U.S. Department of Labor

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

BRB No. 18-0483

LUMAS GUIDRY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 12/13/2018
	)	
WAVELAND SERVICES, INCORPORATED	)	
	)	
and	)	
	)	
SEABRIGHT INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Tracy A. Daly, Administrative Law Judge, United States Department of Labor.

R. Scott Isles, Lafayette, Louisiana, for claimant.

Henry H. LeBas, Todd A. Delcambre and Barry J. Rozas (LeBas Law Offices, P.L.C.), Lafayette, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (2014-LHC-01982) of Administrative Law Judge Tracy A. Daly 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 was injured on October 10, 2009, during the course of his employment when he was involved in an altercation with a coworker. He testified he was working on a filter on an offshore platform when "all of a sudden" his coworker, Mr. Monette punched him in the face. He stated he fell backward and blacked out for a short time. When his boss saw him on the ground, he called for help and had claimant airlifted off the platform and taken to a hospital. Claimant has not worked since, alleging injuries to his elbow, neck, and back. Decision and Order at 12; Tr. at 34-38, 73-74. Employer paid disability and medical benefits until it disputed claimant's entitlement. Decision and Order at 2; JX 1.[1]

At the hearing, the parties disputed, among other things, the occurrence of the incident and injury. To counter claimant's claim, employer submitted testimony from three coworkers, Messrs. Monette, Deville, and Smith. All three were present at the time of the alleged incident and all testified via deposition or recorded statement that, while claimant was pushed by Mr. Monette, he was not pushed hard enough to fall. They testified they saw claimant "stage" his fall because he either sat or leaned back and controlled his fall until he was lying on the ground; he then claimed injury. Mr. Monette stated that claimant's hard hat did not even fall off. EXs 1-2, 11, 14.[2] The incident report, written by Mr. LeBlanc, claimant's supervisor, indicated he thought claimant was joking because he was lying down but was not in distress and everyone else was working. Mr. LeBlanc recorded that, when asked, the crew stated that claimant was faking his injury. EX 13. Hospital records from that date recorded claimant's complaints of head, neck, and elbow pain, but noted he presented with no distress or evidence of trauma. Claimant underwent x-rays and CT scans of his elbow, head, lumbar spine, and cervical spine; all results were negative except an x-ray showing mild degenerative changes in his lumbar spine. CX 11.

Having discovered multiple discrepancies between claimant's hearing testimony and prior statements he made in reporting the injury to his employer and to doctors, the

[1] The parties stipulated that employer paid claimant total and partial disability benefits from October 11, 2009, through June 10, 2016, and medical benefits exceeding $139,000. Decision and Order at 2; JX 1; EXs 9-10, 12.

[2] In his recitation of the facts, the administrative law judge accurately summarized Mr. Monette's testimony. Decision and Order at 9. In later discussing the issue, the administrative law judge mistakenly wrote that Mr. Monette stated that claimant's hard hat "did come off" claimant's head. *Id.* at 20.

administrative law judge found claimant to be an unreliable witness whose testimony, behavior, and demeanor were unpersuasive and not credible. Decision and Order at 16-17. Based on the coworkers' statements, claimant's lack of credibility, and the lack of supporting objective contemporaneous medical evidence, the administrative law judge found claimant failed to establish the elements of a prima facie case, as he failed to show he suffered any harm or that an accident occurred at work which could have caused his current back condition.[3] The administrative law judge, therefore, denied claimant's claim. *Id.* at 20-22. Claimant appeals the denial of benefits; employer responds, urging affirmance.

The administrative law judge addressed only whether claimant established a prima facie case linking his injury to his employment and found he did not. 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 he establishes a prima facie case. To establish a prima facie case, the claimant must show that he sustained a harm or pain and that conditions existed or an accident occurred at work which could have caused the harm or pain. *Bis Salamis, Inc. v. Director, OWCP*, 819 F.3d 116, 50 BRBS 29(CRT) (5th Cir. 2016); *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000). Other than to reiterate his own testimony describing the incident, claimant's brief to the Board asserts only:

> In the alternative, the employer's total termination of benefits based on an allegation that no accident happened is not supported by anything in the record in this matter.
>
> Finally, as indicated in the petition, the administrative law judge ruled that [claimant] had not sustained . . . an on-the-job injury and thus denied the claim. As a matter of fact, the incident offshore was an intentional act witnessed by everyone around. The employer for [claimant] as well as the company over the fixed platform immediately summoned an air helicopter for transportation of [claimant] from the platform to a hospital in a nearby parish.

[3] One year after the alleged incident, in October 2010, claimant began treating with Dr. Appley complaining of chronic back pain. Dr. Appley wrote that the pain stemmed from a year-old incident but noted it as an automobile accident. He diagnosed claimant with mild degenerative changes at L5-S1, lumbosacral neuritis, and lumbar spine stenosis and commenced conservative treatment. In 2012, they began discussing surgical options, and in April 2013, claimant underwent decompression surgery. CX 21.

Cl. Br. at 4, 7.[4] The remainder of his brief is dedicated to what he deems the "central issue" of whether employer established the availability of suitable alternate employment pursuant to *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981). This issue, however, was not reached by the administrative law judge.

Section 802.211 of the Board's regulations, 20 C.F.R. §802.211, requires a petitioner who is represented by legal counsel to submit a supporting brief which:

> Specifically states the issues to be considered by the Board; presents, with appropriate headings, an argument with respect to each issue presented with references to transcripts, pieces of evidence and other parts of the record to which the petitioner wishes the Board to refer; a short conclusion stating the precise result the petitioner seeks on each issue and any authorities upon which the petitioner relies to support such proposed result.

20 C.F.R. §802.211(b). Claimant's brief does not establish error in any of the administrative law judge's credibility determinations or findings and does not cite evidence or authority to support his general one-sentence assertion that employer's "allegation" that the accident did not occur is "not supported by anything in the record." Therefore, we decline to address the issue of whether the administrative law judge erred in finding that claimant failed to establish a prima facie case.[5] *See, e.g., Montoya v. Navy Exch. Serv. Command*, 49 BRBS 51 (2015); *Plappert v. Marine Corps Exchange*, 31 BRBS 109 (1997), *aff'g on recon. en banc* 31 BRBS 13 (1997). Because claimant's claim is not compensable, the administrative law judge appropriately did not address suitable alternate employment, and the issue claimant raises on appeal is moot.

[4] This statement is identical to that in claimant's Petition for Review. Cl. Br. at 7; Cl. Pet. Rev. at 1.

[5] In any event, the administrative law judge's decision is supported by substantial evidence of record. *Bis Salamis, Inc. v. Director, OWCP*, 819 F.3d 116, 50 BRBS 29(CRT) (5th Cir. 2016).

Accordingly, we affirm the administrative law judge's Decision and Order.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge