

ROBERT F. WILKINS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED: _____
INGALLS SHIPBUILDING,)	
INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Additional Benefits and the Decision and Order Denying Motion for Reconsideration of A. A. Simpson, Jr., Administrative Law Judge, United States Department of Labor.

Robert F. Wilkins, Mobile, Alabama, *pro se*.

Paul B. Howell (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

Before: SMITH, BROWN, and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Additional Benefits and the Decision and Order Denying Motion for Reconsideration (91-LHC-1355) of Administrative Law Judge A. A. Simpson, 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). In an appeal by a *pro se* claimant, we will review the administrative law judge's decision to determine if the findings of fact and conclusions of law 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 was hired as a shipfitter in May 1989. After two months recuperating from surgery for diverticulitis, he returned to work on August 28, 1989. On September 28, 1989, claimant swung a maul during the course of his employment, and later that night, he noticed a bulge near his navel which he concluded was a hernia. Claimant reported the injury the next day to his supervisor and to the shipyard hospital, which confirmed he had sustained a hernia. Because employer at first disputed the work-relatedness of this injury, the hospital ordered claimant to return to work. Cl. Exs. 1-2; Emp. Ex. 1; Tr. at 32-35. On September 29, 1989, while lifting some T-beams, claimant contends he exacerbated the hernia and sustained an injury to his back. Tr. at 36, 68. The hospital

would not treat claimant for these complaints. Tr. at 66-67.

Claimant testified he discussed his problems with his supervisor and the shop steward. Although he thought it was just a pulled muscle, he testified he informed employer of the back injury but made it clear he did not want to officially report it for a workers' compensation claim because he feared loss of his job should he complain of another physical problem. Tr. at 38-40, 71. Claimant returned to employer's infirmary on October 2, 1989, complaining only of the hernia condition. He selected Dr. McAtee as his physician of choice for treatment of the hernia. Emp. Exs. 1, 4. On October 5, 1989, he underwent an operation to correct the hernia condition. Dr. Lightfoot, who performed the operation, did not explore claimant's alleged complaint of back pain. Cl. Ex. 16; Tr. at 79.

On November 28, 1989, while still recuperating from surgery, claimant visited Dr. Dyas for treatment of his back pain. A CT scan taken the next day revealed a bulging disc at L4-5, so Dr. Dyas began treatment. Cl. Exs. 4-5, 11-12. After learning his back injury was more than a pulled muscle, on December 7, 1989, claimant officially informed employer of his back problem and requested authorization for treatment. Tr. at 86. Employer controverted the work-relatedness of the back injury. Emp. Exs. 10-11, 24 at Exh. 2. With regard to claimant's hernia, Dr. Lightfoot determined that claimant recovered with no residual disability, and he released claimant to return to work on December 11, 1989. Cl. Ex. 16 at 23-26; Emp. Ex. 21.

At the hearing, claimant and employer stipulated that the hernia caused no permanent partial disability and that all temporary total disability benefits and medical expenses related to the hernia were paid by employer. Emp. Exs. 7-8; Tr. at 6-7. The issues to be resolved included the fact of the back injury, the nature and extent of any disability to the back, and claimant's entitlement to medical expenses for treatment of his back condition. Tr. at 8. The administrative law judge concluded that claimant is not a credible witness and that he did not meet the burden of establishing the occurrence of a work-related incident which could have caused the back injury. Decision and Order at 3-4. Further, he found that claimant failed to notify employer of any back injury in a timely manner and that Dr. Dyas was not authorized to treat claimant's condition. *Id.* at 4-5. Consequently, the administrative law judge concluded that claimant is not entitled to additional benefits beyond those already paid by employer for the hernia condition. *Id.* at 5. The administrative law judge then denied claimant's motion for reconsideration.

Claimant appeals the denial of benefits, contending the administrative law judge erred in finding that no back injury occurred at work, that claimant did not give employer timely notice of any back injury, and that claimant is not entitled to medical benefits for treatment of his back condition. Additionally, claimant contends he was denied proper legal counsel. Employer responds, urging affirmance of the administrative law judge's decisions.

Claimant first contends the administrative law judge erred in finding that no back injury occurred at work. In determining whether an injury is work-related, claimant is aided by the Section 20(a), 33 U.S.C. §920(a), presumption, which may be invoked only after he establishes a *prima facie*

case. To establish a *prima facie* case, claimant must show that he sustained a harm or pain and that conditions existed or an accident occurred at his place of employment which could have caused the harm or pain. *Hartman v. Avondale Shipyard, Inc.*, 23 BRBS 201 (1990), *vacated in part on reconsideration*, 24 BRBS 63 (1990); *Bartelle v. McLean Trucking Co.*, 14 BRBS 166 (1981), *aff'd*, 687 F.2d 34, 15 BRBS 1 (CRT) (4th Cir. 1982); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981).

In this case, the administrative law judge discredited claimant's testimony with regard to the occurrence of an incident at work that could have caused claimant's back injury. As support for his conclusion, the administrative law judge noted claimant's prior criminal conviction, misrepresentation on his employment application, intentional withholding of knowledge regarding the back injury, and denials by claimant's supervisor and doctor of knowledge of a back injury. Decision and Order at 3-4. Because claimant's testimony is the only evidence of record of the occurrence of an incident at work causing a back injury, the administrative law judge found that claimant failed to carry his burden of showing that an incident occurred at work which could have caused a back injury. *Id.* As questions of witness credibility are for the administrative law judge as the trier-of-fact, *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961), and as the administrative law judge's determination herein is supported by substantial evidence and is neither inherently incredible nor patently unreasonable, we affirm his finding that claimant has not established the occurrence of a work-related back injury. *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Consequently, as claimant has not established a *prima facie* case, the Section 20(a) presumption is not applicable, and the administrative law judge properly denied all benefits for any back injury.¹ *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996).

Accordingly, the administrative law judge's decisions are affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

¹We need not address claimant's remaining contentions, as our decision on this issue renders them moot.