BRB No. 93-2060

ROBERT LIBORIO	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHIPYARD RESTAURANT SYSTEM	)	DATE ISSUED:
	)	
and	)	
	)	
HAWAIIAN INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of G. Marvin Bober, Administrative Law Judge, United States Department of Labor.

Jonathan J. Ezer (McKenzie, Trecker & Fritz), Honolulu, Hawaii, for claimant.

Sabrina R. Toma and Wayne W. H. Wong (Torkildson, Katz, Jossem, Fonseca, Jaffe, Moore & Hetherington), Honolulu, Hawaii, for employer/ carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (92-LHC-2349) of Administrative Law Judge G. Marvin Bober 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*., as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq*. (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, the manager of employer's restaurant, filed a claim under the Act for emotional and psychological trauma due to conditions allegedly imposed on him by his superior, Captain Joseph Walters III. Prior to 1989, claimant enjoyed virtual independence in his operation of employer's restaurant. In 1989, however, a Board of Governors was established to oversee the restaurant, with Captain Walters as chairman. Captain Walters immediately assumed an active role in overseeing the restaurant, requesting from claimant budgets, marketing surveys and incentive

programs. After claimant failed to comply with these requests, Captain Walters issued claimant a letter of caution as well as a poor performance review. At this time, claimant complained of headaches, nervousness, shortness of breath, chest and stomach pains, and insomnia. Claimant was terminated from the restaurant by Captain Walters on May 6, 1991. The Department of the Navy upheld this action following a post-termination hearing.

Prior to the hearing before the administrative law judge in the instant case, claimant submitted to the administrative law judge an exhibit marked Claimant's Exhibit A, which consisted of excerpts from his post-termination hearing with the Department of the Navy. Employer subsequently filed a motion to strike Claimant's Exhibit A with the administrative law judge, arguing that this exhibit did not contain the testimony of numerous witnesses who appeared at claimant's post-termination hearing; alternatively, employer requested that the entire transcript of claimant's post-termination hearing be admitted into evidence. At the formal hearing on December 8, 1992, the administrative law judge admitted into evidence Claimant's Exhibit 1, which he stated consisted of both claimant's pre-hearing submission, *i.e.*, Claimant's Exhibit A, as well as the entire transcript of claimant's post-termination hearing. The administrative law judge requested that claimant's counsel submit the complete transcript of claimant's post-termination hearing after the hearing in the instant case. Tr. at 6-7. Pursuant to the administrative law judge's request, claimant's counsel, on January 6, 1993, forwarded to the administrative law judge Claimant's Exhibit 1 which, counsel's cover letter noted, consisted of a complete transcript of claimant's termination hearing contained in two black binders. On March 2, 1993, claimant filed an *ex parte* motion to withdraw Claimant's Exhibit A from evidence, which the administrative law judge granted.

In his Decision and Order, the administrative law judge found that claimant was entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption based on the opinion of Dr. Trockman, who opined that claimant suffered from an adjustment disorder caused by the circumstances of his employment. However, the administrative law judge found that employer established rebuttal of the presumption based on the opinions of Drs. Stitham and Bussey that claimant suffered no psychological industrial injury. The administrative law judge then weighed the evidence as a whole and, relying on the opinions of Drs. Stitham and Bussey, found that claimant's psychological difficulties were not caused by conditions at work. Throughout his decision, the administrative law judge cited Claimant's Exhibit 1, the complete transcript of claimant's post-termination hearing, specifically with regard to the historical background of the claim.

On appeal, claimant challenges the administrative law judge's decision to cite to Claimant's Exhibit 1 in his decision after he had accepted claimant's motion to withdraw this exhibit from the record. Employer responds, pointing out that claimant withdrew from evidence Claimant's Exhibit A, the excerpts from the post-termination hearing transcript, not Claimant's Exhibit 1, the entire hearing transcript itself.

Claimant's sole contention on appeal is that the administrative law judge committed reversible error in citing to Claimant's Exhibit 1 in his decision. We disagree. It is well-established that an administrative law judge has great discretion concerning the admission of evidence, and he is not bound by any formal rules in making evidentiary determinations. *See* 33 U.S.C. §923(a); 20 C.F.R. §702.339; *Vonthronsohnhaus v. Ingalls Shipbuilding, Inc.*, 24 BRBS 154 (1990). At the formal hearing in the instant case, the administrative law judge unequivocally stated that Claimant's

Exhibit 1 consisted of both claimant's pre-hearing submission as well as the hearing transcript of claimant's termination proceeding, contained in approximately two volumes. *See* Tr. at 6. Thereafter, in forwarding the complete termination hearing transcript to the administrative law judge, claimant unequivocally stated in his cover letter that Claimant's Exhibit 1 consisted of a complete transcript of claimant's termination hearing contained in two black binders. Claimant's subsequent motion to withdraw evidence referenced only Claimant's Exhibit A, the excerpts from the post-termination hearing transcript which he had submitted to the administrative law judge pre-hearing and which was made part of Claimant's Exhibit 1 by the administrative law judge at the formal hearing; thus, upon the administrative law judge's granting of claimant's motion, the remainder of Claimant's Exhibit 1, specifically the entire post-termination hearing transcript, remained in evidence. Accordingly, the administrative law judge's citation to Claimant's Exhibit 1 was entirely proper since the post-termination hearing transcript remained in evidence. Claimant's contention of error is therefore rejected. Inasmuch as claimant makes no other allegation of error,[1] we hereby affirm the administrative law judge's denial of benefits.

[1]We note that the administrative law judge's determination that the opinions of Drs. Stitham and Bussey are sufficient to establish rebuttal of the Section 20(a) presumption, and the administrative law judge's reliance on these physicians' opinions to find that causation had not been established on the record as a whole, are neither inherently incredible or patently unreasonable. *See generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

Accordingly, the Decision and Order Denying Benefits 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