BRB No. 11-0680

FRANK MYERS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
LOGISTEC CONNECTICUT, INCORPORATED	)	DATE ISSUED: 06/15/2012
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

Gerald R. Rucci, New London, Connecticut, for claimant.

Peter D. Quay, Taftville, Connecticut, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2009-LHC-01844, 2010-LHC-00461) of Administrative Law Judge Jonathan C. Calianos 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. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant worked for employer for approximately ten years; for the first five years, he worked as a laborer and thereafter as a heavy equipment operator. Tr. at 40, 44-45. On December 14, 2007, claimant worked his usual shift from 7 a.m. to 3 p.m. *Id.* at 33, 67. During his first hour of work and periodically throughout the workday, claimant manually stacked and bundled lumber, a job that required him to lift boards weighing up to 30 pounds each. *Id.* at 33, 62, 67-69, 76. He spent the rest of his time using a forklift to load bundles of lumber onto trucks, estimating that he loaded 18 trucks that day.[1] *Id.* at 70-71, 73-74. Claimant testified that during the workday he experienced fatigue, clamminess or cold sweats, and a needle-like sensation in his hands, but thought he was getting a cold or the flu. *Id.* at 35-36, 77. Claimant left work at 3 p.m. and arrived home about ten minutes later. *Id.* at 33, 34, 85. Immediately upon his arrival home, claimant's wife asked him to carry boxes of motorcycle parts up to the second floor of the house. *Id.* at 34-35, 85-86. He made two trips upstairs, each time carrying a box weighing 30 to 40 pounds. *Id.* at 35, 86-87. After the second trip, claimant felt heavy pressure on his chest, tingling in his hands, and started sweating, and his wife observed that he was pale. *Id.* at 35, 37, 88. His wife took him to the local hospital's emergency room. *Id.* at 36, 37, 77-78. Claimant remained in the hospital for four days, where he was seen by Dr. Fazio, a cardiologist, and was diagnosed with an acute coronary syndrome and a myocardial infarction. *Id.* at 38; CX 1; EX 10A at 6, 8. On February 27, 2008, Dr. Fazio, who had become claimant's treating cardiologist, assigned work restrictions and instructed claimant not to return to his usual longshore job. Tr. at 41; EX 10A-Ex 1.

Claimant filed two claims for compensation under the Act, which were consolidated by the administrative law judge in an Order dated January 22, 2010. ALJXs 5, 7. The first claim, 2009-LHC-01844, is for cumulative trauma to claimant's right knee and back sustained through December 14, 2007, claimant's last day of employment with employer. *See* ALJXs 1, 5, 6, 9. The second claim, 2010-LHC-00461, alleges that claimant sustained a heart attack as a result of the heavy labor he performed for employer.[2] *See* ALJXs 3, 5.

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[1]Claimant operated a Hyster, which is a five-ton forklift that has 22-inch tires with no suspension and has five 12-inch steps up to the cab. Tr. at 24, 42, 66. Claimant estimated that he climbed in and out of the cab one hundred times throughout the workday while loading lumber onto trucks. Before the bundles of lumber could be loaded with the forklift onto the trucks, claimant was required to create a platform on each truck bed; this entailed manually placing boards measuring either four or eight feet in length onto the truck beds. *Id.* at 24-26, 70-75, 89-90.

[2]Employer disputed claimant's claim that his heart attack was causally related to his employment. ALJXs 4, 6, 11. Employer ultimately stipulated to a causal relationship between claimant's knee injury and his employment and paid medical benefits for that injury, including arthroscopic surgery performed on March 3, 2010. ALJX 11; EX 6; Tr.

In his Decision and Order, the administrative law judge found that claimant is entitled to invocation of the Section 20(a) presumption, 33 U.S.C. §920(a), as claimant established that he suffered a heart attack and that his working conditions for employer could have caused this harm. The administrative law judge further found that employer did not produce substantial evidence to rebut the Section 20(a) presumption; however, assuming, *arguendo,* that the presumption was rebutted, the administrative law judge considered the record as a whole and determined that claimant established a causal connection between his heart attack and his employment. The administrative law judge further found that claimant is unable to resume his usual employment duties with employer, and that employer failed to establish the availability of suitable alternate employment. Accordingly, the administrative law judge awarded claimant ongoing temporary total disability benefits from December 15, 2008. 33 U.S.C. §908(b).

On appeal, employer contends that the administrative law judge erred in finding that it failed to present evidence sufficient to rebut the Section 20(a) presumption and in alternatively finding, based on his consideration of the evidence as a whole, that claimant's heart condition is work-related. Employer also challenges the administrative law judge's finding that it did not establish the availability of suitable alternate employment. Claimant responds, urging affirmance.

We first address employer's assertions that the administrative law judge erred in finding that the Section 20(a) presumption was not rebutted and in ultimately determining that claimant's cardiac condition is causally related to his employment. Once, as here, claimant establishes his prima facie case, Section 20(a) applies to relate the claimant's harm to his employment. Employer can rebut this presumption by producing substantial evidence that his injury is not related to his employment. *Rainey v. Director, OWCP*, 517 F.3d 632, 634, 42 BRBS 11, 12(CRT) (2d Cir. 2008); *American Stevedoring, Ltd. v. Marinelli,* 248 F.3d 54, 65, 35 BRBS 41, 49(CRT) (2d Cir. 2001). When aggravation of a pre-existing condition is at issue, employer must produce substantial evidence that work events neither directly caused the injury nor aggravated the pre-existing condition. *Rainey,* 517 F.3d at 636, 42 BRBS at 13(CRT). If a work-related injury aggravates, exacerbates, accelerates, contributes to, or combines with a pre-existing condition, the

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at 16. At the hearing, employer's counsel stated that employer was still investigating the claim for a back injury. Tr. at 16-17; *see also* Decision and Order at 6 n.1, 10-11 and n.2.

entire resultant condition is compensable.[3] *Id.; see also Marinelli*, 248 F.3d at 64-65, 35 BRBS at 49(CRT). If employer rebuts the presumption, it no longer controls and the issue of causation must be resolved on the evidence of record as a whole, with claimant bearing the burden of persuasion. *Rainey*, 517 F.3d at 634, 42 BRBS at 12(CRT); *Marinelli*, 248 F.3d at 65, 35 BRBS at 49(CRT); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

In this case, employer challenges the administrative law judge's finding that the opinions of Drs. Bradbury and Gaeta are insufficient to rebut the Section 20(a) presumption. In his consideration of invocation of the Section 20(a) presumption, the administrative law judge found claimant to be a credible witness and accepted his testimony that while performing physically demanding work for employer on December 14, 2007, he experienced symptoms including fatigue, clamminess and tingling in his hands. Decision and Order at 14. In addressing rebuttal, the administrative law judge found that Dr. Bradbury's opinion does not constitute substantial evidence for purposes of establishing rebuttal of the Section 20(a) presumption. *Id.* at 16. Specifically, the administrative law judge noted that Dr. Bradbury's statements in his report and deposition testimony, that claimant's heart attack commenced at home, were based on medical records indicating that the onset of claimant's chest pain occurred at home. *Id.; see* EXs 3A; 6A at 12-14, 16, 22-23, 25. The administrative law judge, however, found that Dr. Bradbury equivocated when questioned regarding the symptoms of fatigue, cold sweats and tingling in the hands that, according to claimant's credited testimony, he experienced during the workday. In this regard, the administrative law judge cited Dr. Bradbury's testimony that these collateral symptoms could be an indication of a cardiac event and that although the typical presentation of symptoms in a heart attack involves an onset of chest pain followed by collateral symptoms including fatigue, sweating and tingling, in some patients these collateral symptoms precede the onset of chest pain. Decision and Order at 16; *see* EX 6A at 30-32. The administrative law judge thus determined that Dr. Bradbury's opinion was too equivocal to rebut the Section 20(a) presumption. Decision and Order at 16. As the administrative law judge expressly accepted claimant's testimony that he experienced symptoms during the workday, which Dr. Bradbury conceded could be indicative of a cardiac event, the administrative law judge rationally determined that Dr. Bradbury's report and testimony, considered in their

[3]A heart attack suffered in the course and scope of employment is compensable even though the employee may have suffered from a preexisting cardiac condition. *See Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 2000); *Marinelli*, 248 F.3d 54, 35 BRBS 41(CRT). The focus should be on the heart attack which constitutes the ultimate injury, not the underlying heart disease. *Gooden*, 135 F.3d at 1069, 32 BRBS at 61(CRT). Accordingly, a heart attack which is precipitated by the conditions of an employee's employment is compensable under the Act. *Id.; Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968)(en banc).

entirety, are not substantial evidence for the purposes of rebutting the Section 20(a) presumption. *See Rainey*, 517 F.3d 632, 42 BRBS 11(CRT); *see also Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60(CRT) (1st Cir. 2004).

Similarly, the administrative law judge found that Dr. Gaeta's report and deposition testimony, considered as a whole, were too ambiguous to constitute substantial evidence for rebuttal purposes. Decision and Order at 16-17. The administrative law judge cited Dr. Gaeta's report in which the doctor referenced claimant's hospital records which indicated that his symptoms began while lifting motorcycle parts at home. *Id.* at 16; EX 4A. The administrative law judge observed that, in his deposition testimony, Dr. Gaeta agreed that the symptoms claimant experienced at work could be the precursor to a heart attack. Decision and Order at 16; *see* EX 8A at 22-23. As further noted by the administrative law judge, however, Dr. Gaeta stated, in essence, that the strenuous physical activity claimant regularly performed at work could not have triggered his heart attack.[4] Decision and Order at 16-17; EX 8A at 18-19, 26-27. Observing that the exertional requirements of claimant's workplace activities were similar to his activity at home lifting boxes of motorcycle parts, the administrative law judge found Dr. Gaeta's testimony that claimant's normal workplace exertion could not have triggered his heart attack inconsistent with the doctor's previous statements in his written report associating the onset of claimant's symptoms with his physical activity at home.[5] Decision and Order at 16-17; *see* EX 4A. In view of these inconsistencies between Dr. Gaeta's report and deposition testimony, the administrative law judge rationally determined that Dr. Gaeta's opinion is not sufficiently reliable to rebut the Section 20(a) presumption. *See Rainey*, 517 F.3d 632, 42 BRBS 11(CRT); *see also Preston*, 380 F.3d 597, 38 BRBS 60(CRT). As employer has raised no further arguments regarding rebuttal, we affirm the administrative law judge's finding that the Section 20(a) presumption was not rebutted.

As the Section 20(a) presumption is not rebutted, claimant's heart attack is work-related as a matter of law. *Obadiaru v. ITT Corp.*, 45 BRBS 17 (2011). Nonetheless, employer has not established error in the administrative law judge's weighing of the evidence on causation based on the record as a whole; consequently, we also affirm the

[4]Dr. Gaeta explained his opinion, which the doctor himself characterized as "a little controversial," that an individual adapts to vigorous physical activity which he regularly performs and, thus, such activity will not trigger a heart attack; only when an individual does not ordinarily perform strenuous activity can it trigger a heart attack. *See* EX 8A at 18-19, 26-27.

[5]On deposition, Dr. Gaeta testified that if, in fact, claimant's activity carrying boxes of motorcycle parts upstairs was comparable to his usual work activity, then the activity at home would not have been a precipitating event for claimant's heart attack. EX 8A at 25.

administrative law judge's alternative finding that claimant established by a preponderance of the evidence that his cardiac condition is related to his work for employer. Decision and Order at 18-20; *see Marinelli*, 248 F.3d 54, 35 BRBS 41(CRT). Contrary to employer's contentions on appeal, the administrative law judge rationally credited claimant's testimony regarding the symptoms he experienced at work. Decision and Order at 14, 17. Employer's challenge to the administrative law judge's crediting of claimant's testimony rests on the absence of a reference to workplace symptoms in claimant's medical records. The administrative law judge, however, addressed this issue and determined that the absence of this history in claimant's hospital records does not establish that claimant's workplace symptoms did not, in fact, occur.[6] *Id.* at 17-18. It is well-established that the credibility findings of an administrative law judge are entitled to considerable deference and must be accepted by the Board unless they are patently unreasonable. *See Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042, 31 BRBS 84, 89(CRT) (2d Cir. 1997); *Sealand Terminals, Inc. v. Gasparic*, 7 F.3d 321, 28 BRBS 7(CRT) (2d Cir. 1993). In this case, as the administrative law judge's determination to credit claimant's testimony is not patently unreasonable, it is affirmed. *Id.*

We further reject employer's assignment of error to the administrative law judge's consideration of the opinion of claimant's treating cardiologist, Dr. Fazio. The fact that Dr. Fazio's opinion regarding causation was premised on the assumption that claimant experienced symptoms during the workday does not undermine the doctor's opinion, as the administrative law judge rationally found, based on claimant's credited testimony, that claimant did experience symptoms at work.[7] *See Cooper/T. Smith Stevedoring Co., Inc. v. Liuzza*, 293 F.3d 741, 749, 36 BRBS 18, 23(CRT) (5th Cir. 2002); *see also Pietrunti*, 119 F.3d at 1043, 31 BRBS at 90(CRT). Moreover, the administrative law judge reasonably construed Dr. Fazio's report and deposition testimony as reflecting the doctor's opinion that the physically demanding work performed by claimant for employer contributed to and accelerated his heart attack. *See* CX 2; EX 10A at 14, 22. *See generally Gasparic*, 7 F.3d at 323, 28 BRBS at 8(CRT). In addition, the administrative law judge rationally found Dr. Fazio's opinion to be supported by Dr. Bradbury's

[6]As noted by the administrative law judge, both Drs. Fazio and Bradbury testified as to the difficulties encountered by consulting cardiologists in obtaining complete, accurate and consistent histories from patients. Decision and Order at 9; EXs 6A at 14-15; 10A at 15-17. The administrative law judge further noted the testimony of Dr. Gaeta, employer's medical expert, that the consulting cardiologist usually is not concerned about learning when a patient's symptoms commenced as it would not be relevant to the consultation. Decision and Order at 9; EXs 4A; 8A at 9-10, 12-13.

[7]The administrative law judge reiterated that both of employer's medical experts, Drs. Bradbury and Gaeta, acknowledged that symptoms of fatigue, cold sweats and tingling in the hands could be precursors for a subsequent heart attack. Decision and Order at 19; *see also id.* at 7, 17; EXs 6A at 29-32; 8A at 22-23.

acknowledgment that claimant's work activities could have triggered a cardiac event. Decision and Order at 8, 19-20; *see* EX 3A at 2; *Services Employees Int'l, Inc. v. Director, OWCP [Barrios]*, 595 F.3d 447, 455, 44 BRBS 1, 6(CRT) (2d Cir. 2010). As previously discussed with respect to rebuttal of the Section 20(a) presumption, the administrative law judge found that Dr. Gaeta's opinion does not withstand scrutiny in light of the doctor's inconsistent statements regarding the issue of whether routinely-performed physical activities can trigger a heart attack. Decision and Order at 20; *see also id.* at 8-9, 16-18; EXs 4A; 8A at 18-19, 25-27. Thus, in weighing the evidence as a whole, the administrative law judge reasonably accorded greater weight to Dr. Fazio's opinion, as supported by Dr. Bradbury, than to the contrary opinion of Dr. Gaeta. Decision and Order at 20. Accordingly, as employer has not established error in the administrative law judge's weighing of the evidence based on the record as a whole, we affirm as well his alternative finding that claimant established by a preponderance of the evidence that his employment duties with employer contributed to his heart attack. *See Barrios,* 595 F.3d 447, 44 BRBS 1(CRT); *Marinelli,* 248 F.3d 54, 35 BRBS 41(CRT); *see also Hawaii Stevedores, Inc. v. Ogawa,* 608 F.3d 642, 44 BRBS 47(CRT) (9th Cir. 2010).

Employer next challenges the administrative law judge's finding that employer did not establish the availability of suitable alternate employment. Once, as here, claimant establishes his inability to perform his usual work, the burden shifts to employer to establish the availability of suitable alternate employment. *Pietrunti,* 119 F.3d at 1041, 31 BRBS at 88(CRT); *Palombo v. Director, OWCP*, 937 F.2d 70, 73, 25 BRBS 1, 5(CRT) (2nd Cir. 1991). In order to meet this burden, employer must demonstrate that within the geographic area where claimant resides, jobs are available which claimant, by virtue of his age, education, work experience and physical restrictions can perform and which he can compete for and reasonably secure. *Id.; see also New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981). In ascertaining the suitability of the jobs identified by employer, the administrative law judge must compare the requirements of the positions with the claimant's physical restrictions and vocational factors. *LaRosa v. King & Co.*, 40 BRBS 29, 30-31 (2006); *Hernandez v. National Steel & Shipbuilding Co.,* 32 BRBS 109 (1998). If the employer establishes the availability of suitable alternate employment, the claimant is, at most, partially disabled, unless he establishes that he diligently tried but was unable to obtain such employment. *Pietrunti*, 119 F.3d at 1041, 31 BRBS at 88(CRT); *Palombo,* 937 F.2d at 73, 25 BRBS at 5(CRT).

In his letter dated February 27, 2008, Dr. Fazio outlined the restrictions he placed on claimant following claimant's myocardial infarction. Dr. Fazio stated that claimant has limitations: no lifting of more than thirty pounds; no pushing or pulling; no climbing on a consistent basis; and barring exposure to extremes in temperature. *See* EX 10A at 10-14 and Ex 1. Employer's vocational expert, Stephanie Farland, identified seven positions that she opined are suitable for claimant in light of the restrictions assigned by

Dr. Fazio. *See* EX 9A at 10-11 and Ex 3. In addressing Ms. Farland's labor market survey, the administrative law judge found that employer failed to demonstrate that six of the seven identified positions were suitable and/or were available for claimant. Decision and Order at 24-27. The administrative law judge found that although the remaining position, a cashier position at a Michael's arts and crafts store, was both suitable and available, this single minimum wage position was legally insufficient to satisfy employer's burden of establishing the availability of suitable alternate employment. *Id.* at 27-29.

Employer has failed to demonstrate error in the administrative law judge's determination that employer did not establish the availability of suitable alternate employment. First, the administrative law judge's finding that two of the positions identified in Ms. Farland's labor market survey, an assembler job with Infini Staff and a medical assembler job with Kelly Services, are not suitable for claimant is affirmed as unchallenged on appeal. Decision and Order at 25-26; Emp. Petition for Review and brief at 17-18. Next, in determining that the parking enforcement position is not suitable for claimant, the administrative law judge rationally found that this job, which required the ability to work outdoors in New London, Connecticut, is inconsistent with Dr. Fazio's restriction that claimant avoid exposure to extreme temperatures. Decision and Order at 27; EX 10A-Ex 1; *see generally Uglesich v. Stevedoring Services of America*, 24 BRBS 180, 183-184 (1991). The administrative law judge also found that employer failed to establish that the bicycle assembler job at Toys R Us falls within claimant's thirty-pound lifting restriction. Decision and Order at 27. Noting that the labor market survey indicates that the *Dictionary of Occupational Titles* (DOT) classifies the job of bicycle assembler (DOT #806.684-014) as "light," employer avers that the administrative law judge erroneously rejected this position on the basis that the lifting requirements were not identified. Under appropriate circumstances, an administrative law judge may rely on standard job descriptions, including the DOT designation of a job as "light," to flesh out the general physical requirements of a job relied upon by an employer to establish suitable alternate employment. *See Bunge Corp. v. Carlisle*, 227 F.3d 934, 34 BRBS 79(CRT) (7th Cir. 2000); *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). On the particular facts of this case, however, where the bicycle assembler job is performed in a retail store setting, it was not unreasonable for the administrative law judge to decline to give dispositive weight to the general DOT classification of bicycle assembly work as "light." Thus, the administrative law judge rationally found that in view of employer's failure to provide sufficient information regarding the actual physical demands of the position at Toys R Us, he was unable to determine whether in fact this specific job was compatible with claimant's lifting restrictions. *See Carlisle*, 227 F.3d 934, 34 BRBS 79(CRT); *LaRosa*, 40 BRBS 29; *Hernandez*, 32 BRBS 109; *see generally Pietrunti*, 119 F.3d 1035, 31 BRBS 84(CRT). We therefore reject employer's assertion that the bicycle assembler job should be deemed suitable for claimant.

Having rejected the assembler, parking enforcement, and bicycle assembler jobs as unsuitable, the administrative law judge addressed the issue of whether employer established that the remaining jobs were available to claimant during the relevant time period. The standard for establishing suitable alternate employment requires that jobs be available during the "critical period" when the claimant is able to work. *Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 21 BRBS 10(CRT) (4th Cir. 1988); *Martiniano v. Golten Marine Co.*, 23 BRBS 363 (1990). The Board has held that where an employer identifies one specific job opening and also presents credited testimony that similar jobs were available in the community during the relevant time period, this evidence, taken together, is sufficient to meet employer's burden of establishing suitable alternate employment. *Berezin v. Cascade General, Inc.*, 34 BRBS 163 (2000).[8] Where, however, employer identifies only one specific job opening and proffers neither evidence of the general availability of jobs which claimant could perform nor evidence of a significant likelihood of claimant's obtaining the specific position identified, employer's burden of establishing suitable alternate employment is not met. *Holland v. Holt Cargo Systems, Inc.*, 32 BRBS 179 (1998).

Here, the administrative law judge determined that employer failed to establish that the dispatcher positions with Groton Cab and Yellow Cab were actually available at the time the labor survey was conducted. In this regard, the administrative law judge noted that the labor market survey states that these two employers "hire as needed," EX 9A-Ex 3, and Ms. Farland conceded in her deposition testimony that there might not be actual openings with these employers. EX 9A at 19-20; Decision and Order at 25. The administrative law judge also addressed Ms. Farland's statements regarding the general availability of employment opportunities similar to the seven positions identified in her labor market survey in the period following February 2008, when claimant was released to work with restrictions. Decision and Order at 24-25. The administrative law judge observed that although Ms. Farland indicated that these kinds of jobs are routinely available in the labor market, she also stated that the employers listed in the labor market survey were unable to recall whether they hired for the identified positions in 2008. *Id.; see* EX 9A at 12-13 and Ex 3. Based on this testimony, the administrative law judge rationally found that the record does not establish that Groton Cab and Yellow Cab had actual openings for dispatchers available at any point during the period claimant was able to work. Thus, the administrative law judge appropriately distinguished *Berezin*, 34 BRBS at 163, in which an actual job opening existed, from this case in which actual dispatcher openings were not shown to have existed during the relevant time period. Decision and Order at 25.

[8]In *Berezin*, 34 BRBS at 166, the vocational experts for both parties testified that jobs similar to the specific job identified were generally available in the community.

In this case, then, the only suitable job that was shown to be open and available to claimant during the time claimant was able to work was the cashier position at Michael's. The administrative law judge determined that this single, minimum-wage position is insufficient to meet employer's burden of establishing suitable alternate employment because employer did not provide sufficient evidence that claimant is likely to get this job because of either labor market conditions or claimant's special qualifications. Decision and Order at 27-29 and n.7. Unlike the factual situation present in *Berezin*, in which the administrative law judge credited the testimony of both parties' vocational experts that jobs similar to the one specific job opening identified by the employer were available in the community, the administrative law judge here declined to credit Ms. Farland's rather cursory testimony regarding the general availability of jobs similar to the seven positions identified in her labor market survey, finding her testimony insufficient to establish that the single cashier position was in fact available to claimant. Decision and Order at 24-25, 28-29. The credibility of the parties' witnesses, including vocational experts, is a matter to be resolved by the administrative law judge. *See DM & IR Ry. Co. v. Director, OWCP [Fransen]*, 151 F.3d 1120, 32 BRBS 188(CRT) (8th Cir. 1998). We cannot say that the administrative law judge's decision to reject Ms. Farland's testimony regarding the general availability of jobs was irrational. *See generally Gasparic*, 7 F.3d 321, 28 BRBS 7(CRT). In the absence of credible evidence regarding the general availability of jobs which claimant could perform or evidence that the cashier job at Michael's required a specific skill that claimant possessed that would have given him a reasonable likelihood of securing the position, the administrative law judge properly found that the sole cashier position at Michael's is insufficient to satisfy employer's burden. *Berezin*, 34 BRBS 163; *Holland*, 32 BRBS 179. As the administrative law judge's finding that employer failed to establish the availability of suitable alternate employment is rational, supported by substantial evidence and in accordance with law, it is affirmed.[9] We therefore affirm the consequent award of total disability compensation to claimant.

[9]As claimant's duty to diligently seek employment does not arise until employer successfully establishes the availability of suitable alternate employment, we need not address employer's contention that claimant did not exhibit diligence in seeking alternate work. *See Palombo*, 937 F.2d at 75, 25 BRBS at 9(CRT); *Roger's Terminal & Shipping Corp. v. Director, OWCP*, 784 F.2d 687, 18 BRBS 79(CRT) (5th Cir.), *cert. denied*, 479 U.S. 826 (1986).

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge