BRB No. 09-0734

GODOFREDO SANCHEZ PALMA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
P & O PORTS, TEXAS, INCORPORATED	)	DATE ISSUED: 02/26/2010
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order and the Decision and Order on Remand Denying Motion for Modification of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Godofredo Sanchez Palma, Houston, Texas, *pro se*.

Scott A. Soule and Adelaida J. Ferchmin (Chaffe McCall, L.L.P.), New Orleans, Louisiana, for self-insured employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order and the Decision and Order on Remand Denying Motion for Modification (2008-LHC-0432) of Administrative Law Judge C. Richard Avery 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 claimant without counsel, we will review the administrative law judge's decision to determine if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). If they are, they must be affirmed.

Claimant contends he was injured on September 24, 2007, while working for employer driving cars off a ship. He testified that as he reached the ramp to leave the ship a car hit him from behind, causing him to lose consciousness. He also testified that

when he regained consciousness, the claims manager was kicking him. Claimant contends he injured his back, neck and shoulders and had to leave work in an ambulance. Tr. at 6-10. Employer presented evidence that disputed claimant's version of the incident. Specifically, employer's witnesses, Messrs. Allen, Alvi, and Malone, testified that claimant stopped the car and put it in reverse, just touching/tapping the car behind him and causing no damage to either car. They also testified that claimant did not lose consciousness, and Mr. Holmes testified that he did not kick claimant. Emp. Ex. 34; Tr. at 73-74, 85-87, 100-101. Dr. Freeman, an orthopedic surgeon, reported that the incident as described by employer's witnesses would not have caused any tissue damage and that claimant probably was not injured at all. Emp. Ex. 10. The administrative law judge credited employer's witnesses and found that employer rebutted the Section 20(d), 33 U.S.C. §920(d), presumption.[1] Further, the administrative law judge found that claimant's willful intentional conduct was the cause of the incident and any injury he may have sustained. Accordingly, the administrative law judge found that claimant was barred from receiving benefits pursuant to Section 3(c) of the Act, 33 U.S.C. §903(c), and he denied claimant's claim.[2] Decision and Order at 4-6.

Claimant, without the assistance of counsel, appealed the administrative law judge's decision to the Board, submitting additional documentation with his notice of appeal. The Board advised claimant of modification procedures and remanded the case to the administrative law judge for proceedings pursuant to Section 22 of the Act, 33 U.S.C. §922. BRB No. 09-0397 (May 8, 2009). On remand, the administrative law judge acknowledged receipt of claimant's medical records; however, he found that because claimant was barred from recovery due to his own willful misconduct, the medical records establishing claimant's treatment for an alleged work injury are irrelevant, and he again denied the claim. Decision and Order on Remand at 2. Claimant, without representation, appeals the denial of benefits. For the reasons set forth

---

[1]Section 20(d) of the Act, 33 U.S.C. §920(d), provides:

> In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary -
> d) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.

[2]Section 3(c) of the Act, 33 U.S.C. §903(c), provides:

> No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.

below, we affirm the administrative law judge's denial of benefits, albeit on different grounds.[3]

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 his *prima facie* case, the claimant must show that he sustained a harm and that conditions existed or an accident occurred at work which could have caused or aggravated the harm. *See Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); *see generally 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). Once the claimant establishes a *prima facie* case, Section 20(a) applies to relate the injury to the employment, and the employer can rebut this presumption by producing substantial evidence that the injury was not related to the employment. *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); *see also American Grain Trimmers v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999) (*en banc*), *cert. denied*, 528 U.S. 1187 (2000). The claimant bears the burden of establishing the elements of his *prima facie* case by the preponderance of the evidence and without the benefit of the Section 20(a) presumption. *Bolden*, 30 BRBS 71; *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981).

Claimant alleges he sustained injuries to his back, neck and shoulders during the September 24, 2007, incident.[4] Claimant must establish that an accident occurred at work or that working conditions existed which could have caused his alleged injuries. *See*

---

[3]The administrative law judge denied the claim on the ground that the incident was due to claimant's willful conduct. 33 U.S.C. §903(c). Sections 3(c) and 20(d) refer to the "willful intention of the employee to injure or kill himself or another." While the evidence cited by the administrative law judge may support a conclusion that claimant had a willful intention to create the impression of a serious accident, it does not establish that claimant intended to injure himself or another; in fact, the credited evidence supports a conclusion the accident was not so serious as to cause injury to anyone. *Compare with Green v. Atlantic & Gulf Stevedores, Inc.*, 18 BRBS 116 (1986) (claimant was the aggressor in a physical altercation and his claim was barred by Section 3(c)); *O'Connor v. Triple A Machine Shop*, 13 BRBS 473 (1981) (same). Thus, Section 3(c) is not implicated on the facts presented.

[4]Claimant has complained of pain in his neck, back and shoulders since the alleged incident. The records he submitted for the modification proceedings indicate he has been treated at the Wellness Management Center since September 2007, and he has received medical and chiropractic care.

Bolden, 30 BRBS 71; *Jones v. J. F. Shea Co., Inc.*, 14 BRBS 207, 210-211 (1981); *see also U.S. Industries*, 455 U.S. 608, 14 BRBS 631. The administrative law judge's findings crediting employer's witnesses as to the description of the incident and discrediting claimant's testimony are supported by substantial evidence, and they establish that claimant did not satisfy the "accident" element of his *prima facie* case.

The administrative law judge thoroughly summarized the record which is replete with evidence contradicting claimant's version of the events. For example, he summarized the testimony of Mr. Alvi and Mr. Malone who stated that they stood within 10 to 15 feet of the cars at the time of the incident, and the testimony of Mr. Allen who testified that he was driving the second car. Contrary to claimant's version of the events, Mr. Alvi, Mr. Malone, and Mr. Allen testified that claimant stopped his car and put it in reverse, tapping Mr. Allen's car and causing no damage to either car. Mr. Alvi also testified that he reached inside claimant's car and shifted it from "reverse" to "park" before claimant got out. Decision and Order at 2-3; Emp. Ex. 34; Tr. at 73-74, 85-87. The administrative law judge also found that Dr. Freeman did not think the incident as described by employer could have caused any injury and that, likely, claimant had not been injured. Decision and Order at 4-5; Emp. Ex. 10. Additionally, the administrative law judge credited evidence showing that claimant has a history of giving false statements. Decision and Order at 4-6; Emp. Exs. 9, 17-21, 27-28, 35. The administrative law judge stated he did not believe an injury had occurred before he concluded that claimant's conduct was the cause of any incident. Decision and Order at 6.

Questions of witness credibility are for the administrative law judge as the trier-of-fact. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). It is solely within his discretion to accept or reject all or any part of any testimony according to his judgment. *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). In this case, the administrative law judge rationally credited the testimony of employer's witnesses over that of claimant. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). The credited evidence establishes that no accident occurred at work that could have caused claimant's alleged back, neck, and shoulder injuries, as the two cars merely touched each other. Claimant therefore has not established his *prima facie* case and is not entitled to invocation of the Section 20(a) presumption. *See U.S. Industries*, 455 U.S. 608, 14 BRBS 631; *Compton v. Avondale Industries, Inc.*, 33 BRBS 174 (1999). *Bolden*, 30 BRBS at 72-73; *Mock v. Newport News Shipbuilding & Dry Dock Co.*, 14 BRBS 275, 279-280 (1981); *Jones*, 14 BRBS at 210-212. Therefore, claimant's alleged injuries are not work-related as a matter of law. As claimant did not establish an essential element of his claim for benefits, the claim was properly denied.

Accordingly, the administrative law judge's denial of benefits is affirmed.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
REGINA C. McGRANERY
Administrative Appeals Judge