BRB No. 04-0794

STEVE A. SCHETTER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ARMY AND AIR FORCE EXCHANGE SERVICE, DESC	)	DATE ISSUED: 06/14/2005
	)	
and	)	
	)	
CONTRACT CLAIMS SERVICE	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order – Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Steve A. Schetter, Lakeview, Ohio, *pro se.*

Gregory P. Sujack and Daniel L. Grant (Garofalo, Schreiber, Hart & Storm, Chartered), Chicago, Illinois, for employer/carrier.

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

PER CURIAM:

Claimant, appearing without legal representation, appeals the Decision and Order - Denial of Benefits (2003-LHC-1907) of Administrative Law Judge Daniel J. Roketenetz 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, 5 U.S.C. §8171 *et seq.* (the Act). In an appeal by a claimant without an attorney, we will review the findings of fact and conclusions of law of the administrative law judge to determine if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). If they are, they must be affirmed.

Claimant, a truck driver,[1] injured both knees when he slipped and fell on ice while exiting his truck on March 5, 2001. He continued to drive for the next five days until his return to his home in Ohio, when he first sought medical attention. Claimant returned to work five days later and requested a transfer to short haul work due to the condition of his knees and the serious illness of his mother. When informed that no such work was available, claimant resigned. For the next six months, claimant drove his own semi-truck on short hauls but quit work totally when his knee condition worsened. Employer paid temporary total disability benefits from November 6, 2001, through August 30, 2002. Claimant sought additional temporary total disability and medical benefits asserting that although his original injury has resolved he continues to suffer from reflex sympathetic dystrophy (RSD) which developed as a result of his work injury.[2]

In his Decision and Order, the administrative law judge found claimant was not entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption linking his alleged harm, RSD, to the work accident because claimant failed to establish that he has RSD. Accordingly, the administrative law judge denied benefits. Claimant appeals the denial of benefits. Employer responds, urging affirmance.

In establishing that an injury is causally related to his employment, claimant is aided by the Section 20(a) presumption, which provides a presumed causal nexus between the injury and the employment. In order to be entitled to the Section 20(a) presumption, however, claimant must establish a *prima facie* case by showing that he suffers a harm and either that a work-related accident occurred or that working conditions existed which could have caused that harm.[3] *See Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *Mackey v. Marine Terminals Corp.*, 21 BRBS 129 (1988); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). The administrative law judge found that claimant's work-related injury of March 5, 2001, had fully resolved and that claimant failed to demonstrate that he suffers from any infirmity at the present time.

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[1] Claimant's designated run as a truck driver was from Dayton, Ohio, to Oakland and Los Angeles, California, and back. HT at 21.

[2] Reflex Sympathetic Dystrophy is a sympathetic reflex, often occurring after trauma or surgery, in which blood vessels expand and fail to contract, resulting in swelling, tightness and hypersensitivity. EX 9.

[3] Once claimant establishes his *prima facie* case, he is entitled to invocation of the Section 20(a) presumption linking his harm to his employment. *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998).

We affirm the administrative law judge's finding that claimant is not entitled to the benefit of the Section 20(a) presumption as he failed to establish the harm element of his *prima facie* case. In concluding that claimant does not suffer from RSD or any other harm, the administrative law judge discussed all relevant evidence and provided rational reasons for choosing from among competing medical opinions. Decision and Order at 19-20. Additionally, the administrative law judge based his conclusion on the facts surrounding claimant's quitting work and a videotape of claimant's daily activities.

The administrative law judge gave greater weight to the opinions of Drs. Bowden and Vaziri than to that of Dr. Terebuh, the only physician to definitively diagnose RSD and to relate any supportive physical findings.[4] The administrative law judge found that Dr. Terebuh's conclusions relied heavily on the results of claimant's reported reduction in pain following a lumbar sympathetic block which is subjective in nature. Moreover, while Dr. Terebuh viewed the results of the nerve block as confirmation of his diagnosis, CX 1, Drs. Bowden and Vaziri opined that the procedure was a treatment, not a diagnostic tool, and that all patients would experience changes in body temperature following a block. EXs 9, 10. The administrative law judge also concluded that Dr. Terebuh's repeated use of the word "wonder" in linking objective findings to his diagnosis reflected an uncertainty in his findings.[5] Decision and Order at 23.

In contrast, Dr. Bowden testified that claimant exhibited none of the objective signs of RSD such as edema, hypersensitivity, mottled color, temperature change, degenerative deterioration, muscle atrophy or loss of movement. EX 9. Dr. Bowden also found nothing physically wrong with either of claimant's knees and released him to return to his usual employment. *Id.* Similarly, Dr. Vaziri found that his examination of claimant revealed no changes reflective of RSD. EX 10. Bone scans of the knees as well as an MRI support these physicians' opinions that claimant does not display any findings of RSD. EX 9 at 17; EX 10 at 39.

The administrative law judge gave determinative weight to the opinions of Drs. Bowden and Vaziri, finding them well-reasoned and supported by the objective test

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[4] Drs. Costin and Becker do not address the presence or absence of RSD. Dr. Costin, claimant's initial treating physician, wrote on July 12, 2001, that claimant's knee condition is related to his work injury but that he could return to his usual work without restriction; the possibility of RSD is noted in claimant's records on May 1, 2002. CX 4. Dr. Becker does not provide a specific diagnosis of claimant's condition. CX 5.

[5] For example, the administrative law judge reported that Dr. Terebuh stated he "wondered" if certain findings were the result of increased sympathetic outflow. Decision and Order at 23.

results. He gave less weight to the opinion of Dr. Terebuh, finding it heavily based upon claimant's subjective complaints. The administrative law judge then concluded that claimant is not a credible witness based upon discrepancies in his testimony regarding his reasons for leaving his job with this employer,[6] as well as videotapes, which the administrative law judge noted had some flaws, showing the claimant's behaving in a manner inconsistent with his complaints. Decision and Order at 20-21. The administrative law judge therefore concluded that claimant does not have RSD or any other physical infirmity.

The administrative law judge fully addressed and weighed the medical evidence of record, as well as claimant's testimony, and his finding that claimant does not have any current harm is rational and supported by substantial evidence. *Mackey*, 21 BRBS 129. It is the administrative law judge's prerogative to weigh the evidence, draw inferences, and make credibility assessments, and we decline to disturb his judgment as his findings are adequately anchored in the record. *See Pittman Mech. Contractors, Inc. v. Director, OWCP*, 35 F.3d 122, 28 BRBS 89(CRT) (4th Cir. 1994); *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). As claimant failed to establish an essential element of his claim for compensation, we affirm the administrative law judge's denial of benefits. *U.S. Industries*, 455 U.S. 608, 14 BRBS 631; *Bolden*, 30 BRBS 71.

[6] While claimant testified that he left his job as a truck driver with employer because of the increased pain in his knees, HT 32-33, the administrative law judge found that employment records support the testimony of claimant's supervisor, David Watkins, that claimant quit because his request to become a single driver could not be granted. He had made the request several months before the accident, in order to be closer to his ill mother. HT at 93-95.

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge