

BRB No. 92-2186

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| TENA D. DALEY |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| MASTER MARINE, INCORPORATED |) | DATE ISSUED: |
| |) | |
| and |) | |
| |) | |
| WAUSAU INSURANCE COMPANY |) | |
| |) | |
| Employer/Carrier- |) | |
| Respondents |) | DECISION and ORDER |

Appeal of the Decision and Order of G. Marvin Bober, Administrative Law Judge, United States Department of Labor.

Bobby G. O'Barr, Biloxi, Mississippi, for claimant.

Derek A. Wyatt (Hopkins, Dodson, Wyatt & Crawley), Gulfport, Mississippi, for employer/carrier.

Before: SMITH, BROWN and DOLDER, Administrative Appeals Judges.
PER CURIAM:

Claimant appeals the Decision and Order (91-LHC-1354) of Administrative Law Judge G. Marvin Bober denying benefits 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant allegedly sustained an injury to her back on November 21, 1988, during the course of her employment with employer,¹ prompting her to file a claim for permanent total disability benefits under the Act. Employer controverted the claim asserting that claimant did not have a work-related accident or injury on November 21, 1988, and that claimant's back injury is not causally related to her employment.

The administrative law judge determined that although claimant did, in fact, suffer a physical harm, most notably a herniated disc sometime after January 14 and prior to February 2, 1989, the record establishes that no work-related accident occurred on November 21, 1988. Consequently, the administrative law judge determined that claimant failed to establish a *prima facie* case of compensability pursuant to 33 U.S.C. §920(a), and thus, denied benefits.

On appeal, claimant contests the administrative law judge's determination that claimant failed to establish her *prima facie* case. Employer responds, urging affirmance of the administrative law judge's Decision and Order.

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we hold that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error. Contrary to claimant's contentions, the administrative law judge extensively explained his reasons for finding claimant's testimony incredible, specifically relying on the absence of any corroborating testimony² and the numerous inconsistencies between claimant's testimony and the contemporaneous medical reports and testimony of record.³ It is the function of the administrative law judge to make credibility determinations and, if there is substantial evidence to support his determination that claimant's allegation of a work-related accident was false, claimant is not entitled to invocation of the Section 20(a) presumption. *U.S. Industries/Federal Sheet Metal v. Director, OWCP (Riley)*, 455

¹Claimant worked for employer, Master Marine, primarily as a laminator, from 1987 until January 13, 1989, with the exception of approximately three months during which time claimant worked as a cook and dishwasher for Burger King. With regard to the accident, claimant testified that she first felt a strain in her back, while climbing up, then a short time later, experienced a sharp pain radiating down her right hip and left leg after jumping down off the "baffle" onto the floor of the ship's compartment at Master Marine.

²In particular, the administrative law judge found that despite claimant's testimony that she told other co-workers of her work-related injury, claimant failed to produce any corroborating testimony.

³The administrative law judge found persuasive the fact that claimant's recollection of the events surrounding her alleged accident did not coincide with the statements made by her co-worker, Mr. Harbison and supervisor, Mr. Dalton. The administrative law judge similarly found that the accounts of the alleged injury given by claimant to the doctors of record, notably Drs. Allen, Nelson, Leggett and Jones, contained substantial inconsistencies and thus, failed to substantiate the fact of claimant's alleged work accident on November 21, 1988.

U.S. 608, 14 BRBS 631 (1982); *Pigrenet v. Boland Marine & Manufacturing Co.*, 656 F.2d 1091, 13 BRBS 843 (5th Cir. 1981)(*en banc*); *see also Hartman v. Avondale Shipyard, Inc.*, 23 BRBS 201 (1990), *vacated on other grounds on recon.*, 24 BRBS 63 (1990). We therefore affirm the administrative law judge's determination that claimant failed to establish that a work-related accident occurred on November 21, 1988 and consequently, we affirm the denial of benefits.⁴

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

⁴Furthermore, contrary to claimant's assertion the "true doubt" rule is not applicable under the Act. *Director, OWCP v. Greenwich Collieries*, U.S. , 114 S.Ct. 2251, 28 BRBS 43 (CRT)(1994).