BRB No. 03-0112

GODOFREDO PALMA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
COASTAL CARGO OF TEXAS, INCORPORATED	)	
	)	
and	)	
	)	
RELIANCE NATIONAL INDEMNITY COMPANY TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION	)	DATE ISSUED: 09/17/2003
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Larry W. Price, Administrative Law Judge, United States Department of Labor.

Godofredo Palma, Pasedena, Texas, *pro se.*

Dennis J. Sullivan (Stepp & Sullivan, P.C.), Houston, Texas for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant, without assistance of counsel, appeals the Decision and Order Denying Benefits (01-LHC-1184) of Administrative Law Judge Larry W. Price 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, we will review the findings of fact and conclusions of law of the administrative law judge to determine if 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). If they are, they must be affirmed.

Claimant alleges he suffered an injury while unloading cargo from a ship on March 26, 2000, and is now totally disabled due to pain in his head, shoulder, back, and leg, as well as blurred vision and auditory hallucinations. The administrative law judge found that claimant failed to establish that a work-related accident occurred, and thereby denied the claim.

Claimant, representing himself, appeals, contending that the administrative law judge erred in denying him compensation and medical benefits. Employer responds, urging affirmance of the administrative law judge's denial of this claim.

It is well-established that claimant bears 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 his *prima facie* case. *See Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1990); *see also U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). It is claimant's burden to establish each element of his *prima facie* case by affirmative proof. *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). Once claimant has established his *prima facie* case, he is entitled to invocation of the Section 20(a) presumption linking his harm to his employment. *See Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990).

After thoroughly reviewing the evidence of record, the administrative law judge found that the work incident related by claimant did not occur and the conditions of which claimant complained did not exist; accordingly he denied the claim. In this case, claimant alleged that while he was working a heavy chain fell thirty or forty feet, hitting him on the head and shoulder with such force that it broke his hard hat, cut his head and rendered him unconscious, requiring that he be transported to the hospital via ambulance. HT at 17, 32-33. The administrative law judge, however, found that credible eyewitness testimony established that claimant slipped and fell on the rain-slick surface of the deck, landing on his posterior, and that he was fully conscious when taken to the hospital. The administrative law judge based his conclusion upon the deposition testimony of the crane operator and the supervisor overseeing the operation in question. Claimant offered no support for his version of events other than a statement from a fellow worker which the administrative law judge found unreliable because it was uncertain who had provided the translation of the witness's statement.[1]

[1] Although the administrative law judge left the record open in order for claimant to obtain a deposition from his supporting witness, no further statement was filed.

It is well-established that the administrative law judge as the trier-of-fact is entitled to evaluate the credibility of all witnesses and to draw his own inferences from the evidence. *See John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). In the instant case, the administrative law judge found claimant not to be a credible witness based not only upon his own observations of claimant but also upon the changing, and uncorroborated, versions of the work incident claimant related, as well as his inconsistent list of complaints and erratic and uncooperative behavior demonstrated at numerous medical examinations. Accordingly, the administrative law judge found that any condition claimant may have suffered on the day of injury arose from his slipping and falling on the deck. As this determination is supported by substantial evidence and within the discretionary purview of the administrative law judge, we decline to disturb it on review. *Cordero v. Triple A Machine* Shop, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 499 U.S. 959 (1991). Accordingly, we affirm the administrative law judge's finding that on the day in question claimant suffered only a slip and fall.

The administrative law judge then addressed whether any of claimant's multiple complaints satisfied the second prong of claimant's *prima facie* case, *i.e.*, a harm or injury that could have arisen out of the fall. The administrative law judge determined that claimant was not entitled to invocation of the Section 20(a) presumption, 33 U.S.C. §920(a), based upon his alleged ear, eye and head conditions. The administrative law judge correctly found that the slip and fall claimant sustained was not the type of injury that would cause harm to these body parts and that there was no medical substantiation for these complaints other than claimant's own statements.[2] Contradicting claimant's complaints of blurred vision and the inability to complete his neuropsychological tests because he could not see the physician's face was the fact that claimant continued to drive. Claimant's complaints of having suffered a cut on his head as a result of the work incident was not supported by the hospital notes.[3] Moreover, the administrative law judge correctly found there was no medical support for claimant's complaints that he suffered memory loss as a result of his fall. The administrative law judge's finding that claimant failed to establish that he suffered these harms is supported by the medical evidence of record and is affirmed. *Mackey v. Marine Terminals Corp.*, 21 BRBS 129 (1988).

In regard to claimant's alleged injuries to his leg, shoulder and back, the administrative law judge found that claimant was entitled to invocation of the Section

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[2] Both Drs. Owens and Jarollimek failed to find anything wrong with claimant's ears and nothing to support claimant's complaints of pain first in his left ear and subsequently in his right ear. Additionally, there was no medical evidence to support any problem with claimant's vision, except for a need for glasses, CX 1, other than claimant's own testimony.

[3] The hospital emergency notes were not submitted into evidence but claimant concedes that no mention was made of the alleged cut to his head. HT at 34.

20(a) presumption regardless of which version of the incident was accepted. Upon invocation of the presumption, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 33 BRBS 187 (5th Cir. 1999). If the administrative law judge determines that employer has established rebuttal, he must weigh all of the evidence and resolve the causation issue based on the record as a whole. *See Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997).

In the instant case, the administrative law judge found that employer established rebuttal based on the opinions of Drs. Weiner, Barrash, and Ponder, who found no evidence of any work-related condition. *See* EXS 29, 31, 33. Because the medical evidence supports the administrative law judge's determination, we affirm his finding that employer has established rebuttal of the Section 20(a) presumption. *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir. 2003).

The administrative law judge then weighed the evidence and found that claimant did not establish that his back, shoulder and leg complaints are work-related. The record reflects that the majority of physicians who examined claimant found that he does not suffer from any objectively determinable physical problems. Dr. Weiner, a board-certified orthopedic surgeon, opined that based upon his examination and observation of claimant, there was nothing wrong with claimant and that claimant was fully capable of returning to his usual job without restriction. EX 31. Dr. Barrash, a neurological surgeon, concluded that claimant was a malingerer whose subjective complaints could not be substantiated by either physical examination or objective tests. EX 29. Dr. Randall, an orthopedic surgeon, sent claimant to physical therapy for his shoulder complaints but claimant never returned for a reevaluation. EX 33. Dr. Ponder, a board-certified orthopedic surgeon, examined claimant and reviewed his medical records and opined that claimant's spine and pelvis were basically normal and recommended that claimant return to work. EX 30. Only Drs. Fillmore and Jarolimek opined that claimant suffered an objective injury which prevented his return to work. Dr. Fillmore suspected that claimant might have a cervical or lumbar disc herniation and stated that claimant should not be working. EX 7. Dr. Jarolimek, an orthopedic doctor, diagnosed claimant with cervical spine strain, right upper and right lower extremity radiculopathy, lumbar spine strain, headaches and double vision and recommended that claimant undergo arthroscopic surgery. CX 1. The administrative law judge reasonably found the opinions of those doctors who found no disability more convincing as they were based on objective medical tests and observations. The administrative law judge reasonably rejected the physicians who opined that claimant was disabled because they based their opinions on claimant's subjective complaints, which the administrative law judge found were not credible and were self-serving.

We find no reason to disturb the administrative law judge's weighing of the evidence on appeal. The administrative law judge's determination that claimant suffers

no back, leg or shoulder injuries causally related to his employment is supported by the medical evidence, and his weighing of the evidence is within his discretion. *Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 29 BRBS 79(CRT) (5th Cir. 1995); *Migangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991). As we affirm the administrative law judge's conclusion that claimant has no medical condition related to his employment, we also affirm the administrative law judge's denial of benefits.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge