BRB No. 96-0906

SAMI A. NAJJAR	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
VINNELL CORPORATION	)	DATE ISSUED:
	)	
and	)	
	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA c/o AIU NORTH AMERICA	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Frank D. Marden, Administrative Law Judge, United States Department of Labor.

Betty J. O'Shea, New York, New York, for claimant.

Roger A. Levy (Laughlin, Falbo, Levy & Moresi), San Francisco, California, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (95-LHC-0236) of Administrative Law Judge Frank D. Marden 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*., as extended by the Defense Base Act, 42 U.S.C. §1651, *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 citizen of the United States, worked for employer in a variety of capacities from November 1976 to March 31, 1994 in Riyadh, Saudi Arabia, most recently as a personnel specialist.[1] Around February 1, 1994, claimant was informed that his employment would be terminated effective March 31, 1994, pursuant to a program of Saudiization, whereby Americans and other foreign nationals were to be replaced by citizens of Saudi Arabia having similar job qualifications. On March 3, 1994, claimant, who had a long history of back problems, experienced lower back pain after carrying cartons of copy paper. Claimant returned to work, although he spent part of each day in physical therapy and the remainder of each day training his replacement. Claimant's request for an extension of his employment to complete his medical treatment was denied, and his position was terminated, as scheduled, on April 1, 1994. Following his termination, claimant searched for similar employment in Saudi Arabia, but was unable to locate any, and in July 1994, he was required to leave Saudi Arabia. At the time of the hearing before the administrative law judge, claimant resided in Jordan. Although employer did not make any voluntary compensation payments, it did accept liability for claimant's medical benefits under 33 U.S.C. §907. Claimant has not worked since his termination and seeks continuing temporary total disability benefits under the Act commencing April 1, 1994.

The administrative law judge found that claimant failed to establish any compensable disability under the Act. Specifically, the administrative law judge determined that although claimant aggravated his back condition when he was injured on March 3, 1994, he suffered no economic loss as a result of this injury because he remained capable of performing his usual work as a personnel specialist for employer. The administrative law judge further determined that claimant would have remained capable of continuing to perform this work, according to the physicians of record, but for the fact that his job was eliminated on March 31, 1994, due to the Saudiization program. As any economic loss claimant suffered was due to the Saudiization program and not the effects of his work injury, the administrative law judge denied the claim.

Claimant appeals the denial of benefits, arguing that inasmuch as the administrative law judge held employer liable for continuing medical expenses in connection with his work-related injury and claimant was terminated from his job with employer through no fault of his own four weeks following this injury, employer was required to either reemploy claimant or show the availability of alternate jobs he can perform in order to be relieved of liability for claimant's disability compensation. Employer responds, urging affirmance.

[1]Employer had a contract to provide training for the Saudi Arabian National Guard.

To establish a *prima facie* case of total disability, claimant must show that he cannot return to his regular or usual employment due to a work-related injury. *Thompson v. Northwest Enviro Services, Inc.*, 26 BRBS 53 (1992)*; Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1992). In making this determination, questions of witness credibility are for the administrative law judge as the trier-of-fact. *Canty v. S.E.L. Maduro*, 26 BRBS 147 (1992). Once claimant has established his *prima facie* case, the burden shifts to employer to establish the availability of suitable alternate employment that claimant is capable of performing. *See Bumble Bee Seafoods v. Director, OWCP*, 629 F.2d 1327, 1329, 12 BRBS 660 (9th Cir. 1980).

After review of the administrative law judge's Decision and Order in light of the relevant evidence and claimant's arguments, we affirm the administrative law judge's denial of benefits in this case. Contrary to claimant's assertions on appeal, inasmuch as the administrative law judge concluded that claimant was able to perform his usual work as a personnel specialist, claimant failed to establish his *prima facie* case. Employer was thus neither required to provide claimant with a job nor required to provide other evidence of suitable alternate employment in order to defeat claimant's claim.

After considering the relevant medical evidence of record, the administrative law judge found no significant disagreement among the physicians regarding claimant's physical limitations; all physicians who addressed claimant's physical limitations were of the opinion that claimant should not engage in prolonged sitting, standing, and bending and should not engage in heavy lifting. He then indicated that although he did not question claimant's credibility regarding some of the activities he actually performed on the job, he found that the testimony of Jeff Strom, employer's personnel manager, more accurately reflected the level of physical exertion actually required for the position. Crediting Mr. Strom's testimony that claimant's usual job as a personnel specialist was sedentary and did not require him to perform work outside of his restrictions rather than claimant's testimony that he was required to perform moderate to heavy physical activity in maintaining the office supply inventory, the administrative law judge concluded that the effects of claimant's March 3, 1994, work injury did not preclude him from performing his prior work duties.[2] The administrative law judge also found claimant's argument that, as he was receiving physiotherapy, he was not performing his usual work between the time of his injury and his March 31, 1994, termination unpersuasive because it was premised on claimant's inaccurate assessment of his job requirements. The administrative law judge also rejected claimant's assertion that he was not even capable of performing the sedentary duties described by Mr. Strom in light of the fact that claimant conducted an extensive search for a similar position in Saudi Arabia subsequent to his termination. Finally, the administrative law judge rejected claimant's assertion that he had been terminated from his job with

[2]Contrary to claimant's contention, the administrative law judge did not find that claimant was at fault in that he was lifting cartons outside of the requirements of his job at the time he was injured.

employer due at least in part to his work injury in light of the facts that claimant was first notified of the termination on February 1, 1994, more than a month prior to his injury, and introduced no evidence that his request for an extension would have been handled any differently had he not experienced his back injury.

The medical opinions of Drs. Carr, Slotwiner, and Swearingen, as corroborated in part by Dr. Kamal's opinion, in conjunction with Mr. Strom's testimony regarding the duties required of claimant's job provide substantial evidence to support the administrative law judge's finding that claimant remained capable of performing his usual work for employer and accordingly was not disabled by the work injury. *See O'Keeffe*, 380 U.S. at 359. As claimant has failed to raise any reversible error made by the administrative law judge in evaluating the record evidence and making credibility determinations, we affirm his denial of disability benefits based on claimant's failure to establish his *prima facie* case. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).[3]

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

[3]Contrary to claimant's assertions in his Petition for Review, the cases relied upon by the administrative law judge properly support the findings he made. Moreover, the fact that the administrative law judge found employer was liable for claimant's continuing medical expenses is irrelevant to claimant's entitlement to disability compensation. An injury need not be economically disabling in order for claimant to be entitled to medical expenses; it need only be work-related. *Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988).