



JUGE NAPOLITANO

GUILBEAU RULI FRIEMAN APLC

Rene Fuentes v. Offshore Air and Refrigeration, OALJ No. 2017-LHC-983, Honorable Patrick Rosenow (04/23/21)

In this Longshore and Harbor Workers' Compensation Act claim, the employee worked on a crew replacing insulation on a fixed oil and gas platform located in the Gulf of Mexico. While performing his duties as a safety watch, he was asked to carry bags of debris to a garbage receptacle several feet from his watch post located near the scaffolding where the crew was working. After making approximately three trips back and forth between the scaffolding and the garbage receptacle, the employee allegedly tripped on some water filters that had been stored near the work area but which had not been in his walkway on the previous trips. His co-workers found him lying prone on the serrated grating, allegedly in an unconscious state. The alleged accident was unwitnessed by the crew. Because of the apparent emergent situation, and per the protocols on the platform, the Medic assigned to the platform performed an initial evaluation and, ultimately, had the employee flown to shore via a medivac helicopter. After being evaluated at the emergency room for several hours, the employee was released home. Prior to the alleged incident, the employee had numerous pre-existing accidents and injuries, and he also had alcohol and drug dependency issues documented by several health care providers. Further, at the time of the alleged incident, the employee was under active care with an internal medicine physician and pain management physician, who he saw prior to the alleged incident and soon after the alleged incident. The employee did not report the alleged incident to either his personal internal medicine physician or his pain management physician. Instead, he retained counsel within one week of the alleged accident, who then referred the employee to his choice of internal medicine/physical medicine and rehabilitation physician (Dr. William Alden) and then his choice of orthopedic surgeons (Dr. F. Allen Johnston). Both physicians placed the employee on "no work" status and causally related the numerous alleged injuries to the work accident. However, in doing so, both physicians testified that they relied upon the history presented by the employee.

The focus of this claim was the fact of accident, with the credibility of the employee being central to the entire litigation. In a detailed, well-reasoned decision, the Administrative Law Judge (ALJ) found that the employee failed to meet his burden of proof to establish the occurrence of an accident. In so ruling, the ALJ relied upon the well-established Supreme Court of the United States precedent that the employee maintains the burden of persuasion throughout the claim and, if the weight of the evidence is equally balanced, the employee will have failed to satisfy his burden. The ALJ found that while the employee's testimony and presentation of his alleged accident generally was consistent, on almost every other subject, his testimony either was inconsistent with or directly contradicted by the weight of the testimony of other witnesses and documentary evidence. After reviewing many of the inconsistencies in detail, the ALJ then found "the consistency with which his testimony appears to have been contrary to the weight of the evidence causes me to conclude that he is not a credible witness." Significantly, the ALJ then discredited both treating physicians' opinions, as they relied heavily on the employee's report of the accident, which the ALJ found to be not credible. However, the ALJ did not stop there - - he expressly found that Dr. Johnston "appeared to have some bias against insurance companies, who he testified regularly penalize him for spending too much time with his patients." Based on his consideration of the record as a whole, the ALJ found that the employee failed to establish his burden of proof and, accordingly, he denied the claim. This claim currently is on appeal to the United States Department of Labor - Benefits Review Board.

