

BRB No. 99-0366

BENEDETTO VASILE)
)
 Claimant-Respondent)
)
 v.)
)
 UNIVERSAL MARITIME SERVICE) DATE ISSUED: Dec. 16, 1999
 CORPORATION)
)
 and)
)
 SIGNAL MUTUAL INDEMNITY)
 ASSOCIATION)
)
 Employer/Carrier-)
 Petitioners) DECISION and ORDER

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

Michael E. Glazer (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

Christopher J. Field (Weber Goldstein Greenberg & Gallagher), Jersey City, New Jersey, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand (97-LHC-0240) 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 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

This case is on appeal to the Board for the second time. On July 31, 1996,

claimant, a clerk/checker, alleged that he injured his head and right shoulder when a box fell on him while working for employer. In his initial Decision and Order, the administrative law judge awarded claimant temporary total disability benefits from July 31, 1996, to September 19, 1996. On appeal, employer challenged the administrative law judge's finding that claimant was injured in an accident at work and his award of temporary total disability benefits.

In *Vasile v. Universal Maritime Service Corp.*, BRB No. 97-1446 (July 7, 1998)(unpublished), the Board vacated the administrative law judge's award of benefits and remanded the case to the administrative law judge for further findings regarding whether claimant established that an accident in fact occurred. Before invoking the presumption pursuant to Section 20(a) of the Act, 33 U.S.C. §920(a), the administrative law judge was instructed to determine whether an accident in fact occurred by weighing all evidence, pro and con, relevant to this issue and by resolving the issue of the credibility of claimant's testimony concerning the occurrence of the accident. The administrative law judge also was instructed to determine whether employer established rebuttal of the Section 20(a) presumption if he found invocation established and to reevaluate the evidence as a whole, with claimant bearing the burden of proof, if he found that employer established rebuttal. The Board affirmed the administrative law judge's award of temporary total disability benefits from July 31, 1996, to September 19, 1996, conditioned upon the administrative law judge's finding on remand that claimant's injury is work-related.

In his Decision and Order on Remand, the administrative law judge found that claimant's testimony concerning the occurrence of the work accident was credible. He again awarded benefits to claimant after finding that employer established rebuttal of the Section 20(a) presumption and that claimant established that his injury was caused by a work accident upon a weighing of the evidence. Employer appeals, again challenging the findings regarding the occurrence of a work accident.

Employer contends that the administrative law judge violated the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), by not discussing and weighing the evidence to determine whether an accident occurred and by failing to explain why he found claimant's testimony credible on this issue. Employer also contends that claimant did not establish by a preponderance of the evidence that an accident at work in fact occurred, contrary to the decision of the Supreme Court in *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT)(1994).

Section 20(a) provides claimant with a presumption that the injury he sustained is causally related to his employment if he establishes a *prima facie* case by showing that he suffered a harm and that employment conditions existed or a

work accident occurred which could have caused the harm. See, e.g., *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59 (CRT)(5th Cir. 1998). Once claimant has invoked the presumption, the burden shifts to employer to rebut it with substantial countervailing evidence. *Peterson v. General Dynamics Corp.*, 25 BRBS 71, 78 (1991), *aff'd sub nom. Ins. Co. of North America v. U.S. Dep't of Labor [Peterson]*, 969 F.2d 1400, 26 BRBS 14 (CRT)(2d Cir. 1992), *cert. denied*, 507 U.S. 909 (1993); *Davison v. Bender Shipbuilding & Repair Co., Inc.*, 30 BRBS 45, 46-47 (1996). If the administrative law judge finds that the Section 20(a) presumption is rebutted, then all relevant evidence must be weighed to determine if a causal relationship has been established with claimant bearing the burden of persuasion. See, e.g., *Meehan Service Seaway Co. v. Director, OWCP*, 125 F.3d 1163, 31 BRBS 114 (CRT)(8th Cir. 1997), *cert. denied*, 118 S.Ct. 1301 (1998); *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119 (CRT)(4th Cir. 1997); see also *Greenwich Collieries*, 512 U.S. at 267, 28 BRBS at 43 (CRT).

On remand, the administrative law judge concluded that claimant's testimony concerning the occurrence of the work accident was credible. We need not address employer's allegation of error at length, as it has not established that this credibility determination is "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). It is apparent from the record and the administrative law judge's decision that some kind of accident befell claimant at work on July 31, 1996. The administrative law judge noted the unrefuted evidence that claimant was found on the ground in the location office complaining of head pain and dizziness, and was sent to an emergency room of a local hospital by ambulance.¹ See Emp. Exs. 3, 11. This evidence is sufficient to invoke the Section 20(a) presumption. See *U.S. Industries/Federal Sheet Metal, Inc., v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Darnell v. Bell Helicopter Int'l Inc.*, 16 BRBS 98 (1984), *aff'd sub nom. Bell Helicopter Int'l Inc. v. Jacobs*, 746 F.2d 1342, 17 BRBS 13 (CRT)(8th Cir. 1984); Tr. at 15-20. Employer does not dispute these facts; rather, it focuses on the inconsistencies between claimant's testimony concerning the box that allegedly fell on him and the physical evidence at the accident scene. These inconsistencies are insufficient to preclude application of Section 20(a), as the administrative law judge found that employer's evidence on this issue also is unpersuasive. As there is sufficient evidence of record which is not in dispute to satisfy claimant's burden of establishing that an incident at work occurred that could have caused the injury, the administrative law judge's finding in this regard is affirmed. See generally *Brown v. I.T./Continental Baking Co.*, 921 F.2d 289, 24 BRBS 75 (CRT)(D.C. Cir. 1990).

¹At the hospital, claimant was diagnosed with a spinal sprain and head contusion. Emp. Ex. 11.

Employer does not challenge any other aspect of the administrative law judge's decision; therefore, we affirm the administrative law judge's award of benefits on remand.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge