BRB No. 02-0479

EDDIE L. MINIX	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TDI HALTER, INCORPORATED	)	DATE ISSUED: MAR 4, 2003
	)	
and	)	
	)	
RELIANCE NATIONAL INDEMNITY	)	
	)	
	)	DECISION and ORDER
Employer/Carrier-Respondents	)	

Appeal of the Decision and Order Denying Benefits of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

Eddie L. Minix, Port Arthur, Texas, *pro se.*

Dennis J. Sullivan (Stepp & Sullivan, P.C.), Houston, Texas, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Benefits (2000-LHC-851) of Administrative Law Judge Clement J. Kennington rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq*. (the Act). In an appeal by a claimant without representation by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law to determine whether they are rational, supported by substantial evidence, and in accordance with law; if so, they must be affirmed. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.,* 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, a pipefitter helper for employer, alleges that a specific work incident occurred on June 10, 1999, which caused his current back and neck conditions. Specifically, claimant testified that he felt pain in his back when, while entering a porthole feet-first, he slipped off of a ladder and was thereafter compelled to climb back up while holding onto a rail. Claimant completed his ten-hour shift, and thereafter worked complete shifts on the following two days. *See* Tr. at 66-67. On June 14, 1999, claimant went to a local emergency room. Although he testified he complained of back pain at that time, Park Place Hospital emergency room records document only that claimant was diagnosed with sinusitis and a respiratory infection after he reported symptoms of headaches, a sore throat and fever. *See* Emp. Ex. 1 at 2 – 21. Claimant thereafter visited his family physician, Dr. Reyes, on June 14, 15 and 17, 1999, and was treated for an impacted left ear canal. *See* Emp. Ex. 1 at 26-27. On June 22, 1999, during his fourth visit with Dr. Reyes, claimant reported back pain, and his physician ordered x-rays. *See* Emp. Ex. 1 at 29. On July 2, 1999, claimant filed an accident statement with employer documenting his alleged fall into the porthole and his resulting back complaints. See Emp. Ex. 10. Ultimately, claimant was diagnosed with both a congenital spinal defect and cervical disc herniations for which he has undergone surgery and epidural steroid injections.

In his Decision and Order, the administrative law judge determined that while claimant had established multiple harms, specifically lumbar and cervical spinal problems, he failed to establish that he suffered either a specific accident that occurred in the course of his employment or that a condition at work existed which could have caused this harm. Accordingly, having found that claimant failed to establish his *prima facie* case, the administrative law judge concluded that claimant was not entitled to compensation for his current back and neck conditions, and he denied the claim.

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[1] At the formal hearing, claimant acknowledged his awareness of employer's policy requiring employees to immediately report the occurrence of an accident. *See* Tr. at 64-65, 82-83.

[2] On July 30, 1999, following a diagnosis of cervical disc herniations, claimant filed a second accident statement with employer averring that this condition was a result of both his fall into the porthole and his hitting his head on pipes. *See* Emp. Ex. 11. *See also* Emp. Ex. 9 at 3 (Claimant's LS-203, First Report of Injury, wherein claimant avers that his lumbar condition is the result of his fall and his cervical condition results from bumping his head).

Claimant, without the benefit of counsel, has filed a letter with the Board appealing the administrative law judge's denial of his claim. Employer responds, urging affirmance.

Claimant on appeal challenges the sole issue addressed by the administrative law judge below, to wit, the administrative law judge's determination that claimant did not establish the occurrence of a work-related accident on June 10, 1999, or that the alleged working condition existed which could have caused his present medical conditions. As the administrative law judge committed no error in weighing the evidence, we affirm his decision.

Claimant has the burden of proving the existence of an injury or harm and that a work-related accident occurred or that working conditions existed which could have caused the harm, in order to establish a *prima facie* case. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Bolden v. G.A.T.X. Terminals Corp.,* 30 BRBS 71 (1996); *Stevens v. Tacoma Boatbuilding Co.,* 23 BRBS 191 (1993); *Kelaita v. Triple A Machine Shop,* 13 BRBS 326 (1981). It is claimant's burden to establish each element of his *prima facie* case by affirmative proof. *See Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT)(1994).

In the instant case, claimant asserted that his back problems are due to a work incident which occurred on June 10, 1999, when he slipped while entering a porthole, or to his repeatedly striking his head on pipes. The administrative law judge, after discussing claimant's testimony at length, discredited that testimony in concluding that a specific work incident did not occur and that working conditions did not exist which could have caused his

[3] As the administrative law judge's finding that claimant established harms to the lumbar and cervical regions of his body is not challenged on appeal, that finding is affirmed.

present medical conditions. *See U.S. Industries*, 455 U.S. 608, 14 BRBS 631. In rendering this determination, the administrative law judge specifically noted that claimant set forth inconsistent dates regarding the occurrence of his fall into a porthole, that claimant did not report back pain to a physician until June 22, 1999, that claimant did not report the alleged work-incident to employer until July 2, 1999, and that claimant did not relate a work-incident to the four physicians whom he saw immediately following the alleged incident. *See* Decision and Order at 9-10, 14-15.

Based upon these findings, the administrative law judge concluded that claimant failed to establish the occurrence of the events he alleged as the cause of his back condition. We affirm the administrative law judge's determination because it is rational, supported by substantial evidence, and in accordance with law. *See O'Keeffe,* 380 U.S. 359. It is well-established that, in arriving at his decision, the administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence. *See Calbeck v. Strachan Shipping Co.,* 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). Accordingly, the administrative law judge's

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[4] Contrary to the administrative law judge's statement that in a traumatic injury case a claimant must show a specific traumatic event, Decision and Order at 17, a claimant in a traumatic injury case may establish the second prong of his *prima facie* case by proving the existence of general working conditions, such as repetitive lifting, bending or climbing, which could have caused the harm alleged. *See Gardner v. Director, OWCP,* 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981). *See generally LeBlanc v. Cooper/T. Smith Stevedores, Inc.,* 130 F.3d 157, 31 BRBS 195(CRT)(5th Cir. 1997); *Quinones v. H.B. Zachery, Inc.,* 32 BRBS 6 (1998), *aff'd in pertinent part,* 206 F.3d 474, 34 BRBS 23 (CRT)(5th Cir. 2000). In the instant case, however, claimant, who was represented by counsel before the administrative law judge, based his claim on the assertion that specific work events occurred on or about June 10, 1999, which caused his present medical conditions. *See* Emp. Exs. 9 at 1; 10; 11. As *U.S. Industries* holds that the Section 20(a) presumption attaches only to the stated claim, on the facts presented the administrative law judge committed no error in focusing on whether the specific work incidents alleged in fact occurred.

[5] Dr. Williamson's records indicate that claimant related his condition to a fall which occurred on June 7, 1999. *See* Emp. Ex. 1 at 66-68. Claimant's July 2, 1999, accident statement to employer indicated a fall sometime between June 10 and 13, 1999, while claimant's LS-203 stated that the exact date of the alleged incident was unclear. *See* Emp. Exs. 10; 9 at 1.

credibility determinations are not to be disturbed unless they are 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); *see also Bolden,* 30 BRBS 71; *Wheeler v. Interocean Stevedoring, Inc.,* 21 BRBS 33 (1988). In the instant case, the administrative law judge considered, *inter alia*, the inconsistencies in claimant's statements regarding the date on which his specific work-incident was said to have occurred, his failure to report a back or neck problem despite multiple medical treatments for other conditions until June 22, 1999, and his failure to timely inform employer of his alleged work incident, and concluded that claimant did not establish that the alleged work events occurred. On the basis of the record before us, the administrative law judge's decision to discredit the testimony of claimant is neither inherently incredible or patently unreasonable. Accordingly, we affirm the administrative law judge's determination that claimant failed to establish that the events alleged to have caused his present back and neck conditions in fact occurred. As claimant has failed to establish an essential element of his *prima facie* case, his claim for benefits was properly denied. *See U.S. Industries*, 455 U.S. 608, 14 BRBS 631; *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27 (CRT)(9th Cir. 1988); *Bolden*, 30 BRBS 71.

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[6] Claimant testified that he did not inform the Park Place Hospital emergency room personnel on June 14, 1999, or on July 7-8, 1999 when he underwent multiple MRIs, that he had been injured at work. *See* Tr. at 76-77, 98. Claimant additionally acknowledged that he did not inform Dr. Reyes, in June 1999, Dr. Fleming on June 29, 1999, or Dr. Johnson on July 6, 1999, that he had injured himself while working for employer. *See* Tr. at 80-81, 96-98.

[7] In considering the credibility of claimant's testimony, the administrative law judge additionally noted that the Park Place Hospital medical records dated June 14, 1999, do not support claimant's assertion that he complained of back pain during his visit to the hospital's emergency room on that date, that contrary to claimant's testimony the record reflects that Dr. Reyes, on June 22, 1999, did recommend that claimant undergo x-rays, and that although claimant sought permanent total disability under the Act, he informed the state unemployment office that he was capable of working without restrictions during the period of November 1999 to May 2000. *See* Decision and Order at 15.

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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PETER A. GABAUER, Jr.
Administrative Appeals Judge