

BRB No. 12-0120

RAFIKA M. MOHSEN)
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 Claimant-Petitioner)
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 v.)
)
 L-3 COMMUNICATIONS/TITAN) DATE ISSUED: 09/26/2012
 CORPORATION)
)
 and)
)
 ACE AMERICAN INSURANCE)
 COMPANY)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

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

Rafika M. Mohsen, Dearborn, Michigan, *pro se*.

Keith L. Flicker and Brendan E. McKeon (Flicker, Garelick & Associates,
LLP), New York, New York, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Benefits (2009-LDA-00578) of Administrative Law Judge Robert B. Rae rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *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; if they are, they must be affirmed. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

In late 2005, claimant was hired by employer to work as a bilingual teacher in Iraq. Upon her arrival in Baghdad, claimant was assigned to work with detainees at the Abu Ghraib prison. In June 2006, claimant was diagnosed with cancer. She returned to the United States and underwent surgery, chemotherapy and radiation therapy for her condition. She has not returned to work. Claimant alleges that she began suffering from headaches, stomach pain and bad dreams a month or two after starting work in the prison, but she was unable to obtain medical treatment until she returned to the United States. A family doctor referred her to a clinic for therapy where, on February 5, 2007, claimant was diagnosed with major depressive disorder-recurrent, moderate and post-traumatic stress disorder. She filed claims for compensation under the Act on April 5, 2007, April 9, 2009, and May 5, 2009, asserting that she sustained a psychological injury as a result of working conditions she experienced in Iraq. Employer voluntarily paid claimant temporary total disability benefits from May 1, 2007 through October 13, 2008. Thereafter, in controverting claimant's claim, employer averred that claimant's psychological condition is unrelated to her employment.

In his Decision and Order, the administrative law judge found that claimant is not a credible witness and that she failed to establish the existence of working conditions which could have caused her psychological condition. Accordingly, having found that claimant failed to establish her prima facie case, the administrative law judge denied the claim for benefits under the Act.

Claimant, without the benefit of counsel, appeals the administrative law judge's denial of her claim. Employer responds, urging affirmance.

Claimant bears the initial burden of establishing the existence of an injury or harm and that a work-related accident occurred or that working conditions existed which could have caused her harm. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996). In this case, claimant experienced psychological symptoms upon her return to the United States and she introduced into evidence medical testimony demonstrating that she has a present psychological condition. This evidence establishes the "harm" element of claimant's prima facie case. *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *see American Nat'l Red Cross v. Hagen*, 327 F.2d 559 (7th Cir. 1964)(a psychological injury can constitute a "harm" under the Act). The administrative law judge found, however, that claimant failed to establish the existence of working conditions which could have caused her condition.

Before the administrative law judge, claimant asserted that she worked under stressful conditions in Iraq. Specifically, claimant testified that she had never before worked exclusively with males, that the detainees threatened her and her family, and that she was required to wear a protective vest due to occasional rocket or mortar attacks. *See Tr.* at 20-24, 33-34. In his decision, the administrative law judge stated that he was not

favorably impressed by claimant's general demeanor or by her testimony, which he found to be replete with inconsistencies and discrepancies. *See* Decision and Order at 38. The administrative law judge found that claimant provided conflicting accounts of her work experiences for employer. The administrative law judge cited evidence that claimant informed Dr. Hilton that she did not witness detainees being abused, yet she related to Dr. Margolis that she was present when prison guards abused detainees and she told Ms. Mingo that she witnessed killings. Decision and Order at 39; EX 3 at 12; EX 2 at 2; CX 1 at 52. The administrative law judge also found that claimant testified that she worries about threats made against her family in Iraq, yet she testified that she had not spoken to her family in Iraq for a number of years.¹ Decision and Order at 39; Tr. at 46. The administrative law judge further found that claimant's testimony that she led a sedentary, home-based lifestyle, and was incapable of performing housework, was contraindicated by her medical records which indicate that she engaged in walking and jogging activities following her cancer treatment, she performed heavy housework, and that she intended to join a gym and travel. Decision and Order at 39; EX 6 at 86, 110, 117. In conclusion, the administrative law judge found it significant that claimant provided no independent corroboration of the disturbing work events which she described in vague terms. Specifically, the administrative law judge noted that there are no contemporaneous medical or employment records to support claimant's testimony concerning the conditions of her employment in Iraq. Rather, the administrative law judge found that the only evidence of claimant's working conditions was her own incredible, inconsistent, and self-serving testimony.² Decision and Order at 40-41.

¹In her appeal letter to the Board, claimant contends that other close members of claimant's household are in contact with the family in Iraq and claimant is in contact with her family through these other family members. We can only consider the record before us. Section 22 of the Act, 33 U.S.C. §922, provides the only means for changing otherwise final decisions. *See Metropolitan Stevedore Co. v. Rambo*, 515 U.S. 291, 30 BRBS 1(CRT) (1995). Under Section 22, claimant may file a request for modification based on a change in condition or mistake of fact within one year of the final rejection of his claim. Accordingly, should claimant seek to present new evidence in support of an allegation that a mistake in fact occurred, she must file a request for modification. *See* 20 C.F.R. §702.373.

²In this regard, the administrative law judge found the opinion of Dr. Hilton to be well-documented and well-supported. Dr. Hilton, a Board-certified psychiatrist, examined and tested claimant on several occasions and, based in part on his finding that the results of claimant's November 2009 psychological testing are invalid due to claimant's exaggerated responses, opined that claimant's current psychological condition did not arise out of her employment in Iraq, but relates to her cancer diagnosis, dependent personality features, and family dynamics. Decision and Order at 26-37, 41; EX 7 at 7-8.

Having determined that claimant's statements are less-than-credible, unsupported and exaggerated and that the physician reports relating her medical condition to her employment relied on claimant's subjective and exaggerated complaints, the administrative law judge found that claimant failed to establish the existence of working conditions which could have caused her present psychological mental condition. Decision and Order at 41. 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 Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2^d Cir. 1961). 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); *see Bolden*, 30 BRBS 71. In this case, the administrative law judge addressed at length claimant's testimony and statements, and he rationally concluded that claimant did not establish that she experienced working conditions as she alleged. Decision and Order at 41. On the basis of the record before us, specifically claimant's testimony and the statements made to her medical providers, the administrative law judge's decision to reject the testimony of claimant is neither inherently incredible nor patently unreasonable. Therefore, we affirm the administrative law judge's finding that claimant failed to establish an essential element of her claim for benefits, and the consequent denial of claimant's claim for benefits. *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.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge