

LEE SIMMONS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
COASTAL GREAT SOUTHERN, INCORPORATED)	DATE ISSUED: <u>Aug. 24, 2004</u>
)	
and)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
)	
Employer/Carrier- Respondents)	DECISION and ORDER

Appeal of the Decision and Order of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

Lee Simmons, Houston, Texas, *pro se*.

John C. Elliott (Fitzhugh & Elliott, P.C.), Houston, Texas, for employer/ carrier.

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

PER CURIAM:

Claimant, appealing without legal representation, appeals the Decision and Order (2002-LHC-00663) of Administrative Law Judge Lee J. Romero, 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). In an appeal where claimant is not represented by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law in order to determine whether 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, a maintenance mechanic for employer, alleges that on April 18, 2001, he was lying on a creeper working underneath a chassis when he was startled by a water moccasin, which caused him to hit his head on a slack adjuster. Claimant alleges that he was unconscious for approximately two hours and that he began having migraine headaches the next day. He also claims to have sustained vision loss and a neck injury, and that he aggravated a pre-existing lower back condition. Claimant worked intermittently for employer until May 3, 2001, when he stopped working. Employer controverted claimant’s entitlement to compensation and medical benefits.

In his Decision and Order, the administrative law judge initially determined that claimant established that his claim is within the coverage provisions of the Act. *See* 33 U.S.C. §§902(3), 3(a). The administrative law judge next found that claimant failed to establish that the alleged work incident of April 18, 2001, occurred or that claimant sustained any harm or pain as a result of a head injury, and that claimant thus failed to establish his *prima facie* case. Accordingly, the administrative law judge concluded that claimant is not entitled to compensation for his alleged injuries, and he denied the claim.

On appeal, claimant, without the assistance of counsel, challenges the administrative law judge’s finding that he failed to establish his *prima facie* case. Employer responds, urging affirmance.

We address claimant’s challenge to the administrative law judge’s determination that claimant did not have a work-related accident on April 18, 2001. Claimant has 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 bring the claim within the scope of Section 20(a) of the Act, 33 U.S.C. §920(a). *Bolden v. G.A.T.X. Terminals*, 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 this *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). In the instant case, claimant asserted that a definitive work incident occurred on April 18, 2001, which caused his current complaints of headaches, vision loss, and neck and back difficulties; specifically, claimant testified that he struck his head on a slack adjuster when he was startled by a water moccasin. The administrative law judge, after discussing claimant’s lack of credibility, found that claimant’s unsupported testimony failed to establish that an accident occurred at work. *See U. S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982).

In rendering this determination, the administrative law judge extensively addressed the evidence pertaining to claimant's credibility. Decision and Order at 47-52. The administrative law judge found that claimant's testimony was not corroborated by the testimony of other witnesses or supported by other evidence of record, and that it was contradictory, vacillating, and presented in an inconsistent manner. *Id.* at 47. The administrative law judge found no evidence supporting claimant's testimony that he hit his head on a slack adjuster after being startled by a water moccasin. Specifically, the administrative law judge found that there is no evidence of a broken slack adjuster. The administrative law judge credited the deposition testimony of Bobby Holden, employer's president, that he had never seen or received reports of snakes at its repair yard, which is separated from water by another facility and by a railroad track. EX 18 at 6, 7-14, 53. Moreover, the administrative law judge found no evidence that claimant reported to Drs. Rittenhouse, Uribe, Griver, and Likover a job injury involving a snake, and that claimant initially reported to Dr. Rittenhouse in May 2001 that his headaches were due to dental work. EXs 20-22; 25-27; 32 at 5-9; 34; 42-44. The administrative law judge found no support in the record for claimant's testimony that he discussed the work injury with his wife and co-workers. The administrative law judge noted that claimant failed to call as witnesses his wife and co-workers to corroborate his testimony that he informed them on April 18, 2001, of a work injury. The administrative law judge credited the testimony of claimant's supervisor, Calvin Gordon, that he was first informed by claimant's attorney that a snake precipitated claimant's alleged work injury. Tr. at 121. The administrative law judge also credited Mr. Gordon's testimony that employer does not own a creeper because it would not roll on its rocky yard, which the administrative law judge found supported by claimant's testimony of rocky ground at employer's repair yard. Tr. at 197, 373.

Additionally, the administrative law judge noted the inconsistencies between claimant's hearing and deposition testimony as to where on his head claimant struck the slack adjuster and as to when he reported an injury to employer. Tr. at 197-201, 283-284, 291; EXs 13 at 38; 26 at 1. The administrative law judge found the evidence does not support claimant's contention that he confused the date of his injury due to the side effects of prescription medication he took shortly after the alleged injury. EXs 20 at 5, 37; 21 at 1; 22; 32 at 6; 34 at 2, 5. The administrative law judge also found that claimant gave contradictory hearing and deposition testimony regarding his symptoms. Tr. at 210-211, 308-309; CX 13 at 54, 60, 70-77, 80-84; EX 25 at 20. The administrative law judge credited Mr. Gordon's testimony of claimant's reputation among members of his union for embellishing or exaggerating events, which the administrative law judge found was supported by the record evidence addressing claimant's prior education and military service. Tr. at 141-143, 324, 331, 375-376; CX 13 at 53; EXs 46 at 3; 60 at 2. The administrative law judge further credited Mr. Gordon's testimony that claimant informed him at various times prior to alleging a work injury that he sought treatment for headaches due to non-work-related brain tumors, dental work, and swollen blood vessels. Tr. at 124-127, 141-144; EX 17. The administrative law judge found that claimant's testimony and Dr.

Rittenhouse's deposition testimony and records support Mr. Gordon's testimony that claimant initially related his headaches to non-work-related causes. Tr. at 252-257, 270-271; EXs 32 at 6-7; 34 at 5. For these reasons, the administrative law judge concluded that claimant's testimony is unsupported, unpersuasive, and unreliable. The administrative law judge further found that the testimony by employer's witnesses was persuasive, credible, and corroborated by the record. Decision and Order at 52.

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. 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. See *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). In the instant case, the administrative law judge considered the numerous inconsistencies in claimant's testimony regarding his alleged accident and injuries, as well as the conflicting testimony and evidence, and claimant's reputation for veracity. The administrative law judge concluded that claimant did not, in fact, sustain a work-related accident as described on April 18, 2001. 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. *Id.* Accordingly, we affirm the administrative law judge's determination that claimant failed to establish the existence of a work-related incident occurring on April 18, 2001, which could have caused his alleged injuries. See *Bolden*, 30 BRBS 71. As claimant failed to establish an essential element of his *prima facie* case, his claim for benefits was properly denied.¹ 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).

¹ Since we affirm the administrative law judge's finding that claimant failed to establish that a work incident occurred on April 18, 2001, we need not address the administrative law judge's finding that claimant also failed to establish that he sustained a harm.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge