



CHAZSTON GRAZIANO

Claimant-Petitioner

V.

HUNTINGTON INGALLS INDUSTRIES,
INCORPORATED

Self-Insured

Employer-Respondent

DATE ISSUED: May 18, 2017

DECISION and ORDER

Appeal of the Decision and Order – Denying Benefits of Paul C. Johnson, Jr., District Chief Administrative Law Judge, United States Department of Labor.

Charlene A. Morring (Montagna Klein Camden, LLP), Norfolk, Virginia,
for claimant.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (2015-LHC-01132) of Administrative Law Judge Paul C. Johnson, Jr., 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 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 he injured his left shoulder at work on December 13, 2014, while attempting to lift a 100-pound tip-seal bar over his head. Claimant did not lose time from work due to this injury and filed a claim for medical benefits only. 33 U.S.C. §907. The

administrative law judge found that claimant failed to establish that a work accident occurred as alleged on December 13, 2014, because the earliest documentation of the incident is in claimant's claim for compensation, dated February 3, 2015, and

claimant's testimony regarding the accident is inconsistent and uncorroborated. The administrative law judge also found claimant did not establish that he suffered the alleged injury as there was no medical diagnosis of any left shoulder injury after December 13, 2014, and Dr. Kingston reported that claimant's left shoulder was "normal" two days later, on December 15. In the alternative, the administrative law judge found that if claimant established a prima facie case, employer produced substantial evidence to rebut the Section 20(a) presumption, as Dr. Kingston opined that claimant's left shoulder pain was due to his favoring it over the right shoulder and was aggravated by playing basketball. 33 U.S.C. §920(a). On the record as a whole, the administrative law judge found that the preponderance of evidence does not establish that an accident occurred in December 2014 or that claimant suffered a left shoulder injury. Accordingly, the administrative law judge denied the claim for medical benefits.

On appeal, claimant challenges the administrative law judge's finding that his testimony is not credible and that he, therefore, did not establish a prima facie case. Specifically, claimant contends that the discrepancies in his testimony are minor and do not undermine his credibility. Employer did not respond to this appeal.

Assuming various procedural requirements are met, employer is liable for medical benefits for its employees' work-related injuries. 33 U.S.C. §907(a). In determining whether an injury is work-related, a claimant is aided by the Section 20(a), 33 U.S.C. §920(a), presumption, which may be invoked only after claimant establishes a prima facie case with evidence that: (1) he suffered a harm; and (2) an accident occurred or conditions existed at work which could have caused that harm. *See Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). If the claimant establishes the two elements of his prima facie case, the Section 20(a) presumption links his injury to the employment accident or working conditions. *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009); *see U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982).

Claimant contends that his testimony establishes that an accident, in fact, occurred at work on December 13, 2014. The administrative law judge addressed claimant's testimony and found that it is not credible as to the occurrence of the accident because it contains inconsistencies that undermine his claim and is not otherwise corroborated by the record. For example, claimant testified at the hearing that he was injured while trying to lift a 12-foot long tip seal overhead and that he did not report the incident to Dr. Kingston, who treated both of claimant's shoulders two days after the alleged accident. In contrast, however, claimant stated at his September 8, 2015 deposition that the tip seal was 17 feet long and that he did report the incident to Dr. Kingston. Decision and Order at 9; EX 6 at 9-10, 12; Tr. at 12-13, 17. Similarly, claimant stated both that he reported the incident to his supervisor, Jerome Stokes, the day that it happened, and that he did not

report the incident to Mr. Stokes until returning to work after the holidays in January 2015. Decision and Order at 10; EX 6 at 10-11; Tr. at 13. Although claimant also stated that the accident was witnessed by co-worker, James Jordan, EX 6 at 10, claimant did not offer statements or testimony from Mr. Stokes or Mr. Jordan to corroborate his claim that the work accident occurred. Further, the administrative law judge accurately observed that claimant stated he reported the injury to the shipyard clinic in January 2015; however, the first documented report of record of a December 2014 accident is in claimant's claim for medical benefits dated February 3, 2015.¹ Decision and Order at 9-10; EX 7 at 1; Tr. at 15.

In challenging the administrative law judge's credibility determination, claimant does not assert that the administrative law judge mischaracterized his testimony as being inconsistent. Rather, claimant asserts that the inconsistencies are minor and should not have been found to undermine his credibility with regard to the occurrence of a December 2014 work accident.

We reject claimant's contention of error. The administrative law judge is entitled to determine the weight to be accorded to the evidence of record, to address the credibility and sufficiency of any testimony, and to choose from among reasonable inferences. *Newport News Shipbuilding & Dry Dock Co. v. Cherry*, 326 F.3d 449, 37 BRBS 7(CRT) (4th Cir. 2003); *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). 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), nor is the Board entitled to reweigh the evidence, *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP [Hess]*, 681 F.2d 938, 14 BRBS 1004 (4th Cir. 1982). It was not unreasonable for the administrative law judge to find that claimant's delay in

¹ As the administrative law judge found, neither the treatment records of Dr. Kingston nor the shipyard record mention a December 2014 accident or injury. Prior to the alleged injury, on December 3, 2014, claimant sought treatment with Dr. Kingston for bilateral shoulder pain. CX 1. Claimant reported injuring his right shoulder while lifting weights about one year earlier and also complained that he felt a strain in his left shoulder while playing basketball over the prior weekend. *Id.* Dr. Kingston again treated claimant on December 15, 2014. On this date, Dr. Kingston noted that a MRI revealed a right rotator cuff tear, and an evaluation of claimant's left shoulder was "normal." CX 2; EX 3 at 2. Further, when claimant first treated at the shipyard on January 5, 2015, claimant reported his left shoulder pain began with a work injury in 2013 (which he did not previously report), and that the shoulder began to hurt again in December 2014. EX 4 at 19.

reporting the accident and inconsistent testimony regarding the accident details and onset of pain call into question claimant's credibility as to the occurrence of such accident.² Similarly, it was not unreasonable for the administrative law judge to find that claimant's failure to report the accident to Dr. Kingston, who examined claimant's left shoulder and found it to be "normal" two days after the alleged date of injury also undermines his credibility. Thus, as the administrative law judge's credibility determinations are not unreasonable, we affirm the finding that claimant is not a credible witness. *Bartelle v. McLean Trucking Co.*, 687 F.2d 34, 15 BRBS 1(CRT) (4th Cir. 1982); *see generally Compton v. Avondale Industries, Inc.*, 33 BRBS 174 (1999); *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).

As claimant does not challenge the administrative law judge's finding that his statements regarding the occurrence of a December 13, 2014 accident are uncorroborated by other evidence of record, and as substantial evidence supports this finding, the administrative law judge rationally determined that claimant failed to establish that the December 2014 work accident occurred as alleged. Therefore, we affirm the administrative law judge's findings that claimant failed to establish the accident prong of his prima facie case. *Bartelle*, 687 F.2d 34, 15 BRBS 1(CRT); *see also Bis Salamis, Inc. v. Director, OWCP*, 819 F.3d 116, 50 BRBS 29(CRT) (5th Cir. 2016); *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27(CRT) (9th Cir. 1988); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996). As claimant failed to establish an essential element of his claim, we affirm the denial of the claim for medical benefits.³

² In this vein, claimant asserts that his failure to immediately report the accident is "of no consequence" under the Act, because he timely reported the injury within the 30 days required by the Act. 33 U.S.C. §912(a); EX 5. The administrative law judge accepted the parties' stipulation that claimant timely notified employer of the injury. This notice, however, does not establish that the accident actually occurred; it is claimant's burden to establish that the accident did occur as alleged.

³ In light of our affirmance of the finding that claimant failed to establish that the work accident occurred as alleged, we need not address claimant's contention that the administrative law judge erred in finding that claimant did not establish that he sustained a harm to his left shoulder.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge