

BRB No. 02-0217

RUBY SIMS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TIDEWATER TEMPS, INCORPORATED	)	DATE ISSUED: Sept. 30, 2002
	)	
and	)	
	)	
RICHARD FLAGSHIP SERVICES	)	
	)	
Employer/Carrier- Respondents	)	DECISION AND ORDER
	)	

Appeal of the Decision and Order of Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

Chanda W. Stepney (Rutter, Walsh, Mills & Rutter, L.L.P.), Norfolk, Virginia, for claimant.

Robert A. Rapaport and Dana Adler Rosen (Clarke, Dolph, Rapaport, Hardy & Hull, P.L.C.), Norfolk, Virginia, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (2000-LHC-3026) of Administrative Law Judge Fletcher E. Campbell, 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 administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, a laborer/helper, was employed by employer and assigned to work at Lyons Shipyard. On March 22, 1999, claimant allegedly sustained a knee injury during the course of her employment. Claimant testified that she fell on the gangplank of a ship, landing on and injuring her left knee and right wrist. Tr. at 20-23. Claimant testified that she immediately reported her knee injury to two of her Lyons supervisors and to the Lyons safety man. *Id.* at 23-24. She also stated that she told personnel at the emergency care facility, the physician who treated her wrist, Dr. O'Neill, and someone at employer's facility about both the wrist and the knee injuries within a few days of the incident. *Id.* at 25-31. In mentioning the knee condition to others, however, claimant stated that she told people she could treat her knee on her own. *Id.* On June 30, 2000, claimant filed a claim for benefits for her knee injury. Jt. Ex. 1. Employer controverted the claim, contending the notice of injury and claim were untimely filed and that claimant did not sustain a knee injury in the fall at work, as the record establishes claimant did not inform anyone, including her doctor, of any knee injury until March 2000.

The administrative law judge found that claimant invoked and employer rebutted the Section 20(a), 33 U.S.C. §920(a), presumption, and that, based on the record as a whole, claimant's testimony was not credible and she did not establish that her knee injury occurred as a result of her employment. Decision and Order at 10-11. With regard to the timeliness of the claim and the notice of injury, the administrative law judge found that claimant's knee symptoms became manifest, and she became aware of her disability, on March 31, 2000. Thus, he concluded she filed a timely claim for compensation, 33 U.S.C. §913, on June 30, 2000. However, the administrative law judge determined that claimant did not give employer timely notice of the injury, 33 U.S.C. §912(a), as he found the record contains no evidence that employer had any notice of claimant's injury until June 30, 2000, when she filed her claim for compensation, and he denied benefits on this ground also. Decision and Order at 11-12. Claimant appeals, and employer responds, urging affirmance.

Claimant contends the administrative law judge erred in finding that employer rebutted the Section 20(a) presumption and, alternatively, in discrediting claimant's testimony and finding that she failed to establish that her knee injury was work-related. We have reviewed the evidence of record, and we conclude the administrative law judge acted within his discretion in finding the Section 20(a) presumption rebutted and in weighing and crediting the evidence on the record as a whole. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4<sup>th</sup> Cir. 1997). Initially, the administrative law judge rationally found the presumption to be rebutted in light of the absence of medical evidence establishing that a knee injury occurred at the time of the fall and the absence of any complaints of a knee injury until approximately one year after the fall at work. *Moore*, 126 F.3d 256, 31

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<sup>1</sup>The parties stipulated that claimant sustained a fall and injured her right wrist on this date, and employer paid benefits for the wrist injury.

BRBS 119(CRT); Cl. Exs. 1-2, 5d, 5f; Emp. Exs. 1-4, 7-8, 10, 16. In weighing the evidence in the record as a whole, it was reasonable for the administrative law judge to discredit claimant's testimony, as well as the testimony of others who relied on claimant's veracity in light of the glaring inconsistencies in claimant's story and the fact that no one saw the incident. *Id.* As the administrative law judge found, and contrary to claimant's argument, Dr. Gibson, who treated her knee condition, did not state with medical certainty that the fall caused the injury. Rather, when faced with claimant's inconsistent statements, he stated he did not know what caused the condition; he only knew that her knee had problems at the time he saw her in 2000. Cl. Ex. 10 at 29, 33-34. As it was rational for the administrative law judge to find that claimant failed to establish her case based on the record as a whole, we affirm the denial of benefits.

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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PETER A. GABAUER, JR.  
Administrative Appeals Judge

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<sup>2</sup>The record contains a transcript of a recorded conversation claimant had with employer's claims adjuster on April 26, 2000, less than 30 days after March 31, 2000, the date the administrative law judge determined to be the date of awareness. Claimant correctly contends the administrative law judge erred in finding there was no timely notice of injury to employer. 33 U.S.C. §912(a); *see Bechtel Associates, P.C. v. Sweeney*, 834 F.2d 1029, 20 BRBS 49(CRT) (D.C. Cir. 1987); 20 C.F.R. §702.212(a). This error is harmless, however, in light of our affirmance of the finding on causation.