U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 18-0259

RYAN INGLIMA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 11/15/2018
	)	
MAHER TERMINALS, INCORPORATED	)	
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LIMITED	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

Jorden N. Pedersen, Jr., (Javerbaum, Wurgaft, Hicks, Kahn, Wikstrom & Sinins, P.C.), Elizabeth, New Jersey, for claimant.

Christopher J. Field (Field & Kawczynski, LLC), South Amboy, New Jersey, for employer/carrier.

Before: BOGGS, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2016-LHC-00297) of Administrative Law Judge Theresa C. Timlin 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 suffered totally disabling injuries to his left knee, back, and neck on June 30, 2015, when he slipped and fell on a puddle in the men's restroom at work.[1] There were no witnesses to the alleged accident. Claimant reported the incident, and a supervisor called an ambulance. The EMS personnel noted claimant complained of left flank and left knee pain, but they did not find any swelling or bruising. At the hospital, claimant's chief complaint was back pain and left knee pain. Dr. Letizia wrote that claimant was in "no apparent distress." Claimant's knee and back x-rays were "unremarkable" but generally showed "trauma." CX 3.

The next day, claimant went to Ivy Urgent Care, reporting left knee, back and rib pain. Dr. Malizia noted tenderness in these areas and limited range of motion in claimant's knee. Claimant was given work restrictions. On July 21 and 27, 2015, Dr. Prakash interpreted claimant's left knee and lumbar spine MRIs as showing: medial meniscus tear; grade 1 sprain of the ACL without a tear; disc herniation at L5-S1 causing spinal canal stenosis; and broad-based central posterior disc herniation at L4-5. CXs 6, 7. Claimant has not worked since the alleged accident.[2]

With regard to claimant's prima facie case, the administrative law judge found that claimant suffered a harm based on the medical evidence documenting degenerative changes to his left knee and spine, a left knee meniscal tear, and a herniated disk. Decision and Order at 62. Finding claimant's testimony contradictory and undermined by the evidence, however, the administrative law judge determined his account of the alleged accident is entitled to "no weight at all." *Id*. at 51-52, 60, 62.

The administrative law judge found compelling testimony belied claimant's allegation of a slip and fall in a restroom puddle: 1) claimant gave multiple inconsistent statements regarding how his body position led him to fall; 2) claimant inconsistently testified as to the puddle's origin,[3] size, location, and contents; 3) five employees, who accessed the restroom contemporaneously with, or shortly after, claimant, contradicted his

[1] On the date of the alleged injuries, claimant worked as a superintendent of marine operations at employer's facility in New Jersey. Tr. at 21; CX 1; EX 18 at 29.

[2] The record contains additional medical treatment records through November 2016, and doctors' depositions and reports.

[3] Claimant consistently testified that the puddle was not present when he entered the restroom. Decision and Order at 56; EX 18 at 48; Tr. at 59-60.

statements regarding the presence of a puddle in the restroom;[4] and, 4) two employees, standing directly outside the restroom, contradicted claimant's testimony that he yelled for help as loudly as he could from the restroom floor prior to exiting. *Id*. at 54-58, 63; EXs 1, 2, 7, 8 at 36, 9. Thus, because claimant is not credible and the alleged fall was unwitnessed, the administrative law judge found claimant failed to establish the occurrence of an accident at work that could have caused his injuries. Decision and Order at 57, 62-63. As claimant did not establish an element of his prima facie case, the administrative law judge denied his claim.[5] *Id*. at 63.

Claimant appeals, challenging the administrative law judge's findings that the Section 20(a) presumption is not invoked, and, alternatively, that it is rebutted and that claimant did not meet his burden of proving the existence of work-related injury on the record as a whole. Employer responds, urging affirmance.

Claimant contends the administrative law judge erred in finding that the fall did not occur as alleged. Claimant asserts the administrative law judge failed to address "critical evidence" that "clearly prove[s]" he fell due to a puddle in the restroom.[6] Cl. Br. at 13-17. We reject claimant's contention and affirm the administrative law judge's decision.

---

[4] The administrative law judge identified six employees who witnessed the condition of the restroom in the relevant time frame and who stated that there was no puddle, no standing water, and no unsafe conditions on the floor: Joshua Cullen (Superintendent); Yolanda Melgar (Cleaning Lady); Walter Johnson (Straddle Operator); Ernest Dalmedo (Gangman); Carmello Nicita (Crane Mechanic), and Brian Poehler (Safety Superintendent). Decision and Order at 57 n. 27. The administrative law judge accurately characterized the statements of Cullen, Melgar, Johnson, Dalmedo, and Nicita as being relevant because the security video shows they visited the restroom contemporaneously with, or shortly after, claimant, but before Melgar mopped the floor later that morning. EXs 1, 2, 9, 23 at 10; Tr. at 227-228, 232-237. Poehler, by contrast, visited the men's restroom only after claimant exited and the floor had been mopped that morning. Decision and Order at 33-34, 49; EXs 3, 9, 24.

[5] Assuming, arguendo, that claimant established a prima facie case, the administrative law judge alternatively found employer rebutted the Section 20(a) presumption and claimant did not establish by a preponderance of evidence on the record as a whole that he sustained a work-related injury. Decision and Order at 63-66.

[6] Specifically, in support of his assertion, claimant references: the testimonies of his supervisor, mother, and girlfriend, stating that claimant had no physical problems or complaints when he arrived at work on June 30, 2015; medical evidence documenting back

In order to be entitled to the benefit of the Section 20(a) presumption, 33 U.S.C. §920(a), claimant must establish two elements of his prima facie case: the existence of a bodily harm and the occurrence of an accident at work that could have caused it. *See, e.g.*, *Ramsay Scarlett & Co. v. Director, OWCP*, 806 F.3d 327, 49 BRBS 87(CRT) (5th Cir. 2015). Contrary to claimant's assertion, the administrative law judge addressed the "critical evidence" he alleges supports his claim that the accident occurred. *See* Decision and Order at 13-25, 34, 38-39, 58, 62. The administrative law judge extensively discussed all the evidence of record and gave detailed reasons for rejecting claimant's contention that he slipped on a puddle in the restroom. *Id.* at 51-60, 62-63.

An administrative law judge has considerable discretion in evaluating and weighing the evidence of record, *see Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3d Cir. 2001), and her credibility determinations will be affirmed unless 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). The Board is not permitted to reweigh evidence and may not disregard the administrative law judge's findings because other inferences could have been drawn from it. *See Barbera*, 245 F.3d at 287, 35 BRBS at 30(CRT).

The administrative law judge thoroughly explained the basis for granting "no weight at all" to claimant's testimony, highlighting seven pages of inconsistencies in his description of events and other evidence contradicting his account. Decision and Order at 52-59. It was not irrational under these circumstances for the administrative law judge to find claimant not credible. *Barbera*, 245 F.3d at 287, 35 BRBS at 30(CRT); *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).

Moreover, the mere fact that claimant had physical complaints after the alleged accident does not mandate the conclusion that an accident occurred at work. As the administrative law judge permissibly found that claimant is not a credible witness and the record contains no direct evidence corroborating the alleged fall, we affirm that claimant

---

and left knee injuries following the alleged accident; the security video footage, taken outside the men's restroom door, showing claimant entering the restroom normally and exiting with a limp; and the witness statement of Michael DelViscovo (Director of Safety and Security) documenting that claimant's left pant leg was "very wet to the touch" after the alleged accident. Cl. Br. at 14-15, 25. Claimant asserts this evidence proves that the alleged accident occurred because "there can be no other explanation for the sudden onset of [his] injuries." *Id*. at 18.

failed to establish the occurrence of a work accident as supported by substantial evidence. *See Barbera*, 245 F.3d at 287, 35 BRBS at 30(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); *Bartelle v. McLean Trucking Co.*, 687 F.2d 34, 15 BRBS 1(CRT) (4th Cir. 1982); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996). Because claimant failed to establish an essential element of his claim, we affirm the denial of benefits.[7]

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

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

[7] In light of our affirmance of the finding that claimant failed to establish a prima facie case, we need not address claimant's remaining contentions.