BRB No. 97-1497

OTHAL CHEESE	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
TARTAN TERMINALS, INCORPORATED	)	
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Vivian Schreter-Murray, Administrative Law Judge, United States Department of Labor.

Michael C. Eisenstein, Baltimore, Maryland, for claimant.

Thomas G. Young III (Young & Valkenet, L.L.C.), Baltimore, Maryland, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (96-LHC-2076) of Administrative Law Judge Vivian Schreter-Murray 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). 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 alleged that he sustained an injury during the course of his employment with employer on or about October 5, 1992, when a crane hook struck the back of his left hand. Claimant continued to work during the weeks following the alleged incident until he suffered a heart attack on November 18, 1992, but he returned to work three months thereafter. On March 1, 1993, claimant first sought

medical attention for his hand injury when he was examined by Dr. Pidlaoan, who diagnosed a ganglion cyst on claimant's left hand. On May 4, 1993, Dr. Pidlaoan performed an aspiration of the cyst. Dr. Rosenbaum, who examined claimant on January 31, 1996, gave claimant a 13 percent impairment rating to claimant's left hand due to claimant's pain, atrophy and loss of function of the hand. Dr. Rosenbaum upgraded the impairment rating to claimant's left hand to 15 percent after examining claimant on July 18, 1996. Claimant thereafter filed a claim under the Act seeking permanent partial disability compensation pursuant to Section 8(c)(3) of the Act, 33 U.S.C. §908(c)(3), alleging that his hand condition is causally related to the October 1992 work accident.

In her Decision and Order, the administrative law judge found that claimant failed to establish that a traumatic injury to his left hand occurred in October 1992, and thus failed to establish a *prima facie* case sufficient to invoke the presumption of causation under Section 20(a) of the Act, 33 U.S.C. §920(a). Assuming, *arguendo*, that a traumatic work injury did occur in October 1992, the administrative law judge found that claimant failed to establish any residual functional impairment or disability with respect to his left hand. Thus, the administrative law judge denied the claim.

On appeal, claimant contends that the administrative law judge erred in finding that he is not entitled to invocation of the Section 20(a) presumption and by failing to find that he has a permanent partial disability with regard to his left hand which was caused by the October 1992 work-incident. Employer responds, urging affirmance.

It is well-established that claimant bears the burden of proving the existence of an injury or harm and that a work-related accident occurred or that working conditions existed which could have caused the harm, in order to establish his *prima facie* case. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Bolden v. G.A.T.X. Terminals Corp.,* 30 BRBS 71 (1996); *Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1990). It is claimant's burden to establish each element of his *prima facie* case by affirmative proof.[1] *See Kooley v. Marine Industries Northwest,* 22 BRBS 142 (1989); *see also Director, OWCP v. Greenwich Collieries,* 512 U.S. 267, 28 BRBS 43 (CRT)(1994). Once claimant has established his *prima facie* case, he is entitled to invocation of the Section 20(a) presumption linking his harm to his employment. *See Stevens v.*

[1]Contrary to claimant's assertion, Section 20(a) of the Act does not apply to the determination of whether an accident occurred. Thus, if claimant alleges that an accident caused his injury, he must establish that the alleged accident did in fact occur. *See Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981).

Tacoma Boatbuilding Co., 23 BRBS 191 (1990). Upon invocation of the presumption, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). If the administrative law judge finds that the Section 20(a) presumption is rebutted, the administrative law judge must weigh all of the evidence and resolve the causation issue based on the record as a whole. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990).

In rendering her decision, the administrative law judge analyzed claimant's testimony and determined that claimant's allegation of a traumatic injury to his hand in October 1992 lacked credibility. In this regard, the administrative law judge initially found that claimant provided conflicting testimony with regard to the specific date of the alleged work-incident.[2] Moreover, the administrative law judge found it implausible that claimant would be able to work without seeking medical treatment for such an injury for nearly six months, and incredible that he suffered pain and swelling in his left hand during his subsequent hospitalization but did not report it to the medical staff and was not treated for these symptoms.[3] In addition, the administrative law judge credited the opinion of Dr. Pidlaoan, as supported by the opinion of Dr. Sarshar, that claimant's cyst was not due to a traumatic impact, but was the result of either hyperextension or hyperflexion of the wrist.[4] Emp. Exs. 2, 7

[2]Claimant reported to Dr. Pidlaoan that the incident occurred on October 1, 1992, *see* Emp. Ex. 2, but testified that it occurred between October 1 and October 5, 1992. Emp. Ex. 9 at 15; Tr. at 32.

[3]Specifically, the administrative law judge found it implausible that claimant could conceal a swollen and painful left hand from doctors and nurses during his 14-day hospitalization.

[4]Dr. Pidlaoan testified that a ganglion cyst is a traumatic injury, but one that is

at 27-28, 8 at 44. Thus, the administrative law judge concluded that the alleged traumatic injury in October 1992, to claimant's left hand did not occur. *See* Decision and Order at 4.

In adjudicating a claim, it is well-established that an administrative law judge is entitled to evaluate the credibility of all witnesses, including doctors, and is not bound to accept the opinion or theory of any particular medical examiner; rather, the administrative law judge may draw her own inferences and conclusions from the evidence. *See Calbeck v. Strachan Shipping* Co., 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). Moreover, the administrative law judge may discredit a claimant's testimony to find that an alleged accident arising out of the course of claimant's employment did not occur. *See Bartelle v. McLean Trucking Co.*, 14 BRBS 166 (1981)(Miller, J., dissenting), *aff'd*, 687 F.2d 34, 15 BRBS 1 (CRT)(4th Cir. 1982). Accordingly, the administrative law judge's credibility determinations are not to be disturbed unless they are inherently incredible or patently unreasonable. *See generally Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988).

On the basis of the record before us, the administrative law judge's decision to discredit the testimony of claimant is neither inherently incredible nor 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). We therefore affirm the administrative law judge's determination that claimant failed to establish that .the alleged accident in October 1992 occurred. *See, e.g., Rochester v. George Washington University*, 30 BRBS 233 (1997); *Bolden*, 30 BRBS at 73. As claimant failed to establish an essential element of his *prima facie* case, his claim for benefits was properly denied. *See U.S. Industries*, 455 U.S. at 608, 14 BRBS at 631; *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27 (CRT)(9th Cir. 1988).

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

SO ORDERED.

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caused by excessive hyperextension of hyperflexion, and is not caused by a blow to the hand. Emp. Ex. 7 at 27-28.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge