BRB No. 05-0631

JOHN DOUCET	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CHET MORRISON CONTRACTORS, INCORPORATED	)	DATED ISSUED: MAR 30 2006
	)	
and	)	
	)	
ZURICH AMERICAN INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

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

Mark Zimmerman, Lake Charles, Louisiana, for claimant.

Robert S. Reich and Lawrence R. Plunkett, Jr. (Reich, Meeks & Treadaway), Metaire, Louisiana, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2004-LHC-1607) of Administrative Law Judge C. Richard Avery 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 Outer Continental Shelf Lands Act, 43 U.S.C. §1331 *et seq.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law 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).

Claimant alleges that his employment for employer as a rigger in August 2002 caused his current disabling condition. Specifically, claimant testified that he first experienced swelling and a burning sensation on his hands while working for employer on an offshore oil platform identified as High Island 179, in early August 2002. After returning to the mainland upon the conclusion of his work assignment, claimant's swelling subsided. On August 16, 2002, claimant commenced a 10-day assignment for employer on an offshore oil platform, identified as High Island 565, during which time he worked up to fourteen-hour days**.** EX 7. While on High Island 565, claimant testified that he experienced swelling in both his ankles and hands, as well as blisters on his hands. After informing his supervisor of these conditions, claimant was returned to the mainland on August 25, 2002, and he has not returned to work since that time. In May 2003, claimant underwent treatment with Dr. Olivier, who diagnosed claimant as having porphyria cutanea tarda (PCT). Claimant filed a claim for benefits under the Act on July 31, 2003.

In his Decision and Order, the administrative law judge initially found that, assuming timely notice of his injury was never given by claimant to employer, such failure was excused pursuant to Section 12(d), 33 U.S.C. §912(d), of the Act. The administrative law judge next invoked the Section 20(a) presumption of causation, found that employer failed to rebut that presumption, and concluded that claimant's present conditions are related to his employment with employer. Because restrictions were not placed on claimant until October 19, 2004, and employer did not present any evidence of suitable alternate employment, the administrative law judge awarded claimant ongoing temporary total disability benefits commencing October 19, 2004.

On appeal, employer argues that the administrative law judge erred in finding that claimant sustained a compensable injury that was related to his employment on an offshore oil platform.[1] Claimant responds, urging affirmance of the administrative law judge's decision in its entirety.

Claimant bears 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); *Konno v. Young Bros., Ltd.,* 28 BRBS 57 (1994). A harm has been defined as something that has gone wrong with the human frame, while an accident has been defined as an exposure, event or episode. *Perry v. Carolina Shipping Co.,* 20 BRBS 90 (1987). 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). If these two elements are established, the Section

[1] We deny employer's request for oral argument in this case. 20 C.F.R. §§802.305, 802.306.

20(a), 33 U.S.C. §920(a), presumption applies to link claimant's injury or harm with his employment. *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991). An employment injury need not be the sole cause of a disability; if the claimant's employment aggravates, accelerates or combines with an underlying condition, the entire resultant condition is compensable. *See Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966); *Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1993). A *prima facie* case must at least allege an injury that arises out of and in the course of employment. *U.S. Industries/Federal Sheet Metal, Inc.*, 455 U.S. 608, 14 BRBS 631. The United States Court of Appeals for the District of Columbia Circuit has stated that claimant's theory as to how the injury occurred must go beyond "mere fancy." *Champion v. S & M Traylor Bros.*, 690 F.2d 285 (D.C. Cir. 1982); *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968). Claimant is not required, however, to prove that working conditions in fact caused his harm; rather, claimant must show the existence of working conditions which could have potentially caused the harm alleged. *See Stevens*, 23 BRBS 191. Thus, the "working conditions" prong of a claimant's *prima facie* case requires that the administrative law judge determine whether employment events which could have caused the harm sustained by claimant in fact occurred. *See Bolden*, 30 BRBS 71.

With these principles in mind, we now address the issues raised in employer's appeal. Employer argues that the administrative law judge's finding that claimant sustained a compensable harm while working for employer is not supported by substantial evidence. Specifically, employer avers that claimant's testimony that he sustained blisters on his hands while working for employer on an offshore oil platform in August 2002 is not credible and that, therefore, the administrative law judge's finding must be reversed. We disagree. In the instant case, claimant testified that he experienced blisters while working on High Island 565 in August 2002. *See* Tr. at 49. The administrative law judge considered employer's argument that claimant's testimony lacked credibility and noted several inconsistencies in claimant's testimony, but the administrative law judge nonetheless found claimant to be a credible witness since he honestly answered queries regarding his job application and prior non-work activities. Decision and Order at 18 n. 11. As the administrative law judge's credibility determination was not "inherently incredible or patently unreasonable," *Cordero v. Triple a Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979), it must be accepted by the Board. We thus affirm the administrative law judge's finding that claimant established the presence of blisters on his hands while he was employed by employer during August 2002 and that the claimant has established the existence of a harm under the Act for purposes of establishing the first prong of his *prima facie* case.[2] *See Sinclair*, 23 BRBS 148.

[2] As no party challenges the administrative law judge's finding that claimant also experienced ankle swelling at this time, that finding is affirmed.

Employer next challenges the administrative law judge's determination that claimant has affirmatively established the second prong of his *prima facie* case. Employer avers that claimant's exposure to sunlight while working for employer on an offshore oil platform cannot constitute an "accidental injury" for purposes of establishing claimant's entitlement to compensation under the Act.[3] In his decision, the administrative law judge relied upon the testimony of claimant and Dr. Olivier in finding that claimant had established the second element of his *prima facie* case. In this regard, no party challenges the administrative law judge's finding that claimant was exposed to sunlight while working for employer offshore. Moreover, Dr. Olivier testified that, while claimant's PCT was caused by his underlying liver disease and made claimant's skin sensitive to ultraviolet light, it was claimant's exposure to ultraviolet light from sunlight which caused the actual formation of his blisters.[4] CX 4 at 10, 12. Claimant's claim that his harm is work-related, therefore, goes beyond "mere fancy." *Champion*, 690 F.2d 285; *Wheatley*, 407 F.2d 307. Moreover, while employer contends that claimant was exposed to sunlight in both work and non-work settings, the pertinent inquiry when addressing this issue is whether claimant established the existence of working conditions which could have caused or aggravated the harm alleged. *See Stevens*, 23 BRBS 191. That a particular working condition or activity is routine or occurs outside work is not determinative. *See Wheatley*, 407 F.2d 307; *Gardner v. Bath Iron Works*, 11 BRBS 556 (1979), *aff'd sub nom. Gardner v. Director, OWCP*, 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981). Thus, as the administrative law judge's determination that employment events which could have caused the harm sustained by claimant actually occurred is supported by substantial evidence and accords with law, we reject employer's contention of error. The administrative law judge's finding that claimant established the second element of his *prima facie* case, and his consequent invocation of the Section 20(a) presumption, are therefore affirmed. *See Quinones v. H.B. Zachery, Inc.*, 32 BRBS 6 (1998), *aff'd in pertinent part, rev'd on other grounds*, 206 F.3d 474, 34 BRBS 23(CRT) (5th Cir. 2000); *Sinclair*, 23 BRBS 148. As employer does not challenge the

---

[3] Employer asserts that on claimant's LS-200 claim form and at informal conference claimant based his claim on an alleged chemical exposure. Claimant responds that he properly raised this theory based on medical evidence and that his LS-18 listed exposure to sun as the cause of claimant's problems. The administrative law judge addressed only this theory. Claimant may amend his claim to state a new theory of causation as the evidence develops. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 613, n.7, 14 BRBS 631, 633, n.7 (1982). In this case, claimant clearly raised his exposure to sunlight as the cause of his symptoms, Tr. at 9, and the administrative law judge properly addressed it.

[4] Employer, in its brief on appeal, concedes that the trigger for claimant's blisters is his exposure to sunlight. *See* Emp. Br. at 13.

administrative law judge's finding that it failed to rebut the invoked presumption, the administrative law judge's finding of a causal relationship between claimant's harm and his employment with employer is also affirmed.

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

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge