BRB No. 97-0509

JOAN KANE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BUREAU OF NAVAL PERSONNEL / MWR	)	DATE ISSUED:
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Joan Kane, Philadelphia, Pennsylvania, *pro se*.

Lawrence P. Postol (Seyfarth, Shaw, Fairweather & Geraldson), Washington, D.C. for self-insured employer.

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

PER CURIAM:

Claimant, representing herself, appeals the Decision and Order (96-LHC-829) of Administrative Law Judge Ralph A. Romano 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 claimant without representation, 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. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, a custodial worker for employer, alleges that, on August 25, 1993, she sustained an injury to her back while pulling a dryer. Specifically, claimant asserts that she experienced pain in her back, legs and neck as a result of this alleged incident.

Employer voluntarily paid claimant temporary total disability benefits from September 15, 1993 to August 31, 1995. *See* 33 U.S.C. §908(b). In his Decision and Order, the administrative law judge determined that the alleged work incident of August 25, 1993, did not occur and that, therefore, claimant failed to establish her *prima facie* case. Accordingly, the administrative law judge concluded that claimant was not entitled to either disability compensation or medical benefits for this current back condition and denied the claim.

On appeal, claimant, without the assistance of counsel, challenges the administrative law judge's denial of her claim. Employer responds, urging affirmance of the administrative law judge's decision.

Claimant has the burden of proving the existence of an injury or harm and that a work-related accident occurred or that working conditions existed which could have caused the harm, in order to establish a *prima facie* case. *Obert v. John T. Clark and Son of Maryland*, 23 BRBS 157 (1990); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981). It is claimant's burden to establish each element of her *prima facie* case by affirmative proof. *See Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT)(1994).

In the instant case, claimant contends that a specific work incident occurred on August 25, 1993, which caused her current back condition; specifically, claimant testified that she injured her back while "pull [ing] a dryer out to clean behind to get the dust out." *See* Tr. at 21-22. The administrative law judge, after setting forth numerous inconsistencies regarding claimant's testimony, determined that overwhelming evidence suggests a lack of credibility by claimant; accordingly, the administrative law judge discredited claimant's testimony that a definitive work-related accident occurred on August 25, 1993. *See U. S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP,* 455 U.S. 608, 14 BRBS 631 (1982).

In rendering this determination, the administrative law judge specifically cited claimant's inconsistent statements regarding her treatment for prior and subsequent back pain, her changed testimony regarding a previous arrest record, and claimant's denials of prior illegal activity and previous work history which the administrative law judge found to be not credible based upon the record. *See* Decision and Order at 2-3. Additionally, the administrative law judge set forth the testimony of Dr. Valentino, claimant's treating physician, who found claimant to be less than credible, Dr. Lee, who opined that claimant was not truthful regarding her history, and Dr. Rieger, who found that claimant boldly and blatantly pursues secondary gains. *See id.* at 3.

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 (2d Cir. 1961). Accordingly, the administrative law judge's credibility determinations are not to be disturbed

unless they are inherently incredible or patently unreasonable. *See generally Wheeler v. Interocean Stevedoring, Inc.,* 21 BRBS 33 (1988). In the instant case, the administrative law judge considered the inconsistencies in claimant's testimony, as well as the evidence which conflicts with that testimony, and concluded that claimant did not, in fact, sustain a work-related accident as described on August 25, 1993. On the basis of the record before us, the administrative law judge's decision to discredit the testimony of claimant is neither inherently incredible nor patently unreasonable. Accordingly, we affirm the administrative law judge's determination that claimant failed to establish the existence of a work-related incident occurring on August 25, 1993, which could have caused her present back condition. *See Cordero v. Triple A Machine Shop,* 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). As claimant failed to establish an essential element of her *prima facie* case, her claim for benefits was properly denied. *See U.S. Industries*, 455 U.S. at 608, 14 BRBS at 631; *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27 (CRT)(9th Cir. 1988); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996).

Lastly, we note that entitlement to medical benefits is contingent upon a finding of a causal relationship between the injury and employment. *See generally Wendler v. American National Red Cross*, 23 BRBS 408 (1990)(McGranery, J., concurring and dissenting). Thus, in light of our affirmance of the administrative law judge's finding that claimant failed to establish her *prima facie* case, we affirm his finding that employer is not liable for medical benefits related to the treatment of claimant's back condition.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge