

BRB No. 10-0197

JAMES REYES)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
WILLIAMS FABRICATIONS,)	DATE ISSUED: 09/23/2010
INCORPORATED)	
)	
and)	
)	
AMERICAN LONGSHORE MUTUAL)	
ASSOCIATION, LIMITED)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Larry W. Price,
Administrative Law Judge, United States Department of Labor.

James Reyes, Mobile, Alabama, *pro se*.

Douglas L. Brown (Brady Radcliff & Brown LLP), Mobile, Alabama, for
employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Benefits (2008-LHC-0729) of Administrative Law Judge Larry W. Price 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). In an appeal by a claimant who is not represented by counsel, the Board will review the findings of fact and conclusions of law of the administrative law judge to determine if they are rational, supported by substantial evidence, and in accordance with law. If they are, they must be affirmed. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, who was employed as a shop fitter for employer, alleges that a specific work incident occurred on January 6, 2007, which caused his current neck condition. Specifically, claimant testified that on the day of this alleged incident he was working, along with three other employees, in employer's yard. Claimant stated that he was instructed to "hook up the wheel house" which, claimant testified, was "right-side up" at the time. Claimant testified that after he began to climb the wheel house in order to attach it to a crane, he hit his hard hat on a ledge, lost his grip, and struck his elbow while dangling from this structure. Claimant stated that he then pulled himself to the top of the wheel house and that, although his arm was hurting, he finished his eight-hour shift and thereafter worked his full shift on the following four days. On January 12, 2007, claimant reported this alleged incident to employer,¹ and he subsequently sought benefits under the Act for his present neck condition.

In his Decision and Order, the administrative law judge found that claimant was not a credible witness and that he failed to establish that the alleged work incident of January 6, 2007, had occurred. Therefore, the administrative law judge concluded that claimant failed to establish his *prima facie* case. Accordingly, the administrative law judge denied claimant's claim for benefits.

Claimant, without the benefit of counsel, appeals the administrative law judge's denial of his claim. Employer responds, urging affirmance of the administrative law judge's decision.

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 of compensability.² 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). Before the administrative law judge, claimant asserted that a definitive work incident occurred on January 6, 2007, which caused his present neck condition; specifically, claimant testified that he lost his grip while climbing to the top of a "right-side up" wheel house in order to attach that wheel house to a crane. In contrast to

¹ Claimant had been hired by employer on January 4, 2007, as a 30-day probationary employee. He was terminated by employer on January 12, 2007.

² As the administrative law judge's finding that claimant experiences neck pain is not challenged on appeal, that finding is affirmed.

claimant's testimony, employer presented testimony from three employees who were present with claimant in the yard at the time of the alleged incident and who testified that the incident as described by claimant could not have occurred.

The administrative law judge found claimant's testimony regarding the specific events which allegedly occurred in employer's yard on January 6, 2007, to be suspect and his credibility impeached. The administrative law judge found that claimant did not report this alleged incident to employer until January 12, 2007, that claimant continued to work his full shifts in the days following the alleged work incident without complaint until January 12, 2007, that the three employees working with claimant in the yard did not witness the alleged incident, and that, contrary to the claimant's testimony that he climbed up the side of a "right-side up" wheel house, the statements of those employees establish that the incident as described by claimant could not have occurred.³ Decision and Order at 7 – 8. Specifically, the administrative law judge found that claimant testified that the wheel house was never "up-side down" but, rather, was "right-side up" when he began to climb it for the purpose of hooking it up to a crane. In contrast to this statement, Dale Williams testified that the purpose of hooking up the wheel house to a crane was to turn the wheel house from an "up-side down" position to a "right-side up" position; consequently, the wheel house was "up-side down" prior to the need to hook it up to a crane. Lane Williams testified that he was working as a crane operator in the yard on the day of claimant's alleged accident, and that he would have seen claimant pull himself to the top of the wheel house if claimant had in fact done so. Jerry Tuberville stated that he helped to flip the wheel house on January 6, 2007, that claimant assisted in the hooking up of that unit to a crane only when the hooks were at ground level and the unit was in an "up-side down" position, and that he, not claimant, was the only worker to climb to the top of the wheel house once it had been turned "right-side up" by the cranes.

The administrative law judge found that claimant's testimony regarding the alleged events of January 6, 2007 was not credible, and he consequently concluded that claimant failed to establish that the incident occurred. We affirm the administrative law judge's findings because they are 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.*

³ Employer presented testimony that a wheel house, otherwise referred to as a pilot house, is fabricated "up-side down" and that, after it is completed, it is attached to two cranes with hooks so that it could be rotated into an up-right position. This process of rotating a completed wheel house takes between forty-five minutes and one hour.

McGrath Corp. v. Hughes, 289 F.2d 403 (2^d Cir. 1961). Accordingly, the administrative law judge's credibility determinations are not to be disturbed unless they are 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); *see Bolden*, 30 BRBS 71. In this case, the administrative law judge addressed claimant's description of the events which he alleged led to the unwitnessed work incident, claimant's co-workers' testimony regarding claimant's work activities on January 6, 2007, and claimant's activities following the alleged incident, and concluded that claimant did not establish that the alleged work event had 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 nor patently unreasonable. *See Brown v. Pacific Dry Dock*, 22 BRBS 284 (1981). We therefore affirm the administrative law judge's determination that claimant failed to establish the occurrence of the alleged accident. 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.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge