BRB Nos. 96-0616
and 96-0616A

LINNETTE S. SAUNDERS	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
MANAGEMENT CONSULTING, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
INSURANCE COMPANY OF NORTH AMERICA	)	
	)	
Employer/Carrier-Respondents	)	
Cross-Petitioners	)	DECISION and ORDER

Appeals of the Decision and Order Denying Benefits of Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Rutter & Montagna, L.L.P.), Norfolk, Virginia, for claimant.

Gerard E.W. Voyer and Donna White Kearney (Taylor & Walker, P.C.), Norfolk, Virginia, for employer/carrier.

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

PER CURIAM:

Claimant[1] appeals and employer cross-appeals the Decision and Order Denying Benefits (94-LHC-3250) of Administrative Law Judge Daniel A. Sarno, 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). We must affirm the findings of fact and conclusions of law of the

[1]Subsequent to filing claimant's appeal and accompanying briefs in this case, counsel for claimant advised the Board, by letter dated June 14, 1996, that he was withdrawing as claimant's representative.

administrative law judge 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).

Claimant allegedly sustained an injury to her back on August 17, 1993, while working as an inventory clerk for employer. Specifically, she claims that sometime between 10:00 am and lunch time, she was attempting to remove a very heavy box from an overhead K-Rack (a shelf-like structure) when the box fell, causing her to fall with it to the ground. In the course of her fall, claimant maintains that she injured her lower back. Upon reporting the injury to her supervisor, Jim Coyle, claimant alleges that she was required to wait until forty-five minutes after lunch for Mr. Coyle to complete "a slip" that enabled her to go for medical treatment. Claimant was taken to the Naval Base Aid Station, where she was given medication and told to follow-up with her family physician, Dr. Newby. Over the course of treatment, Dr. Newby classified claimant's injury as chronic low back strain, referred her for physical therapy, and advised her that she could return to sedentary work only beginning August 1, 1994.[2] Claimant testified that her attempts to return to work, first with employer and then with other businesses, failed because no sedentary employment was available.[3] Thereafter, claimant filed a claim seeking continuing temporary total disability benefits from August 18, 1993, as well as reasonable and necessary medical benefits. Employer controverted the claim on the grounds that there was no jurisdiction under the Act, that there was no work-related injury, and alternatively, that suitable alternate employment was available.

In his Decision and Order Denying Benefits, the administrative law judge concluded, after determining that claimant was covered under the Act, that the evidence is insufficient to establish that an accident occurred at work. Accordingly, benefits were denied.

On appeal, claimant contests the administrative law judge's finding that an accident at work did not occur. In its consolidated brief, employer responds, urging affirmance of the denial of benefits, and by cross-appeal challenges the administrative law judge's determination that claimant is covered under the Act. *See* 33 U.S.C. §§902(3), 903(a). Claimant responds to employer's cross-appeal, urging affirmance of the administrative law judge's finding regarding jurisdiction in this case.

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[2]During this time, claimant was examined by several other physicians, most notably Drs. Temple, Hansen, and Williamson. Drs. Temple and Hansen found some back tenderness upon examination, while Dr. Williamson found no objective evidence of any ongoing problem, and opined that claimant's complaints of back pain were for the purpose of secondary gain. In addition, claimant underwent physical therapy at at least two separate facilities. At Coastal Center for Physical Therapy, claimant's response to palpation was deemed to be out of proportion to the magnitude of the stimulus and the therapist suspected claimant's motives because of the demonstrated significant nonorganic physical signs of pain. Similarly, at the Maryview Pain Clinic, no physiologic evidence could be found to support claimant's complaints of back pain.

[3]Claimant received compensation pursuant to the Virginia Workers' Compensation Act for temporary total disability from August 18, 1993 to July 14, 1994 and from July 19, 1994 to August 1, 1994.

Claimant asserts that, contrary to the administrative law judge's finding, the record clearly establishes that she sustained a back injury as a result of a work-related accident on August 17, 1993. Claimant specifically argues that the evidence is sufficient to establish invocation of the Section 20(a), 33 U.S.C. §920(a), presumption of causation.

In order to establish a *prima facie* case for application of the Section 20(a) presumption, claimant must show that she sustained an injury, *i.e.*, a physical harm, and an accident at work or working conditions which could have caused the harm. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Care v. Washington Metropolitan Area Transit Authority*, 21 BRBS 248 (1988). Contrary to claimant's contentions, the administrative law judge's reasons for finding that no accident occurred at work are rational and supported by substantial evidence. *See* Decision and Order at 9-10; *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963). We therefore affirm the administrative law judge's denial of benefits as claimant has failed to establish an essential element of her *prima facie* case under Section 20(a).[4] *U.S. Industries/Federal Sheet Metal*, 455 U.S. at 608, 14 BRBS at 631; *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

[4]In light of our affirmance of the administrative law judge's denial of benefits, we need not address employer's contentions on cross-appeal.