1331, 8 BRBS at 744. Because the administrative law judge found that claimant's purpose in remaining in the supply room so long was to take an unauthorized break in the loft area and because this conclusion is supported by a rational credibility determination and by substantial evidence,[4] claimant's unauthorized break removes him from the course of his employment and, thus, relieves employer of liability for compensation for those injuries. *Compton*, 33 BRBS at 178.

[4]Substantial evidence may include circumstantial evidence. *Compton*, 33 BRBS at 176.

Accordingly, the administrative law judge's decision is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge