BRB No. 02-0135

RICHARD W. SCHATTEL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CRESCENT ELECTRIC	)	DATE ISSUED: Sept. 30, 2002
	)	
and	)	
	)	
MID-CENTURY INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order and Decision and Order Denying Claimant's Motion for Reconsideration of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Dennis L. Brown, Houston, Texas, for claimant.

Maurice E. Bostick (Galloway, Johnson, Tompkins, Burr & Smith), New Orleans, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order and Decision and Order Denying Claimant's Motion for Reconsideration (01-LHC-0731) of Administrative Law Judge C. Richard Avery 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 if they 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 alleged that he injured his back on December 1, 1997, when he fell off a ladder during the course of his employment for employer as an electrician. This alleged incident was unwitnessed. Claimant went to employer's infirmary, where a nurse noted claimant's complaints of lower back and buttocks pain, and that claimant's back was red and had abrasions. Claimant was examined that day by Dr. Konikowski, who prescribed rest. Thereafter, claimant received treatment from Dr. Cox for lower back pain. Employer voluntarily paid claimant compensation for temporary total disability, 33 U.S.C. §908(b), from December 2, 1997, to August 9, 2000, when it terminated compensation payments and controverted the claim.

In his Decision and Order, the administrative law judge found that claimant failed to establish that an incident occurred at work on December 1, 1997. Thus, the administrative law judge concluded that claimant is not entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), linking his back condition to his employment, and he denied the claim. Claimant's motion for reconsideration was denied. On appeal, claimant challenges the administrative law judge's finding that he failed to establish a *prima facie* case that his back condition is related to his employment. Employer responds, urging affirmance.

Claimant contends that he produced substantial evidence to establish that an accident at work occurred that could have caused his back condition, and that the administrative law judge erred by not finding him entitled to the Section 20(a) presumption. Claimant has the burden of proving the existence of a harm and that an accident occurred at work or that working conditions existed which could have caused the harm in order to establish a *prima facie* case. *Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990); *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). 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).

In the instant case, the administrative law judge, after discussing the relevant evidence, discredited claimant's testimony that a work-related accident occurred as described by claimant at the formal hearing. In rendering this determination, the administrative law judge discussed the varied descriptions of the accident. Specifically, claimant testified at the hearing that he slipped while ascending a ladder and fell to the ground; however, the record also contains accounts stating that claimant slipped on an oily deck or stepped on an object, which caused him to fall. *Compare* Tr. at 66-67, 109-11 *with* CX 10; EXS 1 at 9, 5 at 113, 27 at 23-24, 42. The administrative law judge also found significant that claimant's co-worker, Richard Oliver, who was in the room at the time of the alleged accident, testified that he did not hear or see an accident, and he contradicted claimant's testimony that they had

begun working at the time of the alleged injury. Tr. at 266-271. The administrative law judge credited videotape and audiotape statements by claimant's wife, Patty Schattel, his son, Richard Schattel, Jr., daughter-in-law, Melissa Bliss Schattel, and the hearing testimony of claimant's neighbor, Donna Sue Pride, that claimant's claim of a work injury on December 1, 1997, was fraudulent. EXS 2, 3, 35; Tr at 38-46. The administrative law judge specifically found more convincing Patty Schattel's videotaped statement, that claimant had staged a work accident, than her trial testimony recanting her prior videotape statement.[1] Decision and Order at 6, 12. The administrative law judge also rejected claimant's contention that Dr. Cox's opinion supports his assertion that an accident occurred at work, as Dr. Cox relied on claimant's version of the events in rendering his opinion. CX 26.

[1]In her videotaped statement, Patty Schattel stated that claimant staged an accident by scratching himself with metal and knocking over a ladder.

It is well established that, in arriving at his decision, the administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence. *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). Moreover, the administrative law judge may discredit a claimant's testimony to find that an alleged accident arising in 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). The administrative law judge's credibility determinations are not to be disturbed unless they are inherently incredible or patently unreasonable. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). In the instant case, the administrative law judge fully considered the evidence of record before concluding that claimant did not establish that he sustained a work-related accident on December 1, 1997. On the basis of the record before us, the administrative law judge's decision to discredit the hearing testimony of claimant is neither inherently incredible nor patently unreasonable. *Id.* Moreover, substantial evidence of record supports the administrative law judge's finding that an accident at work did not occur as alleged. We therefore affirm the administrative law judge's determination that claimant failed to establish that an incident occurred at work on December 1, 1997.[2] As claimant failed to establish an essential element of his *prima facie* case regarding this specific alleged injury, his claim for benefits was properly denied.[3] *See U.S. Industries*, 455 U.S. 608, 14 BRBS 631; *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27(CRT) (9th Cir. 1988); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996).

Accordingly, the administrative law judge's Decision and Order and Decision and Order Denying Claimant's Motion for Reconsideration are affirmed

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[2]The administrative law judge also stated that the relevant evidence created confusion and mistrust such that the evidence was, at best, in equipoise. Decision and Order at 4. Thus, the administrative law judge properly concluded that claimant did not meet his burden of persuasion. *See Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994); *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171 (2001). Moreover, contrary to claimant's contention on appeal, the administrative law judge is not bound by formal rules of evidence and procedure. 33 U.S.C. §923(a). Therefore, he has the discretion to credit the unsworn testimony and statements of Patty Schattel, Richard Schattel, Jr., and Melissa Bliss Schattel over their sworn statements. *See generally Bogdis v. Marine Terminals Corp.*, 23 BRBS 136 (1989); *Taylor v. B. Frank Joy Co.*, 22 BRBS 408 (1989).

[3]Accordingly, we need not address claimant's contentions that employer failed to produce sufficient evidence to rebut the Section 20(a) presumption.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge