BRB No. 03-0447

JUAN MARTINEZ	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TRI-STAR MARINE	)	DATE ISSUED:MAR 11, 2004
	)	
and	)	
	)	
LIBERTY NORTHWEST INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Paul A. Mapes, Administrative Law Judge, United States Department of Labor.

Juan Martinez, Los Angeles, California, *pro se*.

Lisa M. Conner (Aleccia, Conner & Socha), Long Beach, California, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (2001-LHC-1582) of Administrative Law Judge Paul A. Mapes 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 claimant without representation, the Board will review the administrative law judge's findings of fact and conclusions of law to determine whether they 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); 20 C.F.R. §§802.211(e), 802.220. If they are, they must be affirmed.

Claimant was working as a welder on a project involving repairs to a vessel docked at or near Seattle, Washington. According to claimant's hearing and deposition testimony, he was working aboard the vessel on October 1, 1997, when he fell about six feet from a board, hitting his neck, back and hip on a piece of metal. Claimant did not report this accident to employer that day because he thought the company did not have insurance. Following the alleged accident, claimant resumed working and continued working as a welder until he was laid off on October 25, 1997.[1] Claimant sought treatment for back pain beginning in March 1998, but the examining physicians were unable to find any physical abnormalities to explain claimant's complaints of pain. Employer voluntarily paid temporary total disability benefits from March 3, 1998 to June 1, 1998. Claimant filed a claim under the Act on January 14, 2000, seeking continuing compensation and medical benefits.

The administrative law judge found that the evidence does not establish that claimant suffered a compensable injury. Therefore, the administrative law judge denied benefits under the Act.[2] Claimant is not represented by counsel in his appeal. Employer responds to the appeal, urging affirmance of the administrative law judge's Decision and Order.

Initially, the administrative law judge found that claimant's testimony that he suffered an injury while working on October 1, 1997, that required medical treatment and eventually became disabling, is sufficient to invoke the Section 20(a) presumption that claimant suffers from a work-related disability. 33 U.S.C. §920(a). The administrative law judge also found that the evidence establishes rebuttal of the presumption, and after weighing the evidence as a whole, concluded that claimant did not suffer a compensable injury on October 1, 1997. Section 20(a) of the Act aids a claimant in proving that his injury is work-related. In order to invoke the Section 20(a) presumption, claimant must show that he sustained a harm and that either an accident occurred or working conditions existed which could have caused the harm. *See Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir.1998); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). Once the Section 20(a) presumption is invoked, employer may rebut it by producing substantial evidence that claimant's employment did not cause, accelerate,

[1] Claimant subsequently moved to California, where he sought treatment in December 1997 for a right-sided hernia. Claimant indicated on a form filled out for the medical center that he did not have any complaints involving joint or back pain. Emp. Ex. 15 at 218.

[2] The administrative law judge thus did not reach any remaining issues, including whether claimant timely filed a claim pursuant to 33 U.S.C. §913.

aggravate, or contribute to the injury. *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999). When employer produces substantial evidence that claimant's injury is not work-related, the Section 20(a) presumption drops out of the case, and the administrative law judge must weigh all of the evidence relevant to the causation issue, with claimant bearing the burden of proving that his disability is work-related. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

In the present case, the administrative law judge found that claimant's testimony that he suffered an injury while working for employer on October 1, 1997, is sufficient to establish invocation of the Section 20(a) presumption, and he stated, generally, that the evidence which contradicts claimant's testimony is sufficient to rebut the presumption. Decision and Order at 9. The administrative law judge then reviewed all the evidence of record, including the medical opinions, claimant's testimony, and the evidence regarding claimant's false representations to the Passport Office, and concluded that the evidence is insufficient to establish that claimant suffered a compensable injury on October 1, 1997.[3] *Id.* at 10-11. He found that claimant's account of his alleged work accident is uncorroborated by any other witnesses or any other kind of evidence, and he observed that claimant continued to work at his regular duties for more than three weeks after the alleged date of injury until he was laid off for business reasons. In addition, the administrative law judge found that claimant's description of the medical treatment he sought for the alleged injury is inconsistent and that Drs. London, Kroll, and Mirza have been unable to find any medical abnormalities to explain claimant's complaints of pain. Regarding claimant's general veracity, the administrative law judge found it significant that claimant does not use his true name, has made false representations to the Passport Office, and was untruthful regarding whether he ever lived in Mexico or sought medical treatment for his alleged injury on the same day it occurred. In weighing the medical

[3] Claimant began working as a welder for All-Ways Metals on March 23, 2001, but was fired on Auust 7, 2001, from this position for insubordination and because his work was substandard. Claimant filed a state compensation claim for an injury he alleged occurred at this employer on August 7, 2001, and sought treatment for a back injury. Dr. Zargaraff, claimant's treating chiropractor, opined that 30 percent of claimant's overall disability was attributable to the alleged injury of October 1, 1997. Emp. Ex. 14. At the request of employer, claimant was examined on May 3, 2002, by Dr. London, a board-certified surgeon. Dr. London concluded that there was no objective evidence that claimant's impairment could be attributed to the alleged injury on October 1, 1997, that there are no objective findings of an orthopedic nature, that claimant is not in need of any medical treatment of an orthopedic nature, and that claimant is capable of working without any restrictions. Emp. Ex. 9

evidence, the administrative law judge accorded no weight to the opinion of Dr. Zargaraff, who opined that claimant has a permanent disability which is due, at least in part, to his accident on October 1, 1997, as this opinion is based on the representations made by claimant. *See* Emp. Ex. 14. Instead, the administrative law judge relied on Dr. London's opinion as he found it was based on a review of all of claimant's medical records and because Dr. London's qualifications are superior to those of Dr. Zargaraff.

This type of evidence usually is weighed in order to determine if the Section 20(a) presumption is invoked, specifically in discussing the elements of a claimant's *prima facie* case. *See Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *see also Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989). However, as the administrative law judge reviewed all the relevant evidence and is entitled to make credibility determinations, which may not be disturbed unless they are inherently incredible or patently unreasonable, we hold that any error is harmless. *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); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). Moreover, we hold that inasmuch as the administrative law judge rationally weighed the evidence of record, his finding that claimant did not sustain the injury alleged is supported by substantial evidence. Claimant therefore has not established the essential elements of his claim. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Mackey v. Marine Terminals Corp.*, 21 BRBS 129 (1988). We therefore affirm the administrative law judge=s denial of benefits.

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge