

PAUL J. RICE)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
STEVEDORING SERVICES OF AMERICA)	DATE ISSUED: <u>May 14, 2004</u>
)	
and)	
)	
HOMEPORT INSURANCE COMPANY)	
)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Donald B. Jarvis, Administrative Law Judge, United States Department of Labor.

Paul J. Rice, Seattle, Washington, *pro se*.

Richard M. Slagle (Slagle Morgan LLP), Seattle, Washington, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Benefits (2001-LHC-01585, 01586) of Administrative Law Judge Donald B. Jarvis rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.* (the Act). In an appeal by a claimant without representation by counsel, 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. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant alleges that two specific work incidents occurred, on June 19, 2000, and August 9, 2000, respectively, which affected the condition of his right knee. Specifically, claimant testified that on June 19, 2000, he felt a "clicking" in his right knee when he kicked the ground while attempting to remove a strap of steel from his work area.

Claimant sought no medical treatment as a result of this alleged incident, and he thereafter worked on 26 jobs. On August 9, 2000, claimant alleges that he experienced pain in his right knee when, while disembarking from an employer-provided bus, he pivoted on that knee. Claimant testified that on the following day, August 10, 2000, he sought medical treatment for his continuing knee pain. *See* Tr. at 14. On August 18, 2000, claimant presented himself to a local emergency room complaining of knee discomfort. Group Health Cooperative emergency room records for that date reveal that claimant reported that while at home on August 10, 2000, he fell and twisted his knee while going down a ladder. *See* Emp. Exs. 1 at 1; 2 at 3. On that same day, August 18, 2000, claimant completed a ILWU-PMA Welfare Plan Claim Form stating that his disability was not due to an accident, injury, or illness arising out of his employment. *See* Emp. Ex. 2 at 2. On September 11, 2000, claimant filed an injury report with employer stating that he had sustained a work-related injury on June 16, 2000.¹ *See* Emp. Ex. 4 at 8. Claimant subsequently revised his ILWU-PMA Welfare Plan Claim Form to reflect that his knee condition was work-related. *See* Emp. Ex. 7 at 22. Ultimately, claimant was diagnosed with a tear of the right medial meniscus for which he has undergone surgery. *See* Emp. Exs. 5; 6. Claimant was released to return to modified work on February 5, 2001, and full duty on April 4, 2001. *See* Emp. Ex. 7 at 26-42.

In his Decision and Order, the administrative law judge determined that while claimant had established a harm as of August 2000, specifically a right knee problem, he failed to establish that he suffered the specific accidents during the course of his employment that he alleged could have caused that harm. Accordingly, having found that claimant failed to establish his *prima facie* case, the administrative law judge denied the claim for benefits under the Act.

Claimant, without the benefit of counsel, has filed a letter with the Board seeking reconsideration of the administrative law judge's denial of his claim. Employer, although filing an entry of appearance, has not filed a brief in this matter.

Claimant on appeal challenges the sole issue addressed by the administrative law judge below, *i.e.*, the administrative law judge's determination that claimant did not have a work-related accident on either June 19, 2000, or August 9, 2000. Claimant has 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 a *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); *Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1993); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981). It is claimant's burden to establish each

¹ Claimant subsequently conceded that he was not employed on June 16, 2000, and opined that he had given the wrong date of his alleged injury to employer.

element of his *prima facie* case by affirmative proof.² 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).

In the instant case, claimant asserted that definitive work incidents occurred on June 19, 2000, and August 9, 2000, which caused his subsequent knee condition. After setting forth and discussing claimant's testimony at length, the administrative law judge discredited that testimony in concluding that the two specific work incidents alleged did not occur. See *U.S. Industries*, 455 U.S. 608, 14 BRBS 631. In rendering this determination regarding the alleged June 19, 2000, kicking incident, the administrative law judge noted that claimant's August 18 through August 28, 2000, medical records do not reference an incident occurring in June 2000, that subsequent references are inconsistent regarding the date of the alleged incident, and that claimant provided no substantiating or corroborating evidence in support of his allegation regarding this incident. See Decision and Order at 4-5. In addressing the alleged August 9, 2000, incident, the administrative law judge noted that the initial emergency room and subsequent clinic records indicate that claimant injured his knee on August 10, 2000, while at home,³ that claimant did not report to a physician at this time that he had sustained a work-related injury, and that claimant's September 11, 2000, injury report makes no mention of an incident occurring in August 2000, see Emp. Ex. 4.⁴ See Decision and Order at 6-7.

Based upon the foregoing findings, the administrative law judge concluded that claimant failed to establish the occurrence of work incidents on June 19, 2000, or August 9, 2000, which could have caused his knee condition. After a review of the record, we affirm the administrative law judge's findings because they are rational, supported by substantial evidence, and in accordance with law. See *O'Keefe*, 380 U.S. 359. It is well-established that, in arriving at his decision, the administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence. See *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th

² As the administrative law judge's finding that claimant established a harm to his knee is not challenged on appeal, that finding is affirmed.

³ Group Health Cooperative's Urgent Care Record of August 18, 2000, states that claimant's August 10, 2000, knee twisting incident occurred "not @ work," see Emp. Ex. 1, while the dictated report of that date indicates that the August 10, 2000, incident occurred "while at home." See Emp. Ex. 3 at 7.

⁴ The administrative law judge additionally cited to Employer's Exhibit 2, which contains claimant's initial August 18, 2000, Welfare Plan Claim Form; as set forth above, that form indicates that claimant's disability is not work-related.

Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2^d Cir. 1961). Accordingly, the administrative law judge's credibility determinations are not to be disturbed unless they are inherently incredible or patently unreasonable. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). As claimant has 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. 608, 14 BRBS 631; *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27(CRT) (9th Cir. 1988); *Bolden*, 30 BRBS 71.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge