U.S. Department of Labor

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

BRB No. 19-0522

GREGORY LANGLEY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
D & D CONSTRUCTION	)	
	)	DATE ISSUED: 02/28/2020
and	)	
	)	
LOUISIANA WORKERS' COMPENSATION CORPORATION	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeal of the Decision and Order of Angela F. Donaldson, Administrative Law Judge, United States Department of Labor.

William S. Vincent, Jr. and W. Jared Vincent (Law Office of William S. Vincent, Jr.), New Orleans, Louisiana, for claimant.

David K. Johnson (Johnson, Rahman & Thomas), Baton Rouge, Louisiana, for employer/carrier.

Before: BUZZARD, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2018-LHC-00759) of Administrative Law Judge Angela F. Donaldson rendered on a claim filed pursuant to 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 worked for employer as a welder at a Cargill facility. On May 11, 2017, he was welding support brackets on a crane while straddling a beam 10 to 15 feet above the ground. Tr. at 28-29, 82-83. He was wearing a safety harness hooked to a cable secured above him, a hardhat, and a welding mask. *Id*. at 83. While claimant was bent over, powdery dust fell from above onto his hardhat and down his back. *Id.* at 54, 83-84. Claimant reacted by "jumping around," while still seated on the beam, as he felt he was "on fire." *Id.* at 83, 111-113. His co-worker, Shaune Shepeard, who was in the basket of a manlift level with claimant, testified he felt "something hot," saw claimant shaking, and saw smoke coming off both their clothes. *Id.* at 28-29.

Claimant did not discover any burns to his face, neck or clothes but hairs on his legs were "singed at the bottom." Tr. at 84-85. Mr. Shepeard's clothes were not burned. *Id.* at 48. Claimant climbed down a ladder to get off the crane. *Id.* at 85. Other employees came over to apologize for kicking a canister that caused the dust to fall onto him. *Id.* at 30.

Claimant told a "safety man" about the accident, saying he was nervous and upset but otherwise okay. Tr. at 86. Claimant and Mr. Shepeard told claimant's foreman, Mr. Rollins, shortly after the accident that there had been "heat" or a "flash fire," but claimant did not mention any pain or injury to either the "safety man" or Mr. Rollins. *Id.* at 70-71. Mr. Shepeard also asked claimant if he was hurt and claimant told him his leg was "stinging;" claimant finished the work day after a lunch break. *Id.* at 54. No written accident report was made. *Id.* at 129-30, 198-99.

In the days after the accident, claimant continued to work for employer but did not complain of any pain or injury. Tr. at 121. Claimant testified he thought the numbness and pain in his leg would go away. *Id.* at 88-90. Mr. Shepeard testified that claimant mentioned his leg was still bothering him in the days following the accident. *Id.* at 57-58.

On May 15, 2017, claimant sought medical treatment at Ochsner Medical Center's emergency room, reporting right lower leg numbness and a limp since a "work accident," which claimant described as involving a bag of grain dust falling on him whereupon he felt an "explosion." CX 4 at 14-15, 19. An examination showed "decrease[d] sensation to the right lateral lower leg and dorsal aspect of the right foot." *Id.* at 16. The treatment notes state his symptoms "are most likely due to work related incident with explosion near lower extremity." *Id.* at 17. Claimant returned to Ochsner on May 22, 2017 with multiple complaints, including right leg numbness. The treatment notes state the numbness was "secondary to chemical irritation." *Id.* at 8.

Employer's work at the Cargill facility ended a day or two after the accident. Thereafter, claimant was assigned to work at ADM Reserve, adjacent to the Cargill facility, where he worked for two weeks following the accident. Claimant testified he was terminated on May 22, 2017 after Mr. Rollins told him there was no other work available and he was no longer needed. Tr. at 90-92. Mr. Rollins, however, testified he was not involved with claimant's ending his employment and was told claimant quit because he was not comfortable working at heights. *Id.* at 75-76. Employer's project manager, Mr. Naquin, testified claimant approached him and said he did not feel comfortable working at heights and he was leaving to "do his own thing." *Id.* at 171-72. After his employment with employer ended, claimant worked a variety of jobs for different employers.

Claimant filed a claim on September 20, 2017, seeking compensation for "chemical burn with numbness, lower back injury, right knee, and possible lung problems." CX 6 at 60. Dr. Sudderth evaluated claimant on September 26, 2017 and diagnosed a lumbosacral sprain and radiculopathy affecting claimant's right leg and occipital headaches, "secondary to an on-the-job accident on 5/10/17." CX 1 at 50-52. Claimant was given medications, started physical therapy, and was told not to do any physical work. Tr. at 96-97; CX 1 at 50-52.

The administrative law judge found claimant gave inconsistent or contradictory answers about what occurred after the accident, the circumstances of his leaving his employment, and his subsequent employment with other employers. Decision and Order at 4-5. She found him only marginally credible, but nonetheless accepted his testimony regarding the accident and some of his resulting physical injuries, noting it was plausible and consistent with the credible testimony of his co-workers. *Id.* at 6. She concluded the accident occurred as described when dust fell on claimant causing a brief ignition. *Id.* at 14. She found claimant's medical records from shortly after the accident support his description of his injuries to his right leg. *Id.* She noted claimant did not report back pain until September 20, 2017, but accepted his testimony that it occurred gradually and Dr. Sudderth's opinion that his lumbosacral sprain and radiculopathy are causally related to his May 2017 work accident. She found claimant established a prima facie case for his back injuries and right leg numbness, entitling him to the Section 20(a) presumption.[1]

The administrative law judge determined employer did not produce substantial evidence to rebut the presumption. Decision and Order at 16. Employer relied on the gap in treatment between May and September 2017 and speculated that something else must

[1] She found claimant did not establish a prima facie case for the alleged chemical burn, right knee injury, and lung injuries because they are not mentioned in claimant's medical records. *See* Decision and Order at 16, n.4.

have caused claimant's back injury but provided no support for its theory. *Id.* at 17. Because employer did not rebut the presumption, the administrative law judge found the presumption established a causal connection between his injuries and his work accident. In the alternative, the administrative law judge also weighed the evidence as a whole and concluded claimant's lumbosacral sprain and radiculopathy affecting his right lower extremity are related to his work accident. *See id.* at 17-18.

The administrative law judge found claimant established he has been temporarily totally disabled since September 26, 2017, the first date on which Dr. Sudderth took him off work.[2] Decision and Order at 19. She therefore awarded claimant ongoing temporary total disability benefits from September 26, 2017, as well as reasonable and necessary medical benefits.[3] *See id.* at 23.

On appeal, employer contends the administrative law judge erred in finding claimant's back and right leg injuries are due to the alleged work accident. Claimant filed a response brief, urging affirmance.

Employer first assigns error to the administrative law judge's finding that claimant established a prima facie case. Employer contends claimant's testimony about the alleged work accident is not credible, and even if the alleged accident occurred, there was no indication for months afterward that claimant suffered any injury from it.

In order to invoke the Section 20(a) presumption, a claimant must establish a prima facie case by showing: (1) he suffered a "harm" and (2) a condition of the workplace could have caused, aggravated, or accelerated the harm. *Amerada Hess Corp. v. Director, OWCP*, 543 F.3d 755, 42 BRBS 41(CRT) (5th Cir. 2008). The United States Court of Appeals for the Fifth Circuit, within whose jurisdiction this case arises, has stated claimants face a "fairly light burden" in which they must supply "prima facie proof of a compensable injury." *Bis Salamis, Inc. v. Director, OWCP*, 819 F.3d 116, 127, 50 BRBS 29, 36(CRT) (5th Cir. 2016). An administrative law judge may make credibility determinations in ascertaining whether a claimant has made a prima facie case. *See id.*

In this case, the administrative law judge specifically considered the inconsistencies in claimant's testimony, but gave "great weight" to his account of the accident and his

[2] The parties stipulated that claimant has not returned to his usual job. Decision and Order at 19. Employer did not submit evidence of suitable alternate employment.

[3] Employer does not challenge the administrative law judge's award of temporary total disability benefits.

physical back and right leg injuries as "largely plausible, internally consistent, and consistent with the eyewitness testimony of Mr. Shepeard." Decision and Order at 6. The Board will not overturn an administrative law judge's credibility determinations unless they are patently unreasonable. *Lennon v. Waterfront Transport*, 20 F.3d 658, 28 BRBS 22(CRT) (5th Cir. 1994); *Young v. Newport News Shipbuilding & Dry Dock Co.*, 45 BRBS 35 (2011).

The administrative law judge was well within her discretion to credit the portion of claimant's testimony regarding his work accident, because she found it corroborated by the credible testimony of Mr. Shepeard and Mr. Rollins. *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991). Mr. Shepeard stated he felt heat and that smoke came off both his and claimant's clothes, consistent with claimant's description of the accident and his feeling that he was "on fire." Tr. at 28-29, 84. Mr. Rollins confirmed he saw dust on claimant and heard from other workers about the accident. *Id.* at 70-73. Claimant testified that after the accident, he found the hairs on his legs were singed and mentioned to Mr. Shepeard that his leg was stinging. *Id.* at 54, 84-85. In addition, claimant reported right lower leg numbness at the emergency room four days after the accident and an examination confirmed "decrease[d] sensation to the right lateral lower leg." CX 4 at 14-15, 19. We therefore affirm the administrative law judge's finding that an accident occurred on May 11, 2017, that could have caused claimant's leg injury. *See Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000).

Employer next challenges the administrative law judge's finding that claimant established a prima facie case for his back injury. To meet his burden, claimant did not need to prove his accident actually caused his back injury, only that an accident occurred at work which could have caused his injury. *See Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608 14 BRBS 631 (1982); *Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 690, 33 BRBS 187, 187(CRT) (5th Cir. 1999). Employer contends claimant denied any back pain in the emergency room visit in May following the accident and therefore the accident could not be the cause of back pain first mentioned in September 2017. The administrative law judge considered claimant's delay in mentioning back pain but accepted his explanation that his back pain occurred gradually. Decision and Order at 15.

The administrative law judge acted within her discretion in crediting claimant's testimony regarding the gradual onset of his back pain. *Bis Salamis*, 819 F.3d at 127-128, 50 BRBS at 37-38(CRT). Claimant's medical history and objective tests confirm the existence of a back injury. Claimant testified he believed he had injured his back by jumping up and down while straddling the beam during the work incident. Tr. at 111. Dr.

Sudderth opined claimant's May 2017 work accident caused his lumbosacral sprain and radiculopathy. CX 1. The administrative law judge found Dr. Sudderth's opinion supported by claimant's medical records and treatment notes as well as his MRI and EMG results. *See* Decision and Order at 15. In conjunction with claimant's testimony, Dr. Sudderth's opinion is sufficient to establish a prima facie case as to claimant's back injury. Thus, the administrative law judge properly invoked the Section 20(a) presumption that claimant's back pain and right leg numbness were caused by his work accident. *See Obadiaru v. ITT Corp.*, 45 BRBS 17 (2011). Accordingly, we affirm the administrative law judge's application of the Section 20(a) presumption.

If a prima facie case is established, the burden shifts to employer to rebut the Section 20(a) presumption with substantial evidence "through facts—not mere speculation—that the harm was not work-related." *Amerada Hess Corp*, 543 F.3d at 761, 42 BRBS at 44 (quoting *Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 687-88, 33 BRBS 187, 189(CRT) (5th Cir. 1999)). Substantial evidence is "the kind of evidence a reasonable mind might accept as adequate to support a conclusion." *Conoco, Inc. [Prewitt]*, 194 F.3d at 690, 33 BRBS at 187(CRT).

We reject employer's contention that the administrative law judge erred in finding it did not rebut the Section 20(a) presumption. The administrative law judge found employer did not submit substantial evidence of the lack of a causal connection between claimant's injuries and his work accident because it relied solely on negative evidence in the form of claimant's lack of credibility and his delay in reporting his injuries. The Section 20(a) presumption may be rebutted by evidence that "throws factual doubt" on claimant's prima facie case, *see Ceres Gulf, Inc. v. Director, OWCP [Plaisance]*, 683 F.3d 225, 231, 46 BRBS 25, 29(CRT) (5th Cir. 2012), but the administrative law judge is not required to conclude that a gap between the accident and a report of injury rebuts the presumption. *See Gencarelle v. General Dynamics Corp.*, 22 BRBS 170 (1989), *aff'd*, 892 F.2d 173, 23 BRBS 13(CRT) (2d Cir. 1989). Instead, the administrative law judge permissibly emphasized that no medical opinion disputes the connection between claimant's back and right leg injuries and his accident. We affirm the administrative law judge's finding as it is in accordance with the law. *See Hunter*, 227 F.3d at 290, 34 BRBS at 99(CRT); *see also Simonds v. Pittman Mechanical Contractors, Inc.*, 27 BRBS 120, *aff'd sub nom. Pittman Mechanical Contractors, Inc. v. Director, OWCP*, 35 F.3d 122, 28 BRBS 89(CRT) (4th Cir. 1994). Because employer did not rebut the Section 20(a) presumption, claimant's back and right leg injuries are work-related. *See Obadiaru*, 45 BRBS at 20.

In the alternative, the administrative law judge weighed the evidence as a whole and found claimant affirmatively established the work-relatedness of his back and right leg

injuries.[4] Employer's challenge to the administrative law judge's weighing of the evidence is based on the same contentions addressed and rejected above. The Board is not permitted to reweigh the evidence or substitute its inferences for those of the administrative law judge. *See James J. Flanagan Stevedores, Inc. v. Gallagher*, 219 F.3d 426, 34 BRBS 35(CRT) (5th Cir. 2000). The administrative law judge's findings that a work accident caused claimant's lumbosacral sprain and radiculopathy affecting his right lower extremity are rational, supported by substantial evidence, and in accordance with law. *See* Decision and Order at 17-18. Thus, we affirm the administrative law judge's award of benefits. *See Hunter*, 227 F.3d at 290, 34 BRBS at 99(CRT).

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[4] If employer had rebutted the presumption, it would have dropped out of the case, with the burden on claimant to prove by a preponderance of the evidence that his injuries are related to the work accident based on the record as a whole. *See Plaisance*, 683 F.3d at 127, 46 BRBS at 28(CRT). Because employer did not rebut the presumption the claim is compensable without need to weigh the evidence. *See Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988). That the administrative law did so and reached the same conclusion regarding compensability is harmless error.