



RONNIE PRICE)	BRB No. 15-0425
)	
Claimant-Petitioner)	
)	
v.)	
)	
LONGNECKER PROPERTIES, INCORPORATED)	DATE ISSUED: <u>Apr. 11, 2016</u>
)	
and)	
)	
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH c/o AIG)	
)	
Employer/Carrier- Respondents)	
)	
QUENTIEN ROGERS)	BRB No. 15-0426
)	
Claimant-Petitioner)	
)	
v.)	
)	
LONGNECKER PROPERTIES, INCORPORATED)	
)	
and)	
)	
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH c/o AIG)	
)	
Employer/Carrier- Respondents)	DECISION and ORDER

Appeals of the Decision and Order of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

Jerry C. von Sternberg (Spagnoletti & Co.), Houston, Texas, for claimants.

Joseph B. Guilbeau (Juge, Napolitano, Guilbeau, Ruli & Frieman),
Metairie, Louisiana, for employer/carrier.

Before: BOGGS, BUZZARD and GILLIGAN, Administrative Appeals
Judges.

PER CURIAM:

Claimants appeal the Decision and Order (2014-LHC-1502, 2014-LHC-1510) of Administrative Law Judge Patrick M. Rosenow 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 Outer Continental Shelf Lands Act, 43 U.S.C. §1331 *et seq.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimants allege they suffered totally disabling injuries on November 29, 2013, when employer's offshore supply vessel, the *Seacor Conquest* (the *Conquest*), struck the trawling lines of a shrimping boat.¹ Neither claimant has worked since leaving the vessel. Tr. at 82, 176. Claimants contended that the collision was of sufficient force such that they were thrown off a stool and a top bunk bed, respectively. Employer countered that no appreciable force was generated by the incident such that claimants could have been thrown from their locations, and that claimants fabricated their injuries in an attempt to commit insurance fraud. In addressing this issue, the administrative law judge stated that the claimants must prove their prima facie cases by a preponderance of evidence, without the benefit of the Section 20(a), 33 U.S.C. §920(a), presumption. The administrative law judge found that claimants' description of events was improbable, contradicted, and uncorroborated, and that the credible testimony of record establishes that, in the absence of a major collision, the *Conquest* was too large to abruptly accelerate or decelerate in such a way that would have thrown either claimant to the deck. Thus, the administrative law judge found that claimants failed to establish that an incident occurred that could have caused their alleged injuries.² As claimants did not establish an element

¹ On the date of the collision, claimants were assigned as riggers to the *Conquest*, a 205-foot long offshore supply vessel with a steel hull. EX 14 at 14; Tr. at 44, 156-159. At the time of the incident, the vessel was travelling between 10-12 knots. EXs 11 at 46, 14 at 24. On board were claimants, one other rigger, the captain and seven other crewmen.

² Claimant Rogers alleged he suffered injuries to his back. Claimant Price alleged he suffered injuries to his low back, neck, and left forearm.

of their prima facie cases, the administrative law judge denied the claims for benefits. Decision and Order at 41-43. Claimants appeal, and employer responds, urging affirmance.³

Initially, claimants contend the administrative law judge erred in requiring them to prove the elements of their prima facie cases by a preponderance of the evidence and without the benefit of the statutory presumption. We reject this contention. In determining whether an injury is work-related, a claimant is aided by the Section 20(a) presumption, which may be invoked only after the claimant establishes a prima facie case that: (1) he suffered a harm; and (2) an accident occurred or conditions existed at work which could have caused that harm. *See Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000). The Section 20(a) presumption does not apply to aid a claimant in establishing his prima facie case. *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981). Rather, the claimant has the burden of proving the existence of an injury or harm and the occurrence of an accident or working conditions that could have caused the harm. *Bis Salamis, Inc. v. Director, OWCP*, ___ F.3d ___, 2016 WL 1077125, No. 15-60148 (5th Cir. Mar. 17, 2016); *Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989). If the claimant establishes the two elements of his prima facie case, Section 20(a) applies to presume that the harm was caused by the work incident. *Hunter*, 227 F.3d 285, 34 BRBS 96(CRT); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *see U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). Thus, in this case, the administrative law judge did not err by requiring claimants to prove their entitlement to the presumption. Decision and Order at 41; *Kelaita*, 13 BRBS 326.

Claimants next assert the administrative law judge erred in concluding that they were not thrown to the floor in the collision between the *Conquest* and the shrimping vessel as they alleged. It is well established that an administrative law judge has considerable discretion in evaluating and weighing the evidence of record and may draw inferences therefrom. *See Hunter*, 227 F.3d 285, 34 BRBS 96(CRT); *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). The administrative law judge's credibility determinations must be affirmed unless they are inherently incredible or patently unreasonable. *Lennon v. Waterfront Transport*, 20 F.3d 658, 28 BRBS 22(CRT) (5th Cir. 1994); *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). The Board is not entitled to

³ The administrative law judge issued a single decision addressing both claims. The Board consolidated claimants' appeals in an Order issued on September 3, 2015. Claimants' motion for oral argument is denied. 20 C.F.R. §§802.305(b), 802.306.

reweigh the evidence and may not disregard the administrative law judge's findings on the ground that other inferences also could have been drawn from the evidence. *See James J. Flanagan Stevedores, Inc. v. Gallagher*, 219 F.3d 426, 34 BRBS 35(CRT) (5th Cir. 2000); *Presley v. Tinsley Maint. Serv.*, 529 F.2d 433, 3 BRBS 398 (5th Cir. 1976).

Contrary to claimants' assertions, the administrative law judge's findings, inferences and credibility determinations in this case are rational and supported by substantial evidence. The administrative law judge observed that the *Conquest* did not strike the shrimping vessel itself, but only its trawling cables. Decision and Order at 42. In finding that claimants' descriptions of the event on November 29, 2013, were not credible, the administrative law judge observed that none of the other crew members aboard the *Conquest* witnessed claimants' falls, corroborated their version of events, or reported any violent movement of the vessel. Specifically, although Claimant Price stated that able-bodied seamen Ramesh Townsend and Brandon Howell witnessed his being thrown from a lounge stool and that Townsend was thrown to the floor and Howell was thrown off-balance into a table, Tr. at 54-55, these statements are in direct conflict with those of Howell and Townsend. Howell stated he was on the main deck during the incident and that he did not fall in any way or see anyone else fall. EX 8 at 12-14. Townsend stated he was in the galley washing dishes, he never saw Price fall down on the floor, but he saw Price get up from his seat and walk away after the incident. EX 13 at 8, 11-17, 21. Similarly, although Claimant Rogers stated he believed forces threw him to the floor from his bunk bed while he slept, Tr. at 160-162, fellow rigger Abraham Hostetler stated that Price and Rogers were the first people he saw after the accident, Price said he did not feel anything and woke up Rogers in his bunk, and that Rogers confirmed he slept through the incident and was asleep in his bunk when Price woke him. Tr. at 220-221.

In addition, Howell, Townsend, Hostetler, Captain Robert Nicholas, training mate Chris Gillilan, chief engineer Christopher Campbell, and mate Kevin McCann all testified that the vessel slowed but did not jerk, and the forces they felt were negligible and not enough to affect anyone's balance. EX 8 at 14; EX 10 at 15-18, 24-25; EX 11 at 13; EX 12 at 19; EX 13 at 11; EX 14 at 36-38; Tr. at 202-204. Based on the testimony of Nicholas, Campbell, and Gillilan, the administrative law judge rejected the claimants' testimony that the collision with the trawler's cables generated forces sufficient to throw them from their resting positions, finding it improbable given the evidence concerning the *Conquest's* size and speed. Decision and Order at 41-42; EX 11 at 28-29, 51-52; EX 12 at 25-18, 59; EX 14 at 27-28.

As the administrative law judge rationally found claimants' testimony to be improbable, uncorroborated and inconsistent with the statements of all other crewmen aboard the vessel, he rationally found that the incident on November 29, 2013, did not occur in the manner alleged by claimants and could not have caused the alleged injuries.

Bis Salamis, Inc., 2016 WL 1077125 at *12. Because the administrative law judge permissibly found that claimants failed to establish an element of their prima facie cases, we affirm the denial of benefits as it is supported by substantial evidence of record. *Id.*; *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27(CRT) (9th Cir. 1988); *Bolden*, 30 BRBS 71.

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

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge