BRB No. 13-0060

DAVID ENNIS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
HUNTINGTON INGALLS INDUSTRIES, INCORPORATED	)	DATE ISSUED: 07/18/2013
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

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

Charlene A. Morring (Montagna Klein Camden, LLP), Norfolk, Virginia, for claimant.

Jonathan H. Walker (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2011-LHC-01266, 2011-LHC-01267) of Administrative Law Judge Kenneth A. Krantz 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 administrative law judge's findings of fact and conclusions of law if they 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 suffered an injury on January 12, 2009, while working for employer as a pipe inspector. Claimant testified that when he tried to go around a cart that was in his path and cross the rail, he caught his foot on the rail and stumbled. To gain his stability, he had to twist his body, which injured his back and right knee. Tr. at 15. Claimant reported the injury to employer and received treatment at the shipyard clinic. Although

claimant testified he reported that he twisted his back and right knee, the shipyard clinician documented that claimant twisted his back only, noting that claimant felt pain in his lower back radiating down to the right knee. *Id.* at 16; EX 3-1. After a week of restrictive duty, claimant returned to working his regular duties. Claimant testified that, at first, he did not have problems with his knee, but in January 2010, he started to have right knee pain that would wake him up in the middle of the night. Claimant further testified that, in May 2010, he hit his knee on the corner of a steel table at work, which caused him pain; however, he did not file an accident report as he believed the pain would go away. Tr. at 17. Claimant continued to work despite the pain and did not report any knee problems to the clinic until August 2010, after he was informed by a physician that he needed surgery. Claimant had arthroscopic knee surgery on September 16, 2010, and he returned to full-duty work five weeks later. Claimant contended that the January 12, 2009, injury and his subsequent shipyard work caused cumulative damage to his knee, necessitating the surgery. Employer controverted the claim.

In his Decision and Order, the administrative law judge invoked the Section 20(a), 33 U.S.C. §920(a), presumption with respect to an accidental injury based on findings that claimant suffered a harm, specifically a knee injury which employer did not contest, and the existence of an accident at work, specifically the undisputed January 12, 2009, incident, which could have caused that condition. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996). The administrative law judge also invoked the Section 20(a) presumption as to a cumulative trauma injury, finding that the stooping, bending, and twisting activities required by claimant's job could have caused or aggravated his knee condition. Decision and Order at 12.

The burden then shifted to employer to rebut the presumed causal connection with substantial evidence that claimant's injury was not caused or aggravated by his employment. *See Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009). The administrative law judge found that employer rebutted the presumption that the January 12, 2009, accident caused claimant's knee injury and that claimant had suffered a cumulative trauma injury. Weighing the evidence of record as a whole, the administrative law judge found that claimant did not establish a causal connection between his knee condition and his work.[1] On appeal, claimant challenges these findings.

[1]The administrative law judge additionally found claimant's claims barred under Section 12 of the Act, 33 U.S.C. §912, as claimant did not give employer timely notice of his knee injury arising from either the January 12, 2009, accident or cumulative trauma. Decision and Order at 19; *but see id.* at 18. The administrative law judge further found

In finding the Section 20(a) presumption rebutted with respect to the workplace accident on January 12, 2009, the administrative law judge relied on inconsistencies in claimant's statements and the lack of corroborating evidence in the record. Specifically, the administrative law judge found claimant's testimony, that the January 12, 2009, accident caused his knee condition, unreliable because claimant wavered between attributing his knee pain to the January 12, 2009, accident and the unreported accident in May 2010.[2] Further, the administrative law judge observed that the shipyard notes for the January 12, 2009, accident did not note a knee injury or knee pain[3] and that claimant subsequently saw a physician and had two follow-up visits to the shipyard clinic, but treated only for a back injury. CX 5; EX 3. Further, claimant did not complain of knee

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that employer did not have knowledge or notice of the injury before the 30-day period expired, and that employer was prejudiced by the lack of timely notice. 33 U.S.C. §912(d). Although claimant summarily stated in his petition for review that the "ALJ erred in determining that [claimant] failed to give timely notice of his knee injury," the issue is not further addressed in any of claimant's briefs. Therefore, we affirm the administrative law judge's finding. *See generally Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007). Claimant's entitlement to any disability benefits therefore is barred, and the causation issue is relevant only as to medical benefits.

[2]In his deposition, claimant stated that he injured his knee in May 2010 when he caught his foot while getting up from a table, causing him to bump and twist his right knee. EX 13 at 4. Claimant referenced the January 2009 accident, stating that he had an "old" or "first" injury;" but, he "wasn't sure if [his knee injury] was related to the first one because I had no idea what was going on because after the first one I seemed to be doing real well with it until I twisted it again [in May 2010]." EX 13 at 9. Claimant also testified the pain from his first injury went away after January 2009. Tr. at 25. By contrast, claimant told the shipyard clinic on August 19, 2010, that the pain from twisting his right knee on January 12, 2009, never got better. EX 6.

[3]The administrative law judge observed that the shipyard notes for January 12, 2009, recorded that, "Patient was walking, he stepped over a rail, his foot got caught and patient twisted his back. Patient felt pain in lower back radiating down to right knee . . . Patient complained of lower back pain." Decision and Order at 12; EX 3-1. The administrative law judge rationally found that "pain radiating down to his knee is not synonymous with knee pain." Decision and Order at 12.

pain to his family physician, Dr. Spiller, whom he saw three times after the January 12, 2009, accident but before his September 16, 2010, surgery.[4] EX 4.

Contrary to claimant's assertion, the administrative law judge rationally found that this evidence rebuts the presumption that claimant injured his knee in a work accident.[5] *Moore*, 126 F.3d 256, 31 BRBS 119(CRT). It is well-established that an administrative law judge is entitled to evaluate the credibility of witnesses. *See Doss v. Itmann Coal Co.*, 53 F.3d 654, 19 BLR 2-181 (4th Cir. 1995). Therefore, the administrative law judge rationally rejected claimant's allegation of an accident at work that injured his knee based on the inconsistencies in claimant's statements and the absence of any medical evidence regarding a knee injury or knee symptomology prior to May 2010.[6] As it is supported by substantial evidence, we affirm the administrative law judge's finding that the Section 20(a) presumption was rebutted with respect to the January 12, 2009, accident. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT).

In finding the Section 20(a) presumption rebutted as to a cumulative trauma injury, the administrative law judge found claimant's allegations of a cumulative trauma injury unreliable given that the first time claimant attributed his knee pain to cumulative trauma was in his opening statement at the September 9, 2011, hearing,[7] claimant's argument that his knee injury was caused by work accidents on January 12, 2009, and May 2010 weighed against a finding of cumulative trauma, and no doctor of record

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[4]The record reflects claimant saw Dr. Spiller on April 8 and October 7, 2009, and on April 13, 2010. EX 4.

[5]This evidence also could have been considered in addressing whether claimant established a prima facie case. Based on the administrative law judge's credibility determination, he could have found that claimant failed to establish the occurrence of an accident at work that could have caused the injury. *See Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 30(CRT) (9th Cir. 1988); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996).

[6]Although claimant asserts that his supervisor, Mr. Benson, testified to seeing claimant limp and favor his right knee in March 2010, the record reflects Mr. Benson stated he saw claimant limping and favoring his right knee prior to August 2010. Tr. at 31-32.

[7]The administrative law judge observed that claimant's hearing testimony did not attribute his knee pain to his job's physical requirements, and claimant presented no evidence that repetitive or cumulative working conditions caused his knee to become progressively more symptomatic. Decision and Order at 16.

attributed claimant's knee injury to claimant's general working conditions. Contrary to claimant's assertion, the administrative law judge rationally found that this evidence rebuts the presumption that claimant injured his knee due to his working conditions.[8] *Id.* Therefore, as it is supported by substantial evidence, we affirm the administrative law judge's finding that the Section 20(a) presumption was rebutted with respect to a cumulative trauma injury.

Claimant generally contends the administrative law judge erred in concluding on the record as a whole that his knee injury is not work-related. Claimant has failed to demonstrate error in the administrative law judge's weighing of the evidence and credibility determinations. *See, e.g., Pittman Mechanical Contractors, Inc. v. Director, OWCP*, 35 F.3d 122, 28 BRBS 89(CRT) (4th Cir. 1994); *see* Decision and Order at 17. As substantial evidence of record supports the administrative law judge's finding, we affirm the conclusion that claimant's knee injury is not compensable. *See Moore*, 126 F.3d 256, 31 BRBS 119; *Hice v. Director, OWCP*, 48 F.Supp.2d 501 (D. Md. 1999).

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge

[8]This evidence also could have been considered in addressing whether claimant established a prima facie case. *See* n. 5, *supra.*