

CHARLES VAUGHAN)
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 Claimant-Petitioner)
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 v.)
)
 ARMY & AIR FORCE EXCHANGE) DATE ISSUED: 07/22/2013
 SERVICE)
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 and)
)
 CONTRACT CLAIMS SERVICES,)
 INCORPORATED)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Kenneth A. Krantz,
Administrative Law Judge, United States Department of Labor.

John H. Klein (Montagna Klein Camden L.L.P.), Norfolk, Virginia, for
claimant.

Before: DOLDER, Chief Administrative Appeals Judge, HALL and
BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2011-LHC-01210) of
Administrative Law Judge Kenneth A. Krantz 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.*, as extended by the Nonappropriated Fund Instrumentalities Act, as
amended, 5 U.S.C. §5171 *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'Keefe v.*
Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

Claimant worked for employer as a warehouse laborer. He was admitted to the
hospital on September 9, 2008, for chest pain and shortness of breath. Claimant received
a diagnosis of myocardial infarction, coronary artery disease, and severely reduced left

ventricular function. He underwent triple coronary bypass surgery on September 10, 2008. He has not returned to work. On January 25, 2010, claimant filed a claim alleging he sustained a heart attack during the course of his employment for employer on September 8, 2008.

In his decision, the administrative law judge found claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), that his working conditions could have caused, aggravated or accelerated his heart condition and that employer did not rebut the presumption. The administrative law judge found that, although employer did not have notice of claimant's work injury until January or February 2010, it was not prejudiced by claimant's untimely notice of injury. *See* 33 U.S.C. §912(d)(2). The administrative law judge found that the claim for temporary total disability compensation is barred, however, since claimant did not file his claim until January 25, 2010, for his September 8, 2008 heart attack, which is beyond the one-year limitation of Section 13(a), 33 U.S.C. §913(a). Thus, the administrative law judge denied the claim for compensation.¹

On appeal, claimant challenges the denial of the claim for compensation. Employer did not file a response brief.

Claimant contends the administrative law judge erred in finding the compensation claim barred under Section 13(a). Claimant argues the administrative law judge erred in finding that employer did not have notice of his injury; thus, claimant contends employer's failure to file a report of the injury pursuant to Section 30(a), 33 U.S.C. §930(a), tolled the time for filing a claim, pursuant to Section 30(f), 33 U.S.C. §930(f). Specifically, claimant contends the administrative law judge erred in rejecting the testimony of Ms. Gunthier, claimant's live-in partner, that she informed two of claimant's supervisors that his chest pains started at work.

Pursuant to Section 13(a), claimant must file a claim for his work injury within one year of his awareness of the relationship between the injury and the employment.² *See, e.g., Newport News Shipbuilding & Dry Dock Co. v. Parker*, 935 F.2d 20, 24 BRBS 98(CRT) (4th Cir. 1991). Section 20(b) of the Act, 33 U.S.C. §920(b), provides a presumption that the claim was timely filed; to overcome the Section 20(b) presumption, employer must preliminarily establish that it complied with the requirements of Section

¹Apparently, there was no claim for medical benefits, which is not time-barred.

²Although the administrative law judge did not explicitly state the date claimant became aware that his heart attack was work-related, claimant does not challenge this omission and his brief implies a date of awareness in September 2008 when he was recuperating in the hospital from triple bypass surgery.

30(a). *Blanding v. Director, OWCP*, 186 F.3d 232, 33 BRBS 114(CRT) (2^d Cir. 1999). Section 30(a) provides, in pertinent part:

Within ten days from the date of any injury which causes loss of one or more shifts of work, or death or from the date that the employer has knowledge of a disease or infection in respect of such injury, the employer shall send to the Secretary a report [with details concerning the injury].

33 U.S.C. §930(a); *see also* 20 C.F.R. §§702.201-205. Section 30(f) provides that where employer has been given notice or has knowledge of any injury and fails to file the Section 30(a) report, the statute of limitations provided in Section 13(a) does not begin to run until such report has been filed. 33 U.S.C. §930(f); *see Nelson v. Stevens Shipping & Terminal Co.*, 25 BRBS 277 (1992); *Ryan v. Alaska Constructors, Inc.*, 24 BRBS 65 (1990). Thus, for Section 30(a) to apply, the employer or its agent must have formal notice of the injury or knowledge of the injury and its work-relatedness; the employer may overcome the Section 20(b) presumption with substantial evidence that it never gained knowledge or received notice of the injury for Section 30 purposes. *See Steed v. Container Stevedoring Co.*, 25 BRBS 210 (1991); *see also Stark v. Washington Star Co.*, 833 F.2d 1025, 20 BRBS 40(CRT) (D.C. Cir. 1987).

The administrative law judge found the tolling provision of Section 30(f) inapplicable since employer did not have notice or knowledge of the injury before the claim was filed in January 2010. Decision and Order at 16. Employer's First Report of Injury, LS-202, filed on February 25, 2010, states that it first gained knowledge of a work-related injury on February 17, 2010. EX 5. The administrative law judge discussed Ms. Gunthier's testimony that, at the hospital in September 2008, she had informed Ms. Bristow, employer's stockroom manager, that claimant's chest pains arose at work; however, Ms. Bristow and Ms. Allen, employer's stockroom foreman, testified that they were not informed by either claimant or Ms. Gunthier that claimant's chest pains began at work. Decision and Order at 15; *see* Tr. at 28-29, 33, 41-42, 51-52, 54-55. The administrative law judge noted that Ms. Bristow's testimony is consistent with: (1) an internal email Ms. Bristow sent on February 18, 2010 (to Monika Busby), stating that Ms. Gunthier had told her at the hospital that claimant "was at home taking a shower and did not feel well so he drove himself to the hospital and that he had a heart attack," EX 4 at C; and (2) the classification on October 16, 2008, by Aetna, employer's employee disability insurance carrier, of the 2008 heart attack as not work-related, EX 1 at G-J. The administrative law judge credited the corroborated testimony of Ms. Bristow and Ms. Allen over that of Ms. Gunthier. Decision and Order at 15, 17. The administrative law judge additionally found corroboration in that employer did not conduct an internal investigation until February 17, 2010. The administrative law judge therefore found that employer did not have knowledge of claimant's alleged work injury until the claim was filed and that the Section 13(a) statute of limitations was not tolled. As claimant filed his

claim more than one year after his injury, the administrative law judge concluded that the claim for compensation is barred.

The administrative law judge has the authority to make credibility determinations, and it is solely within his discretion to accept or reject all or any part of any testimony according to his judgment. *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 (2^d Cir. 1961); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). The Board will not interfere with credibility determinations unless they are “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).

In this case, the administrative law judge acted within his discretion in crediting the testimony of Ms. Bristow and Ms. Allen that they were not informed by Ms. Gunthier that claimant had chest pains at work prior to his heart attack, and the supporting documentation, to find that employer did not have knowledge of a work-related injury until after claimant filed his claim on January 25, 2010. *Simonds v. Pittman Mechanical Contractors, Inc.*, 27 BRBS 120 (1993), *aff’d sub nom. Pittman Mechanical Contractors, Inc. v. Director, OWCP*, 35 F.3d 122, 28 BRBS 89(CRT) (4th Cir. 1994); *see also Young v. Newport News Shipbuilding & Dry Dock Co.*, 45 BRBS 35 (2011). Therefore, as it is supported by substantial evidence, we affirm the administrative law judge’s findings that employer rebutted the Section 20(b) presumption, that the time for filing the claim was not tolled by Section 30(f), and that the claim for compensation is barred under Section 13(a). *See Stark*, 833 F.2d 1025, 20 BRBS 40(CRT); *Wendler v. American Red Cross*, 23 BRBS 408 (1990) (McGranery, J., dissenting); *Alston v. Safeway Stores, Inc.*, 19 BRBS 86 (1986).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge