BRB No. 02-0650

PAT ELIA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
HOWLAND HOOK CONTAINER TERMINAL, INCORPORATED	)	DATE ISSUED: May 30, 2003
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Philip J. Rooney (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

John F. Karpousis (Freehill, Hogan & Mahar, L.L.P.), New York, New York, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand (2000-LHC-0067) of Administrative Law Judge Ralph A. Romano 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).

This is the second time this case has come before the Board. Claimant, a mechanic, alleges he was injured at work on July 15, 1999, when he fell from a chassis, sustaining injuries to his left knee and left shoulder. He has not returned to work for employer. The administrative law judge found that claimant did not establish by a preponderance of the evidence that an accident occurred at work on

July 15, 1999; therefore, he determined that claimant failed to establish a *prima facie* case for invocation of the Section 20(a), 33 U.S.C. §920(a), presumption, and he denied benefits.

Claimant appealed the denial of benefits to the Board. The Board held that, although the administrative law judge's findings of fact were supported by the evidence he cited, he did not discuss all the relevant evidence. Specifically, the Board held that the administrative law judge rationally discredited claimant's version of the alleged events on July 15, 1999, that the record supports the findings that no one witnessed claimant's alleged fall, that testimony of claimant's intent to return to Florida gave him a motive to fabricate a story, that the administrative law judge rationally credited the testimony of claimant's co-workers over that of claimant as to what they may have discussed after the alleged fall, and that claimant did not immediately report any injury. However, the administrative law judge did not discuss some relevant evidence: Mr. Ying's statements regarding seeing claimant on the ground and hearing sounds consistent with expressions of pain from claimant's direction; Mr. Perseghin's testimony that claimant told him about the injury on the way home from work that day; the emergency room report recorded on the evening of the alleged accident; and the voice mail message from claimant to employer two days after the alleged incident. Accordingly, the Board vacated the denial of benefits and remanded the case for the administrative law judge to weigh all relevant evidence, both supportive and non-supportive of claimant's claim. *Elia v. Howland Hook Container Terminal, Inc.*, BRB No. 01-414 (Jan. 17, 2002).

On remand, the administrative law judge summarized his findings from the first decision. He then addressed the four pieces of evidence identified by the Board, stating briefly his reasons for rejecting each. Claimant appeals the denial of benefits, and employer responds, urging affirmance.

Claimant contends the administrative law judge erred in placing an incorrect burden on claimant, in disregarding the directive of the Board, in failing to conduct a complete review of the evidence and in making irrational credibility determinations. Claimant also contends he is entitled to invocation of the Section 20(a) presumption as a matter of law and that employer has failed to present sufficient evidence to rebut the presumption.

In determining whether an injury is work-related, a claimant is aided by the Section 20(a) presumption, which may be invoked only after he establishes a *prima facie* case. To establish a *prima facie* case, the 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. *Bath Iron Works Corp. v. Brown*, 194 F.3d 1, 33 BRBS 162(CRT) (1st Cir. 1999); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir.1998); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). This burden encompasses both the burden of production and the burden of persuasion. *Jones v. J. F. Shea*

Co., Inc., 14 BRBS 207, 210-211 (1981). Thus, a claimant may not utilize the Section 20(a) presumption to establish the elements of a *prima facie* case; rather, he must convince the administrative law judge, by the weight of all the relevant evidence, that the individual elements are satisfied. *See Bartelle v. McLean Trucking Co.*, 687 F.2d 34, 15 BRBS 1(CRT) (4th Cir. 1982); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *Jones*, 14 BRBS at 211. Accordingly, we reject claimant's assertion that the administrative law judge must consider claimant's evidence, standing alone, to ascertain whether invocation of Section 20(a) is proper.

We also reject claimant's assertions that the administrative law judge did not follow the Board's directive on remand to address all the evidence relevant to the *prima facie* case issue and that he improperly disposed of the evidence in a cursory manner for irrational reasons. Pursuant to Section 805.405(a) of the regulations, 20 C.F.R. §805.405(a), if the Board remands a case, the administrative law judge is to initiate proceedings or such other action "as is directed by the Board." *See Stokes v. George Hyman Constr. Co.*, 19 BRBS 110 (1986). In this case, the Board held that the administrative law judge's findings in his first decision were supported by evidence in the record, but his decision had to be vacated because of his failure to consider all of the relevant evidence. On remand, the administrative law judge clearly considered the additional evidence identified by the Board, and thus complied with Section 805.405(a). Although claimant does not agree with the administrative law judge's credibility determinations, they are reasonable, particularly when considered in conjunction with his previous findings. 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); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969), and as his credibility determinations must be accepted unless inherently incredible or patently unreasonable, *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 1335, 8 BRBS 744, 747 (9th Cir. 1978), *cert. denied,* 440 U.S. 911 (1979), the administrative law judge's determination that claimant failed to establish the occurrence of an accident at work on July 15, 1999, must be affirmed. *See Bolden*, 30 BRBS 71; *Hartman v. Avondale Shipyard, Inc.*, 23 BRBS 201, *vacated on other grounds on recon.*, 24 BRBS 63 (1990). As claimant thus failed to establish an essential element of his *prima facie* case, the denial of benefits is also affirmed.

[1]In light of our decision, we do not reach claimant's contention that employer failed to rebut the Section 20(a) presumption.

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge