BRB No. 93-0626

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| LONNIE BOWEN | ) | |
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| Claimant-Petitioner | ) | |
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| v. | ) | |
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| KEITH MARINE | ) | DATE ISSUED: |
| | ) | |
| and | ) | |
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| LIBERTY MUTUAL INSURANCE COMPANY | ) | |
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| | ) | |
| Employer/Carrier-Respondents | ) | DECISION and ORDER |

Appeal of the Decision and Order of John C. Holmes, Administrative Law Judge, United States Department of Labor.

Lonnie Bowen, Jacksonville, Florida, *pro se*.

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

PER CURIAM:

Claimant, proceeding without representation, appeals the Decision and Order (91-LHC-2761) of Administrative Law Judge John C. Holmes 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*. (the Act). In an appeal in which claimant is not represented by counsel, the Board will review the administrative law judge's Decision and Order under its statutory standard of review. We must affirm the findings of fact and conclusions of law of the administrative law judge if they 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).

In his deposition, claimant alleged that he sustained an injury to his lower abdomen and back while working as a fitter for employer on December 4 or 5, 1990. Claimant alleged that the injury occurred when he and co-workers Ralph Burkett and Billy Martin were removing a heavy steel angle from a bulkhead above them, and claimant's end of the angle began to fall on him, he caught it, and was knocked to the floor. Cl. Ex. 2 at 25-28. Claimant sought treatment on December 6, 1990,

in the emergency room of Putnam Community Hospital, where he was diagnosed with a rectus abdominous muscle strain. Cl. Ex. 1. Claimant further alleged that his injury was aggravated a few weeks later at work, when he was loading strips of steel plate onto a truck with co-worker Rusty Wortman, felt something snap, and fell down. Cl. Ex. 2 at 32-35. Claimant subsequently learned that he had sustained a nondisplaced avulsion fracture of the right transverse process L-4 when he received emergency room treatment on December 27, 1990 at Putnam Community Hospital. Cl. Ex. 1. Claimant sought temporary total disability compensation from December 4, 1990 until at least the end of February 1991 and medical benefits under the Act.

In his Decision and Order, the administrative law judge found that claimant was not entitled to benefits inasmuch as his alleged injuries were not work-related. Claimant, representing himself, appeals the denial of benefits. Employer has not responded to claimant's appeal.

After review of the administrative law judge's Decision and Order in light of the evidence of record, we affirm his denial of benefits because his determination that claimant did not sustain a work-related injury is rational and supported by the record. Section 20(a) of the Act, 33 U.S.C. §920(a), provides claimant with a presumption that his condition is causally related to his employment if he shows that he suffered a harm and that employment conditions existed or a work accident occurred which could have caused, aggravated, or accelerated the condition. *See Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991); *Gencarelle v. General Dynamics Corp.*, 22 BRBS 170 (1989), *aff'd*, 892 F.2d 173, 23 BRBS 13 (CRT)(2d Cir. 1989). Once claimant has invoked the presumption, the burden of proof shifts to employer to rebut it with substantial countervailing evidence. *Merrill*, 25 BRBS at 144. If the presumption is rebutted, the administrative law judge must weigh all the evidence and render a decision supported by substantial evidence. *See Del Vecchio v. Bowers*, 196 U.S. 280 (1935).

In the present case, the administrative law judge found that inasmuch as claimant testified that he had an injury which he alleged happened at work and the medical records supported a finding of injury, claimant was entitled to invocation of the Section 20(a) presumption. The administrative law judge then determined that there was substantial evidence in the record to rebut the presumption. In so concluding, the administrative law judge found claimant's uncorroborated deposition testimony regarding the alleged accidents unpersuasive, noting that because claimant had twice failed to attend scheduled hearings of his case and had requested a decision on the record through his attorney, he was precluded from observing claimant's demeanor. In contrast, the administrative law judge found the testimony of claimant's co-workers, Ralph Burkett and Rusty Wortman, and that of Glen Martin, his supervisor, which directly refuted claimant's deposition testimony regarding the alleged work-related accidents credible. Mr. Burkett and Mr. Wortman testified that they neither witnessed any work-related accident involving claimant, nor heard about any industrial injury to claimant. Tr. at 38-39, 45, 47, 50. Mr. Burkett explicitly denied seeing an angle fall on claimant, Tr. at 38, and stated that when anyone was hurt in the yard, everyone knew about it, whereas he did not learn of claimant's alleged work-related injury until he was called to the hearing. Tr. at 39, 45. Although claimant testified that his supervisor, Glen Martin, asked whether he was all right on the date of each incident, and told him to go to the hospital if he needed to, Cl. Ex. 2 at 27, 35, Mr. Martin denied seeing claimant sustain any injury on the job and testified that claimant never reported a work-related injury to him, and, in fact, had told him that he had been injured at home. Tr. at 17-20, 24.

After considering the evidence as a whole, the administrative law judge found, based on the testimony of Mr. Burkett, Mr. Wortman and Mr. Martin, that the accidents which claimant alleged were the cause of his injuries did not occur. After review of the record, we affirm the administrative law judge's finding because it is rational, supported by substantial evidence, and in accordance with law. *See O'Keeffe*, 380 U.S. at 359. We note that the evidence as to whether the alleged events at work occurred should have been weighed in determining whether the Section 20(a) presumption was invoked, as it is claimant's burden to establish that the working conditions or accident which forms the basis for his claim did, in fact, occur. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982) (where substantial evidence supported administrative law judge's determination that claimant's allegation of a work accident was false, claimant was not entitled to invocation of the Section 20(a) presumption). An administrative law judge's credibility determination that the alleged work accident did not occur, must be affirmed when it is supported by substantial evidence. *See Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27 (CRT)(9th Cir. 1988); *Pigrenet v. Boland Marine & Manufacturing Co.*, 656 F.2d 1091, 13 BRBS 843 (5th Cir. 1981) (*en banc*). *See also Darnell v. Bell Helicopter, Inc.*, 16 BRBS 98 (1984), *aff'd sub nom. Bell Helicopter, Inc. v. Jacobs*, 746 F.2d 1342, 17 BRBS 13 (CRT)(8th Cir. 1984); *Jones v. J. F. Shea Co.*, 14 BRBS 207 (1981). Any error is harmless, however, as the administrative law judge weighed the relevant evidence. Inasmuch as our review of the administrative law judge's Decision and Order in light of the record fails to reveal any reversible error made by the administrative law judge in evaluating the conflicting evidence and making credibility determinations, his denial of benefits is affirmed. *See generally Thompson v. Northwest Enviro Services, Inc.*, 26 BRBS 53 (1992).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge