

JOAN MELU	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CADDELL DRY DOCK AND REPAIR	)	DATE ISSUED:
	)	
and	)	
	)	
THE STATE INSURANCE FUND	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION AND ORDER

Appeal of the Decision and Order-Denying Claim for Benefits of Michael P. Lesniak,  
Administrative Law Judge, United States Department of Labor.

Joan Melu, Norfolk, Virginia, *pro se*.

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

PER CURIAM:

Claimant, without representation, appeals the Decision and Order-Denying Claim for Benefits (91-LHC-399) of Administrative Law Judge Michael P. Lesniak 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 a *pro se* claimant, the Board will review the administrative law judge's findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and in accordance with law.<sup>1</sup> *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant worked for employer as a welder. On December 1, 1988, the float stage on which claimant was welding shifted, causing him to lose his balance at which time a welding spark went into his right ear. Claimant did not immediately seek medical attention, but continued working. He

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<sup>1</sup>In an Order dated March 15, 1994, the Board noted the appearance of David T. Daulton, Esq. on behalf of claimant and directed counsel to file a Petition for Review and brief within thirty days from receipt of the Order. However, by letter dated April 7, 1994, Mr. Daulton informed the Board that he had not been retained by claimant and had declined to undertake representation on his behalf. Therefore, claimant is now considered to be proceeding in a *pro se* capacity.

continued his employment until December 7, 1988, at which time he claims that his condition worsened and alleges that he was taken to the hospital. Although a subpoena was issued by the administrative law judge for the hospital records, no records of treatment were received or introduced. Claimant sought benefits for temporary total disability for the period from December 7, 1988 through approximately March 6, 1989.

In his decision, the administrative law judge found that claimant did not establish a *prima facie* case of causation, because he did not establish that he had suffered a "harm." In addition, the administrative law judge found that even if there was a harm related to working conditions, claimant did not provide evidence of any disability, work-related or not, during the period from December 7, 1988 through March 6, 1989. Thus, benefits were denied.

After consideration of the administrative law judge's Decision and Order and the evidence of record, we hold that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error. Specifically, the administrative law judge found that there is no medical evidence of record that indicates that claimant was disabled at all for any reason during the period from December 7, 1988 through March 6, 1989. While credible complaints of pain alone may be sufficient to meet the employee's burden, the administrative law judge rejected claimant's testimony regarding his alleged disability during this period as the medical reports of Drs. Meisel, Lerch, and Kimmelman directly contradict it. *See generally Thompson v. Northwest Enviro Services, Inc.*, 26 BRBS 53 (1992). It is the function of the administrative law judge to make credibility determinations, which may not be disturbed unless they are inherently incredible or patently unreasonable. *Rivera v. United Masonry, Inc.*, 948 F.2d 774, 25 BRBS 51 (CRT) (D.C. Cir. 1991). We therefore affirm the administrative law judge's finding that claimant failed to produce evidence of a disability during the period from December 7, 1988, through March 6, 1989, and thus affirm the denial of benefits. *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56 (1980).

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

SO ORDERED.

JAMES F. BROWN  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge