BRB No. 97-1073

CHARLES F. JONES	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BETHLEHEM STEEL CORPORATION	)	DATE ISSUED:
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Vivian Schreter-Murray, Administrative Law Judge, United States Department of Labor.

Michael C. Eisenstein, Baltimore, Maryland, for claimant.

Heather H. Kraus (Semmes, Bowen & Semmes), Baltimore, Maryland, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (96-LHC-2379) of Administrative Law Judge Vivian Schreter-Murray 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 findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, a maintenance electrician for employer, allegedly sustained a knee injury during the course of his employment for employer on April 18, 1996, when he hit his right knee on a pole as he was riding his bicycle through a gate near the end of the work day. Claimant returned to work the following day and continued to work through the following week. Claimant did not report this alleged incident to his supervisor until April 29, 1996, the day he first sought medical treatment for a

swollen knee. After an MRI revealed a torn medial meniscus, claimant, on July 12, 1996, underwent arthroscopic surgery. Claimant thereafter filed a claim under the Act seeking temporary total disability compensation, 33 U.S.C. §908(b), from April 29, 1996 through September 13, 1996, alleging that his knee condition was causally related to the April 18, 1996, work incident.

In her Decision and Order, the administrative law judge found that claimant failed to establish that a traumatic injury to his knee occurred on April 18, 1996, and thus failed to establish a *prima facie* case sufficient to invoke the presumption of causation under Section 20(a) of the Act, 33 U.S.C. §920(a). Assuming, *arguendo,* that claimant had met his burden so that he would be entitled to invocation of the Section 20(a) presumption, the administrative law judge found that employer established rebuttal of the presumption and denied the claim, crediting medical evidence that claimant's knee condition was not caused by trauma.

On appeal, claimant contends that the administrative law judge erred in finding that he is not entitled to invocation of the Section 20(a) presumption and by failing to find that his knee condition was caused by his April 18, 1996 work-incident. Employer responds, urging affirmance.

It is well-established that 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 his *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); *Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1990). 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). Once claimant has established his *prima facie* case, he is entitled to invocation of the Section 20(a) presumption linking his harm to his employment. *See Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990).

In the instant case, the administrative law judge, after analyzing the medical evidence of record as well as the testimony of claimant, determined that there was no credible medical evidence that claimant's knee condition resulted from a traumatic injury and that the alleged traumatic injury on April 18, 1996, to claimant's right knee did not occur. In rendering this determination, the administrative law judge credited the opinion of Dr. Apostolo over the contrary opinion of Dr. Viener. Dr. Apostolo, whose examination of claimant on September 4, 1996 included a review of claimant's medical records, opined that claimant suffered from a long-time

degenerative tear of the meniscus, and that there was no way claimant's meniscal tear could have been caused or aggravated by the alleged April 18, 1996 incident, as trauma to the kneecap bears no relationship to this type of condition. *See* Emp. Exs. 1, 9 at 18. The administrative law judge also accepted Dr. Apostolo's testimony that claimant reported experiencing popping and clicking in the inner aspects of his right knee prior to April 1996. *See* Decision and Order at 3; Emp. Ex. 9 at 8, 28. The administrative law judge found that Dr. Apostolo's opinion was supported by the testimony of Dr. Viener who, on April 30, 1996, reported no bruising of claimant's knee, *see* Cl. Ex. 1a, and that the x-rays and MRI confirmed the presence of a degenerative meniscal tear. However, as Dr. Viener offered no explanation as to why he attributed claimant's symptoms to a traumatic injury, the administrative law judge discredited Dr. Viener's opinion as being unreasoned. Based on these determinations, as well as the fact that claimant failed to report any injury to employer on April 18, 1996, did not seek immediate medical care, and continued to work the following week, the administrative law judge rejected claimant's testimony and found that claimant failed to establish that an injury to his right knee occurred on April 18, 1996. *See* Decision and Order at 3-4.

In adjudicating a claim, it is well-established that an administrative law judge is entitled to evaluate the credibility of all witnesses, including doctors, and is not bound to accept the opinion or theory of any particular medical examiner; rather, the administrative law judge may draw her own inferences and conclusions from the evidence. *See Calbeck v. Strachan Shipping* Co., 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 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). Moreover, the administrative law judge may discredit a claimant's testimony to find that an alleged accident arising out of the course of claimant's employment did not occur. *See Bartelle v. McLean Trucking Co.*, 14 BRBS 166 (1981)(Miller, J., dissenting), *aff'd*, 687 F.2d 34, 15 BRBS 1 (CRT)(4th Cir. 1982). Accordingly, the administrative law judge's credibility determinations are not to be disturbed unless they are inherently incredible or patently unreasonable. *See generally Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988).

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 generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied,* 440 U.S. 911 (1979). We therefore affirm the administrative law judge's determination that claimant failed to establish that the alleged accident on April 18, 1996 occurred. *See, e.g., Rochester v. George Washington University*, 30 BRBS 233 (1997); *Bolden*, 30 BRBS at 73. As claimant failed to establish an essential element of his *prima facie* case, the administrative

law judge's finding that Section 20(a) was not invoked is affirmed. *See U.S. Industries*, 455 U.S. at 608, 14 BRBS at 631; *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27 (CRT)(9th Cir. 1988).

In addition, the administrative law judge determined that assuming, *arguendo*, claimant established his *prima facie* case, the testimony of Dr. Apostolo and the supporting medical evidence was sufficient to rebut the Section 20(a) presumption. Upon invocation of the presumption, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). If the administrative law judge finds that the Section 20(a) presumption is rebutted, the administrative law judge must weigh all of the evidence and resolve the causation issue based on the record as a whole. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990). In finding that employer rebutted the presumption, the administrative law judge relied on the opinion of Dr. Apostolo. As the opinion of Dr. Apostolo that claimant's meniscal tear is unrelated to a traumatic injury constitutes substantial evidence sufficient to rebut the presumption, we affirm the administrative law judge's finding that the Section 20(a) presumption, if invoked, is rebutted. *See Philips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988). Moreover, any error by the administrative law judge in failing to expressly weigh the evidence on the record as a whole is harmless because the administrative law judge discussed all of the relevant medical evidence contained in the record, and rationally found Dr. Viener's opinion outweighed by the contrary opinion of Dr. Apostolo. *See generally Bingham v. General Dynamics Corp.*, 20 BRBS 198 (1988).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH

Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge