

GEORGE WIMBUSH)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
UNIVERSAL MARITIME SERVICE)	DATE ISSUED: 05/31/2007
CORPORATION)	
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	
ASSOCIATION)	
)	
Employer/Carrier-)	DECISION and ORDER
Respondents)	

Appeal of the Decision and Order on Remand of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

George Wimbush, Newark, New Jersey, *pro se*.

Christopher J. Field (Field Womack & Kawczynski, LLC), South Amboy, New Jersey, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order on Remand (2002-LHC-02676) of Administrative Law Judge Ralph A. Romano 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 where claimant is not represented by counsel, the Board will review the administrative law judge's decision to determine if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law; if they are, they must be affirmed. 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

This case is on appeal for the second time. Claimant testified that he was employed as a hustler driver in 2002, which required that he work from the cab of the vehicle. Claimant testified that he frequently banged his knee as he got in and out of the cab. Tr. at 15-17, 59. He stated that in February and in March or April 2002 he banged his knee so hard that he had to pause from performing his duties. *Id.* at 18, 26-27. In mid-April, claimant stopped working due to non-payment of union dues. He sought treatment for pain in his right knee, which originally he had attributed to arthritis. *Id.* at 20-21. Nonetheless, after an MRI taken on May 4, 2002, Dr. Rieber diagnosed claimant with a torn medial meniscus in his right knee and thereafter performed surgery to repair the tear. CX 4. Claimant has not returned to work since the surgery. Claimant filed a claim in August 2002 for “repetitive trauma” due to banging his knee on the hustler.

In his initial decision, the administrative law judge denied benefits, finding that claimant did not establish a *prima facie* case that he suffered a work-related injury. 33 U.S.C. §920(a). Although the administrative law judge found that Dr. Rieber’s notes establish the existence of a meniscal tear, the administrative law judge did not believe claimant’s testimony that he banged his right knee in February and March 2002 while climbing into the hustler.

Claimant appealed the administrative law judge’s decision, alleging that the administrative law judge erred in finding that he has not established a *prima facie* case that his knee injury was caused by his repeatedly banging his knee at work. The majority of the panel held that the administrative law judge relied on incorrect factors in assessing claimant’s credibility as to the occurrence of a work accident. Thus, the case was remanded for reconsideration as to this element of claimant’s *prima facie* case. *Wimbush v. Universal Maritime Services, Inc.*, BRB No. 04-0667 (May 25, 2005)(unpub.) (McGranery, J., dissenting). The dissenting Board member would have affirmed the denial of benefits based on the administrative law judge’s credibility assessments.

On remand, the administrative law judge again rejected claimant’s testimony concerning the occurrence of the alleged banging incidents, and he found that the Section 20(a) presumption is not invoked. The administrative law judge stated that he did not deny this claim because claimant failed to trace his injury to a specific time, or because claimant failed to accurately diagnose the source of his pain, or because claimant did not establish he was immediately disabled. Rather, the administrative law judge stated he denied the claim because the whole of claimant’s testimony concerning the incidents in question was uncertain, evasive, inconsistent and vague. The administrative law judge found that these characteristics were reflected in claimant’s demeanor at the hearing. Thus, the administrative law judge denied the claim as claimant did not establish an element of his *prima facie* case. Claimant appeals the denial of benefits, and employer responds, urging affirmance.

We affirm the administrative law judge's Decision and Order on Remand. In order to be entitled to the Section 20(a) presumption, claimant must establish both elements of his *prima facie* case: the existence of a physical harm and the occurrence of an accident at work, or working conditions, that could have caused the harm. *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000). In this case, the administrative law judge found that claimant had a torn meniscus, but did not establish that he bumped his knees getting in and out of the cab as alleged. The administrative law judge is entitled to weigh the evidence and to assess the credibility of a witness's testimony. The Board may not interfere with credibility determinations unless they are "inherently incredible or patently unreasonable." *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 1335, 8 BRBS 744, 747 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). As the administrative law judge observed claimant's demeanor at the formal hearing in assessing his credibility and provided a rational basis for disbelieving claimant's testimony concerning the occurrence of his injury, we affirm the denial of benefits. Claimant did not establish an essential element of his claim for compensation. *See generally U.S. Industries/Federal Sheet Metal v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Bolden v. G.A.T.X. Corp.*, 30 BRBS 71 (1996); *Mackey v. Marine Terminals Corp.*, 21 BRBS 129 (1988).

Accordingly, we affirm the administrative law judge's Decision and Order on Remand denying benefits.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge