BRB No. 90-741

KATHLEEN M. FOX	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED:_____
CONSOLIDATED OPEN MESS, BANGOR INTERNATIONAL AIRPORT, MAINE	)	
	)	
and	)	
	)	
AIR FORCE CENTRAL INSURANCE FUND	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Anthony J. Iacobo, Administrative Law Judge, United States Department of Labor.

Kathleen M. Fox, Bangor, Maine, pro se.

David J. Christenson, Randolph Air Force Base, Texas, for employer.

Before: SMITH, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant, without representation, appeals the Decision and Order (89-LHC-1369) of Administrative Law Judge Anthony J. Iacobo denying benefits 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., as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 et seq. (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with applicable law. O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant worked as a waitress/bartender for employer from 1977 until 1979, and again during 1980. Claimant alleges that, sometime during the early part of 1979 while on duty at a wedding reception, she was called to the kitchen to answer a phone call. She claims that she slipped in a pool of water near the kitchen

door and fell, hitting her back, left side and head, and that she lost consciousness for an undetermined amount of time. Tr. at 17-19. Claimant continued her usual work after regaining consciousness. Tr. at 20. She does not remember whether she took time off work, but she remembers staying in bed to recover, and she remembers feeling achy. Tr. at 22. She claims that months later she began having vision, speech and loss of equilibrium problems, and an inability to use her left hand and arm. Tr. at 23-24. Following the alleged injury, claimant avers she attempted to obtain workers' compensation claim forms from her employer but was unable to do so. Tr. at 30.

Claimant quit her job with employer in March 1979 but continued to work at various other jobs until November or December when she returned to employer's employ in her usual capacity as a waitress/bartender. She stayed with employer until the air force base closed in April 1980. Tr. at 34-35, 52, 55-56, 61. Claimant moved to Florida in 1984 where she served as a waitress at several establishments until she returned to Maine in 1986. Tr. at 37-38. Claimant filed a claim for the alleged 1979 work-related injury in 1985, and employer filed a notice of controversion in March 1987. Cl. Ex. 6; Emp. Ex. 1 at 19.

A hearing was held on September 20, 1989, wherein the parties disputed, inter alia, the occurrence of an incident at work. Decision and Order at 2. After a review of the evidence, the administrative law judge found that claimant failed to establish the existence of an incident at work which could have caused her injury. Decision and Order at 9. Claimant appeals the administrative law judge's denial of benefits, and employer responds, urging affirmance. Because claimant appeals to the Board without the assistance of an attorney, the administrative law judge's Decision and Order will be reviewed under the Board's general standard of review. O'Keeffe, 380 U.S. at 359.

Initially, we consider whether the administrative law judge erred in concluding that a work-related incident did not occur. 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 the claimant establishes a prima facie case. Hartman v. Avondale Shipyard, Inc., 23 BRBS 201 (1990), vacated in part on reconsideration, 24 BRBS 63 (1990); Bartelle v. McLean Trucking Co., 14 BRBS 166 (1981), aff'd, 687 F.2d 34, 15 BRBS 1 (CRT) (4th Cir. 1982); Kelaita v. Triple A Machine Shop, 13 BRBS 326 (1981). To establish a prima facie case, claimant must show that she sustained a harm or pain and that conditions existed or an accident occurred at employer's facility which could have caused that harm or pain. Id. In this instance, although the administrative law judge found there is evidence of hospital admissions for various abrasions and falls, he determined that an accident did not occur at employer's facility which could have caused claimant's condition. Decision and Order at 8-9.

In denying the claim, the administrative law judge credited

the testimony of employer's two witnesses, a former manager and a former personnel assistant, which clearly contradicts claimant's testimony as to the occurrence of the alleged incident. Decision and Order at 8. Although claimant testified these witnesses knew of her injury, neither could recall the incident described by claimant. Tr. at 27, 50, 76, 92. However, both witnesses testified they would have been informed had an accident of such a serious nature occurred. Tr. at 85, 92-94. Moreover, they testified that claimant should have known to report an injury to her supervisor, and she should have known how to file a claim, as new employees are oriented with the proper procedures. Tr. at 75, 98-99. Additionally, the administrative law judge noted claimant's inability to obtain a claim form is contradicted by the fact that employer posted an informational bulletin at its facility which indicated that forms could also be obtained from the Department of Labor. Tr. at 99; Decision and Order at 8. He noted, in particular, claimant's aggressiveness in writing to the Maine Workers' Compensation Commission, the Governor of Maine, the Maine Civil Liberties Union, and the Supreme Courts of Maine, Florida and the United States, about her alleged injury. Decision and Order at 8.

The administrative law judge also found there is no contemporaneous documentary evidence indicating the occurrence of a work-related injury. Decision and Order at 8. Although there is evidence of a radiological evaluation in June 1979, claimant admitted it was for an unrelated fall down a flight of steps. Cl. Ex. 4 at 8; Tr. at 40. The only other medical evidence of record remotely contemporaneous to the alleged accident concerns claimant's admission to an alcohol treatment center in August 1979. Cl. Ex. 1. Thus, the administrative law judge properly found that none of the medical evidence of record supports claimant's claim of a head and back injury occurring at employer's facility in early 1979. He further noted that claimant denied ever suffering a head injury in her application for rehire. Decision and Order at 8; Emp. Ex. 5 at 5.

Questions of witness credibility are for the administrative law judge as 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). As it is within his discretion to credit the testimony of employer's witnesses, and as the evidence credited does not establish the occurrence of an incident at employer's facility which could have caused the harm claimant alleges, the administrative law judge rationally determined that claimant failed to establish a necessary element of a prima facie case. Hartman, 23 BRBS at 205-206. There-fore, as the administrative law judge's Decision and Order is supported by substantial evidence in the record, we must affirm the administrative law judge's denial of benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge