BRB No. 96-1758

COLEY JOHNSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NORTH FLORIDA SHIPYARDS	)	DATE ISSUED:
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Charles P. Rippey, Administrative Law Judge, United States Department of Labor.

John E. Houser, Thomasville, Georgia, for claimant.

Richard M. Stoudemire and Darlene D. Sapiera (Cole, Stone & Stoudamire), Thomasville, Georgia, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (94-LHC-1705) of Administrative Law Judge Charles P. Rippey 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).

On June 14, 1990, claimant allegedly sustained a back injury during the course of his employment for employer. He initially sought emergency room treatment on July 27, 1990, at Memorial Health Care Center. Claimant described his injury as a torn muscle on the left side of his back which occurred at work. EX 1. Between 1990 and the date of the formal hearing on May 6, 1996, claimant's back condition deteriorated to the extent that he required the use of a wheelchair. Claimant and employer agreed that claimant suffers from a debilitating degenerative spinal condition; however, employer challenged claimant's contention that his condition is related to his employment with employer.

In his Decision and Order, the administrative law judge found that claimant failed to

establish that his back condition arose either from a traumatic injury or in the course of his employment with employer. Moreover, the administrative law judge found that claimant failed to establish his *prima facie* case, *i.e.*, that an accident had occurred at work which could have resulted in his back condition. Next, assuming *arguendo* the application of the Section 20(a) presumption, 33 U.S.C. §920(a), the administrative law judge found that employer established rebuttal of the presumption by crediting medical evidence that claimant's spinal condition is purely degenerative and is not caused by any trauma. Accordingly, the administrative law judge denied the claim for compensation.

On appeal, claimant contends the administrative law judge erred in finding that he is not entitled to invocation of the Section 20(a) presumption and by failing to credit evidence that his spinal condition may be due, at least in part, to a traumatic injury at work. Employer responds, urging affirmance.

Claimant challenges that the administrative law judge's determination that he is not entitled to invocation of the Section 20(a) presumption. 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 and 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, the Section 20(a) presumption is invoked, linking his harm to his employment. *See Stevens v. Tacoma Boatbuilding Co.,*23 BRBS 191 (1990).

In the instant case, claimant asserted that he injured his lower back during a fall at work on June 14, 1990. In his Decision and Order, the administrative law judge discredited claimant's testimony regarding this incident based on the numerous dates of injury claimant gave various medical providers during the course of treating his back condition.[1] Moreover, at his initial medical examination on July 27, 1990, claimant denied that his injury was caused by trauma. EX 1. The corroborating testimony of claimant's co-worker, Scott Heggs, asserted that claimant was injured on June 6 or 7, 1990; however, Mr. Heggs' affidavit states that the injury occurred in early July. Tr. at 132-134. Lastly, the administrative law judge credited the affidavit of claimant's supervisor, Lester Barrileaux, that claimant did not report a work injury on June 14, 1990. *See* EX 16.

It is well-established that, in arriving at his decision, the administrative law judge is

[1]At various times claimant reported the following dates for his work injury, which at the formal hearing he alleged occurred on June 14, 1990: June 15, June 18, July 16, 1990, a couple of weeks before July 27, 1990, July 1990, and August 1990. *See* Tr. at 5, 28, 59, 65, 72, 77, 78, 116.

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*, 372 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, an 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 where there are numerous inconsistencies in the record regarding the alleged date of injury. *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). Accordingly, the administrative law judge's credibility determinations are not to be disturbed unless they are inherently incredible or patently unreasonable. *See generally Avondale Shipyards, Inc. v. Kennel,* 914 F.2d 88, 24 BRBS 46 (CRT) (5th Cir. 1990); *Wheeler v. Interocean Stevedoring, Inc.,* 21 BRBS 33 (1988).

In the instant case, the administrative law judge considered the inconsistencies in claimant's and Mr. Heggs' testimony regarding the date of his alleged accident, the contemporaneous medical records, and the affidavit of claimant's supervisor, in concluding that claimant did not sustain a work-related accident as described in June 1990. On the basis of the record before us, the administrative law judge's decision to discredit the testimony of claimant is neither inherently incredible or patently unreasonable. Accordingly, we affirm the administrative law judge's determination that claimant failed to establish the existence of a work-related accident which could have caused his present back condition. 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).

Next the administrative law judge determined that, assuming *arguendo* claimant established his *prima facie* case, employer presented clear and convincing evidence sufficient to rebut the Section 20(a) presumption. Once claimant establishes his *prima facie* case, the Section 20(a) presumption applies to link the harm with decedent's employment. *Lacy v. Four Corners Pipe Line*, 17 BRBS 139 (1985). 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 finding that employer had rebutted the presumption, the administrative law judge credited the testimony of Dr. Weiss, which he found to be "convincing and complete." *See* Decision and Order at 2-3. Dr. Weiss, a board-certified physiatrist, diagnosed claimant's back condition as thoracic myelopathy of unknown etiology, either degenerative or infectious, and he unequivocally opined that this myelopathy was not caused by trauma; his opinion was based on the absence of a syrinx in any of the magnetic resonance images of claimant's spine.[2] *See* EX 17 at 4-6, 18-20, 23; *see also* EX 6. As the unequivocal opinion of Dr. Weiss constitutes substantial evidence sufficient to rebut the presumption, we affirm the administrative law judge's finding that the Section 20(a) presumption, if invoked, is rebutted.[3] *See Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

[2]The administrative law judge also credited the medical opinions of Drs. Spatola and Pennington, which are supportive of Dr. Weiss's conclusions, *see* EXS 8, 15, over the contrary opinion of Dr. Pierce, a chiropractor, based on Dr. Pierce's lack of specialized training in treating or diagnosing spinal myelopathies.

[3]We hold that any error committed by the administrative law judge in failing to expressly discuss causation, based on the record evidence as a whole, is harmless because the administrative law judge discussed all of the relevant medical evidence contained in the record, expressly and rationally discredited Dr. Pierce's causation opinion, and found Dr. Weiss's opinion of no work-related injury "convincing and complete." *See generally Bingham v. General Dynamics Corp.*, 20 BRBS 198 (1988).