BRB No. 02-0288

ARTHUR WATSON	)	
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Claimant-Petitioner	)	
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CERES MARINE TERMINALS INTERNATIONAL	)	DATE ISSUED: Nov. 25, 2002
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Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Montagna Breit Klein Camden, LLP), Norfolk, Virginia, for claimant.

Richard E. Garriot and Dana Adler Rosen (Clarke, Dolph, Rapaport, Hardy & Hull, P.L.C.), Norfolk, Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (00-LHC-1866) of Administrative Law Judge Daniel A. Sarno, Jr., 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, a header on a lashing gang, seeks compensation for temporary total disability from July 25, 1999, until May 22, 2000, as the result of a spider bite he alleges he suffered during the course of his employment on July 21, 1999. Although it is undisputed that claimant was indeed incapacitated during this period as the result of a spider bite, employer argued that claimant failed to establish that the bite occurred during the course of his employment.

In his decision, the administrative law judge acknowledged that claimant suffered a harm, *i.e.,* the spider bite,[1] but found that claimant failed to establish the second prong of his *prima facie* case, *i.e.,* working conditions, as he failed to demonstrate that the bite occurred while he was at work. Accordingly, the administrative law judge denied compensation.

Claimant appeals, arguing that the administrative law judge erred in finding that he failed to establish the Aworking conditions@ element of his *prima facie* case. Employer responds, urging affirmance of the denial of benefits.

In establishing that an injury is causally related to his employment, claimant is aided by the Section 20(a), 33 U.S.C. '920(a), presumption, which provides a presumed causal nexus between the injury and the employment. In order to be entitled to the Section 20(a) presumption, however, claimant must establish a *prima facie* case by showing that he suffered a harm and either that a work-related accident occurred or that working conditions existed which could have caused the harm. *See Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). Claimant bears the burden of establishing each element of his *prima facie* case by affirmative proof. *See Bolden v. G.A.T.X. Corp.*, 30 BRBS 71 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

In the instant case, the administrative law judge found that claimant was not entitled to the benefit of the Section 20(a) presumption inasmuch as his testimony was insufficient to establish the existence of working conditions which could have caused his harm, *i.e.*, claimant failed to establish that the spider bite occurred at work or that there were any spiders observed at work that could have bitten him. On the day in question, July 21, 1999, claimant, a gang supervisor, testified that he had gone on board the ship *Louisa Maersk* from Columbo, Sri Lanka, to check on the progress of his men when he experienced itching on his ankle; he left the ship and returned to the break room complaining of being bitten by a mosquito. HT at 13. Four days later he sought medical treatment for swelling and redness in his foot and ankle, initially relating the problem to his removal of an ingrown toe nail on his right foot. He was diagnosed as suffering early cellulitus arising out of the removal of the nail on his great toe or secondary to a possible insect bite, and was treated with

[1]Claimant was diagnosed as suffering arachnid envenomation and cellulitus as the result of a bite from a brown recluse spider on his ankle. CX 7. As a result, he underwent an extensive period of treatment as well as several surgeries for his ongoing necrosis, including a skin graft, before returning to his regular work duties on May 23, 2000. CX 3.

antibiotics. EX 4; *see also* n.1, *supra*. On August 6, 1999, Dr. Robinson determined that claimant had been bitten by a brown recluse spider.

The administrative law judge concluded that although claimant suffered the debilitating effects of a spider bite, claimant failed to establish that the bite occurred during the course of his employment. In making this determination, the administrative law judge relied on the deposition testimony of Dr. Abraham, an expert in spider ecology and behavior, who stated that the circumstances surrounding the bite as alleged by claimant were inconsistent with the behavioral patterns of the brown recluse spider. EX 1. Dr. Abraham stated that although brown recluse spiders had been found as far north as Virginia, the spider is a nocturnal, non-aggressive species that would not attack unless threatened. *Id.* at 8. Moreover, she testified that the bite of this particular spider is seldom felt when inflicted and that it takes several hours for the symptoms to become noticeable. *Id.* at 9. Finally, she concluded with a reasonable degree of scientific certainty that the spider could not have inflicted the bite through claimant=s sock, as alleged, because its fangs are too small. *Id.* at 11-12. It was her opinion that, based on the scenario claimant presented, the spider bite occurred early that morning, most likely when claimant was dressing for work. EX 1.

The administrative law judge accordingly concluded that claimant failed to establish that the bite occurred at work for several reasons. First, the actual spider was never found or seen by either claimant or his co-workers. Second, claimant did not demonstrate that the brown recluse spider is common on ships in general or on that ship in particular. Third, the area in which claimant alleges the bite occurred is outdoors, exposed to daylight and no cargo had been moved or disturbed at the time. Additionally, claimant alleged that he had been bitten through either his pants and sock or through his sock, HT at 20, which the brown recluse spider is incapable of doing. Finally, the administrative law judge found claimant=s testimony Aengendered doubt@ that he had experienced anything on the day in question. Decision and Order at 8. The administrative law judge based this conclusion on claimant=s initial attribution of the swelling and redness to his removal of an ingrown toe nail.

We affirm the administrative law judge=s finding that claimant is not entitled to the benefit of the Section 20(a) presumption. The Section 20(a) presumption does not aid claimant in establishing either element of a *prima facie* claim. *Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989); *Mackey v. Marine Terminals Corp.*, 21 BRBS 129 (1988). Contrary to claimant=s assertion that he established the requisite working conditions, claimant has merely established that he was at work on the day in question; he has failed to demonstrate that the incident occurred as he

alleged. Claimant mistakenly argues that the principle that he is not required to link his harm with his working conditions, *see Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990), is equivalent to his merely having to demonstrate that he was at work on a particular day. While claimant is not required to introduce affirmative evidence establishing that the working conditions in fact caused the alleged harm in order to invoke the Section 20(a) presumption, *id.,* claimant must establish the existence of working conditions that could have caused the harm. *See Bolden*, 30 BRBS 71. In order to benefit from the Section 20(a) presumption, claimant must prove that the incident which he alleges caused the harm did in fact occur on the work site, not merely that it could have occurred there. *See U.S. Industries/Federal Sheet Metal v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). Thus, claimant=s assertion that he established the working conditions element of his *prima facie* case merely by testifying that the spider bite may have become symptomatic during the course of his day=s work is without merit. In the instant case, claimant has failed to present any evidence, other than his own testimony, that he was bitten by something on board ship that day, and the administrative law judge rationally rejected this evidence based on Dr. Abraham=s deposition testimony. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). As claimant failed to establish an essential element of his claim for benefits, we affirm the administrative law judge=s conclusion that claimant is not entitled to the Section 20(a) presumption. *U.S. Industries/Federal Sheet Metal,* 455 U.S. 608, 14 BRBS 631.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge