BRB No. 92-967

BRIAN BOUDREAUX	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DRILL STRING INSPECTORS, INCORPORATED	)	
	)	
	)	
and	)	
	)	
CRUM & FORSTER INSURANCE COMPANY	)	DATE ISSUED: _____
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Kenneth A. Jennings, Administrative Law Judge, United States Department of Labor.

Joseph J. Weigand, Jr., Houma, Louisiana, for claimant.

Leon A. Aucoin and Michael J. Bernard (Aucoin & Unland), Metairie, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (89-LHC-3106) of Administrative Law Judge Kenneth A. Jennings 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 allegedly sustained an injury to his back while working for employer, Drill String

Inspectors, Incorporated (DSI), as a pipe inspector aboard the *Ocean Conquest*, a jack-up rig, during a three day period from July 8 through July 11, 1987.[1] Claimant argued that his injury occurred either as a result of a specific incident when he and a co-worker attempted to stop a section of pipe that was rolling down a ramp, or was the result of general working conditions aboard the *Ocean Conquest*. On July 28, 1987, claimant sought medical treatment from Dr. Landry. Dr. Landry's notes indicate that claimant reported that he had a prior fusion in 1975, that he had been doing fine until he fell near Sabine Pass, a navigable waterway at the mouth of the Sabine River where the *Ocean Conquest* was located, and that he has experienced back pain since that time. Cx. 2. Dr. Landry's examination revealed spasm and restriction of motion, and x-rays performed indicated a crack in the fusion mass. Claimant sought compensation and medical benefits under the Act.

In his Decision and Order, the administrative law judge found that although claimant satisfied the jurisdictional requirements of the Act, he was not entitled to compensation inasmuch as he failed to establish that his back injury was work-related. Claimant appeals the administrative law judge's denial of benefits, arguing that in finding that his back injury was not work-related, the administrative law judge focused solely on the one incident where claimant and his co-worker attempted to brace a joint of drill pipe which was rolling down a wooden ramp when, in fact, his injury was actually caused by the general working conditions aboard the *Ocean Conquest*, *i.e.*, inspecting drill pipe at floor level, moving the drill pipe manually to inspect it, and working 20 hour shifts.[2] Employer responds, urging affirmance.

After review of the administrative law judge's Decision and Order in light of the evidence of record, we reject claimant's assertion that the administrative law judge erred in finding that his back condition was not work-related. Section 20(a) of the Act, 33 U.S.C. §920(a), provides claimant with a presumption that his condition is causally related to his employment if he shows that he suffered a harm and that employment conditions existed or a work accident occurred which could have caused, aggravated, or accelerated the condition. *See Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991); *Gencarelle v. General Dynamics Corp*, 22 BRBS 170 (1989), *aff'd*, 892 F.2d 173, 23 BRBS 13 (CRT)(2d Cir. 1989). Once claimant has invoked the presumption, the burden of proof shifts to employer to rebut it with substantial countervailing evidence. *Merrill*, 25 BRBS at 144. If the presumption is rebutted, the administrative law judge must weigh all the evidence and render a decision supported by substantial evidence. *See Del Vecchio v. Bowers*, 296 U.S. 280 (1935).

In the present case, the administrative law judge found that inasmuch as claimant claimed to have injured his back while attempting to brace a joint of drill pipe that was rolling down a ramp and

[1]Claimant's employment with employer was on an as-needed part-time basis. During the period in question, employer dispatched claimant to work for ODECO aboard the *Ocean Conquest*.

[2]Although claimant asserts that the working conditions were not contested, this assertion is contrary to the record inasmuch as employer presented testimony which directly contradicts claimant's testimony regarding many of the working conditions, including how often the crew broke for breaks, whether claimant manually moved the pipe, and whether claimant examined the pipe at floor level or at a higher level. *See* discussion, *infra*.

sought medical treatment for his alleged injury from Dr. Landry on July 28, 1987, he was entitled to the benefit of the Section 20(a) presumption. The administrative law judge then determined that there was substantial evidence in the record to rebut the presumption. The administrative law judge specifically noted claimant's testimony that the work process employed upon the *Ocean Conquest* required the DSI crew to physically move the drill pipe., *i.e.*, that the operator would kick a section of pipe to the edge of a wooden ramp and that claimant and another employee would then grab both ends and brace the pipe as it rolled down the pipe and into the inspection area. *See* Tr. at 25, 27-29. The administrative law judge, however, deemed claimant's testimony inaccurate in this regard because it was contradicted by the testimony of three other witnesses, claimant's co-workers, Mr. Guidry and Mr. Spratt, and the president of DSI, Mr. Arceneaux. Each of these witnesses testified that the DSI crew did not move the pipe and that the ODECO roustabouts and crane operator moved the pipe, both before and after the inspection. *See* Ex. 6 at 21-22; Ex.7 at 7; Ex. 8 at 14.[3]

In addition, the administrative law judge found claimant's veracity lacking because he provided conflicting testimony regarding when, if at all, the crew was permitted to take a break during the first 18 hours of work.[4] In light of these discrepancies, the administrative law judge found the testimony of the other witnesses who opined that the crew broke for regular meals and took additional breaks while the pipe was being moved by the ODECO crew more credible. *See* Ex. 6 at 26-29; Ex. 8 at 17, 48, 88. The administrative law judge also noted that although claimant alleged that he told his crew members about his back pain immediately after he experienced it, *see* Ex. 9 at 163, the other witnesses testified that claimant had merely described being exhausted. *See* Ex. 6 at 29, 33, 35; Ex. 7 at 6-8; Ex. 8 at 15-16. Moreover, the administrative law judge noted that claimant offered several versions as to how his alleged pain arose; in one instance, claimant related the onset of his pain to catching the rolling pipe, *see* Ex. 9 at 150-152, whereas in another the onset was gradual and not related to one single incident. Ex. 9 at 118.

Finally, the administrative law judge concluded that the medical evidence offered did not support a finding that the injury occurred as claimant alleged. The administrative law judge specifically noted the conflict between claimant's hearing testimony and the history he provided to Dr. Landry regarding the fall he purportedly sustained while offshore. Decision and Order at 15; *see also* Cx. 2. The administrative law judge also noted that none of the doctors could say with any degree of medical certainty whether claimant's prior spinal fusion had healed successfully or was

[3]In crediting this testimony, the administrative law judge noted that while Mr. Arceneaux may have had some interest in the litigation, claimant's crew members had nothing to gain by fabricating a story.

[4]At the hearing, claimant testified both that the crew broke for every regular meal, Tr. at 42, and that the crew took one fifteen minute break during the first 18-20 hour period. Tr. at 28. At his deposition, however, claimant testified that the crew did not stop working during the first 18-20 hours to sleep, rest, or eat until 4:00 p.m. on July 9, 1987. Ex. 9 at 85. On cross-examination during his deposition, the claimant stated that the crew stopped work during both the lunch and dinner hours. *Id.*

solid prior to claimant's alleged accident. Finally, the administrative law judge found the occurrence of the alleged injury suspect because claimant did not seek medical attention from a doctor until approximately two weeks after he returned from the job, a dispute arose between claimant and employer regarding the number of hours claimant had worked and the compensation owed for those hours in the interim, and claimant consulted an attorney, who referred him to Dr. Landry for his initial examination.

After considering the evidence as a whole, the administrative law judge decided that he could not credit claimant's testimony in any respect and that the weight of the evidence failed to establish that the claimant's injury occurred in the manner claimant alleged. After review of the record, we affirm the administrative law judge's finding because it is rational, supported by substantial evidence, and in accordance with law. *See O'Keeffe*, 380 U.S. at 359. We note that the evidence as to whether the alleged events at work occurred should have been weighed in determining whether the Section 20(a) presumption was invoked, as it is claimant's burden to establish that the working conditions or accident which forms the basis for his claim did, in fact, occur. *See Darnell v. Bell Helicopter, Inc.*, 16 BRBS 98 (1984), *aff'd sub nom. Bell Helicopter, Inc. v. Jacobs*, 746 F.2d 1342, 17 BRBS 13 (CRT) (8th Cir. 1984); *Jones v. J. F. Shea Co.*, 14 BRBS 207 (1981). Any error is harmless, however, as the administrative law judge weighed the relevant evidence. We further note that, contrary to claimant's assertion, the administrative law judge did consider claimant's theory that his injury was caused by general working conditions, but rationally determined that inasmuch as the testimony of Mr. Guidry, Mr. Spratt, and Mr. Arceneaux indicated that claimant was not required to move pipe manually or to work for extended periods without breaks, claimant's injury could not have occurred as he alleged. As claimant fails to establish any reversible error made by the administrative law judge in evaluating the conflicting evidence and making credibility determinations, his denial of benefits is affirmed.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge