

BRB No. 08-0230

D.L.)
)
Claimant-Respondent)

v.)

LABOR READY,)
INCORPORATED)

DATED ISSUED: SEP 22 2008

and)

ACE AMERICAN INSURANCE)
COMPANY)

Employer/Carrier-)
Petitioners)

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits and the Supplemental Decision and Order Awarding Attorney’s Fee of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

Henry B. Zuber, III (Zuber Law Firm, LLC), Ocean Springs, Mississippi, for claimant.

John J. Rabalais, Janice B. Unland, Robert T. Lorio and Matthew D. Crumhorn (Rabalais, Unland & Lorio), Covington, Louisiana, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits and the Supplemental Decision and Order Awarding Attorney’s Fee (2007-LHC-318) of Administrative Law Judge Clement J. Kennington 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 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).

Claimant alleges that his employment as a painter/blaster caused his current wrist pain and carpal tunnel syndrome. Specifically, claimant testified that he worked seven days a week, ten to twelve hours per day, during which time he used pneumatic or vibrating tools such as grinders, scaling or needle guns, and chipping hammers. In January 2005, claimant experienced pain in his hands and wrists. In March 2005, claimant informed his foreman that he was having problems with his hands. In late May 2005, claimant was informed by employer that he was thereafter to be employed by Masse Contracting. Claimant continued to work for one week, at which time he sought medical treatment at an emergency room where it was recommended that he treat with a specialist. The next day, claimant informed employer of his condition and visited a second hospital emergency room. Claimant subsequently underwent treatment with Dr. Blevens, an orthopedic surgeon, who recommended that claimant not return to work. EMGs performed on November 30, 2005, resulted in findings consistent with carpal tunnel syndrome. On December 2, 2005, Dr. Blevens released claimant to return to unrestricted work; on December 19, 2005, however, Dr. Blevens modified his return to work opinion, stating that claimant may return to limited duty work with no use of vibrating equipment. On February 3, 2006, Dr. Blevens diagnosed claimant’s condition as carpal tunnel syndrome and reiterated his opinion that claimant avoid the use of vibrating equipment. On December 26, 2006, and January 10, 2007, claimant was examined by Dr. Freeman who found that while claimant exhibited minimal to no symptoms of carpal tunnel syndrome, claimant’s MRI revealed a large amount of fluid in his mid-carpal joint. On June 25, 2007, claimant was examined by Dr. Meyer, who diagnosed claimant’s condition as vibration-induced tenosynovitis.

In his Decision and Order, the administrative law judge initially found that there is no dispute that claimant was required to use vibrating tools during his employment as a painter/blaster and that claimant suffers from pain in his hands. Relying upon the opinions of Drs. Blevens and Freeman, the administrative law judge determined that claimant suffers from carpal tunnel syndrome aggravated by his use of vibrating tools. Claimant thus established his *prima facie* case, and the administrative law judge concluded that claimant’s carpal tunnel syndrome was related to his employment. Next, the administrative law judge found that as there was no evidence that claimant worked with vibrating tools during his employment with Masse Contracting, employer was the party responsible for the payment of any compensation and medical benefits due claimant under the Act. The administrative law judge awarded claimant temporary total disability benefits from June 8, 2005 to December 2, 2005, and permanent partial disability benefits for a two-percent impairment rating to each of claimant’s hands, based upon an average weekly wage of \$685.14. 33 U.S.C. §908(b), (c)(3). The administrative law judge also awarded claimant reasonable and necessary medical benefits pursuant to Section 7 of the Act, excluding a carpal tunnel release on the basis that this procedure was not necessary,

and an assessment pursuant to Section 14(e) of the Act, 33 U.S.C. §§907, 914(e). In a Supplemental Decision and Order, the administrative law judge awarded claimant's attorney a fee of \$20,165.30, representing 97.68 hours of legal services rendered at an hourly rate of \$200, plus costs of \$629.30.

On appeal, employer argues that the administrative law judge erred in finding that claimant sustained a compensable occupational disease related to his employment as a painter/blaster. Employer additionally challenges the administrative law judge's award of benefits to claimant, and the administrative law judge's finding that it is the party responsible for the payment of any benefits due claimant under the Act. Lastly, employer challenges the attorney's fee awarded to claimant's counsel by the administrative law judge. Claimant responds, urging affirmance of the administrative law judge's decisions in their entirety.

Injury

Claimant bears 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.¹ See *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *Konno v. Young Bros., Ltd.*, 28 BRBS 57 (1994). A harm has been defined as something that has gone wrong with the human frame. *Perry v. Carolina Shipping Co.*, 20 BRBS 90 (1987); see *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968). It is claimant's burden to establish each element of his *prima facie* case. 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). If these two elements are established, the Section 20(a), 33 U.S.C. §920(a), presumption applies to link claimant's injury or harm with his employment. *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991).

Employer argues that the administrative law judge erred in finding that claimant sustained a compensable occupational disease, specifically carpal tunnel syndrome, as a result of his use of vibrating tools and equipment. In support of its contention of error, employer avers that, in light of Dr. Meyer's opinion that claimant suffers from tenosynovitis, the testimony of Drs. Blevens and Freeman and the delayed diagnosis of claimant's carpal tunnel syndrome following his removal from the workforce are insufficient to establish that claimant suffers from carpal tunnel syndrome. We disagree. In his decision, the administrative law judge initially found, and employer does not

¹ As the administrative law judge found, no party disputes that claimant utilized vibrating tools during his employment with employer as a painter/blaster. Decision and Order at 24. Claimant thus established the working conditions element of his *prima facie* case.

challenge on appeal, that it is undisputed that claimant suffers from pain in his hands. Decision and Order at 23. Next, the administrative law judge accorded greater weight to the opinions of Drs. Blevens and Freeman that claimant suffered from carpal tunnel syndrome, than the contrary opinion of Dr. Meyer that claimant suffers from tenosynovitis, since Dr. Meyer did not reconcile the findings of claimant's two nerve conduction studies, which yielded findings consistent with carpal tunnel syndrome, with his contrary conclusion.² *Id.* Determining the weight to be accorded the evidence, including competing medical opinions, is within the authority of administrative law judge. *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). As the administrative law judge rationally determined that the opinions of Drs. Blevens and Freeman were entitled to greater weight, and these opinions constitute substantial evidence supporting the administrative law judge's finding, it must be affirmed. *O'Keefe*, 380 U.S. 359. We thus affirm the administrative law judge's finding that claimant established that he suffers from carpal tunnel syndrome; therefore, he demonstrated the existence of a harm under the Act for purposes of his *prima facie* case. *See Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989). As it is undisputed that claimant's employment duties included the use of vibrating tools and equipment, the administrative law judge's finding that Section 20(a) was invoked, linking claimant's diagnosed carpal tunnel syndrome to his employment as a painter/blaster, and his conclusion that carpal tunnel syndrome thus arose out of his employment are also affirmed.³

Employer next contends that the administrative law judge erred in determining that claimant's carpal tunnel syndrome constituted a compensable occupational disease. We reject this argument. In his decision, the administrative law judge, citing decisions of the United States Court of Appeals for the Fifth Circuit in *LeBlanc v. Cooper/T. Smith Stevedoring, Inc.*, 130 F. 3d 157, 31 BRBS 195(CRT) (5th Cir. 1997), and the United States Court of Appeals for the Second Circuit in *Gencarelle v. General Dynamics Corp.*,

² Claimant's November 30, 2005, EMGs resulted in findings consistent with carpal tunnel syndrome. JX 5 at 19. Dr. Blevens, who continued to treat claimant following these tests, thereafter opined that claimant suffers from carpal tunnel syndrome and proscribed steroid injections to the carpal canal and the use of bilateral wrist supports. *Id.* at 20-28, 33. Claimant's May 3, 2006, EMGs resulted in findings consistent with carpal tunnel syndrome on the right, but no electrical evidence of carpal tunnel syndrome on the left. *Id.* at 31.

³ Employer on appeal has cited no evidence supportive of a finding that claimant's diagnosed carpal tunnel syndrome was not caused or aggravated by his employment as a painter/blaster.

892 F. 2d 173, 23 BRBS 13(CRT) (2^d Cir. 1989), determined that for approximately one third of the ten to twelve hours per day, seven days a week, claimant worked for employer, he used vibrating tools and equipment, and that this rendered his employment sufficiently peculiar to warrant a finding that his hand condition is an occupational disease.⁴ Decision and Order at 23 – 24. As the administrative law judge properly applied the legal standard of *LeBlanc* and *Gencarelle* and the evidence supports the administrative law judge’s determination that the conditions of claimant’s employment were “peculiar to” that employment, we affirm the administrative law judge’s finding that claimant’s carpal tunnel syndrome is an occupational disease.⁵ See *Bunge Corp. v. Carlisle*, 227 F.3d 934, 34 BRBS 79(CRT) (7th Cir. 2000), *aff’g* 33 BRBS 133 (1999).

Responsible Employer

Employer next challenges the administrative law judge’s determination that it is the employer responsible for claimant’s benefits under the Act. For the reasons that

⁴ The administrative law judge noted that although the use of vibrating tools or equipment is not exclusive to painting/blasting, the prolonged nature of claimant’s exposure to vibrating tools was sufficiently peculiar to his employment and of such an unusual degree as to render his condition an occupational disease. In *LeBlanc*, the Fifth Circuit, in addressing the issue of occupational disease in terms of the applicable provision for calculating average weekly wage, see 33 U.S.C. §910(a) – (c), (i), held that claimant’s disability due to a back injury did not result from a disease peculiar to his line of work. 130 F.3d 157, 31 BRBS 195(CRT). In *Gencarelle*, the Second Circuit affirmed the Board’s holding that the extended statute of limitation provisions for occupational diseases are inapplicable to a claim for chronic knee synovitis, since claimant’s work activities were not “peculiar to” his employment. 892 F.2d at 177, 23 BRBS at 20(CRT).

⁵ The determination regarding whether a particular condition is an occupational disease or an accidental injury developed as a result of specific provisions of the Act applicable to occupational diseases. See, e.g., 33 U.S.C. §§912, 913, 908(c)(23), 910(i). Employer, however, raises this argument in the context of asserting the lack of a causal relationship. In this case, even if claimant’s condition did not meet the occupational disease criteria, it would be a compensable injury, as an injury may occur gradually over a period of time and still be considered an accidental injury under Section 2(2) of the Act. See *Gencarelle v. General Dynamics Corp.*, 22 BRBS 170, *aff’d*, 892 F.2d 173, 23 BRBS 13(CRT) (2^d Cir. 1989). The administrative law judge specifically determined that had claimant’s condition not been an occupational disease his condition resulted from an injury gradually produced by his work activities or conditions. Decision and Order at 24. Moreover, it is a longstanding principle that an accidental injury compensable under the Act occurs even if the force producing the injury is not great or the injury could have occurred outside work. See *Southern Stevedoring Co. v. Henderson*, 175 F.2d 863 (5th Cir. 1949).

follow, we reject employer's allegation of error, and we affirm the administrative law judge's finding on this issue.

In order to determine employer liability in occupational disease cases involving successive employers, the courts and the Board have uniformly applied the last employer rule enunciated in *Travelers Ins. Co. v. Cardillo*, 225 F.2d 137 (2^d Cir.), *cert. denied*, 350 U.S. 913 (1955). See *New Orleans Stevedores v. Ibos*, 317 F.3d 480, 36 BRBS 93(CRT) (5th Cir. 2003), *cert. denied*, 540 U.S. 1141 (2004); *Avondale Industries, Inc. v. Director, OWCP [Cuevas]*, 977 F.2d 186, 26 BRBS 111(CRT) (5th Cir. 1992). Pursuant to *Cardillo*, 225 F.2d 137, the responsible employer in an occupational disease case is the last covered employer to expose the employee to injurious stimuli prior to his awareness of an occupational disease arising out of his employment. See *Zeringue v. McDermott, Inc.*, 32 BRBS 275 (1998). In order to meet its burden of establishing that it is not the responsible employer, an employer must prove that either the employee was not exposed to injurious stimuli in its employment, or that the employee was exposed to injurious stimuli while working for a subsequent employer covered under the Act. *Cooper/T. Smith Stevedoring Co., Inc. v. Liuzza*, 293 F.3d 741, 36 BRBS 18(CRT) (5th Cir. 2002); *Cuevas*, 977 F.2d at 190, 26 BRBS at 113(CRT). In support of its position on appeal, employer avers that claimant was exposed to hazardous working conditions while working for Masse Contracting between May 25, 2005, and June 7, 2005, the day on which claimant first sought medical treatment for his hand conditions.

Claimant was employed by employer from December 2004 through approximately May 25, 2005, during which time it is undisputed that claimant's employment duties required the repeated use of vibratory tools and equipment. On or about May 25, 2005, claimant was informed by his safety officer that he would thereafter be employed by Masse Contracting. While claimant acknowledged during his testimony that he continued in his "same job" after his transfer to Masse, *see* Tr. at 75 – 76, he subsequently described his employment duties with Masse as involving driving a forklift to remove barrels of debris from beneath a bridge. *See id.* at 101 -103. On June 7, 2005, claimant sought medical treatment at a hospital emergency room. The following day, June 8, 2005, claimant reported his hand pain to employer, who sent him to a different emergency room for treatment, and he has not returned to work for either employer or Masse since that time. In addressing this issue in his decision, the administrative law judge found that claimant worked for Masse for approximately one week, and that claimant's employment duties during that period of time involved using a forklift to remove and replace barrels of waste. Decision and Order at 25. The administrative law judge further found that claimant did not testify that he used any vibrating tools or equipment during his brief period of employment with Masse, nor does the record contain any information that claimant used such tools or equipment during this period of time. Based upon his finding that the record contains no indication that claimant was exposed to vibrating tools or equipment during his employment with Masse, the administrative

law judge concluded that employer is the party responsible for the payment of claimant's benefits under the Act.⁶

The Board is not empowered to reweigh the evidence, but must accept the rational inferences and findings of fact of the administrative law judge which are supported by the record. *See, e.g., Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991). In this case, the administrative law judge rationally found that the evidence did not establish that claimant was exposed to vibratory tools or equipment during his period of employment with Masse Contracting. Accordingly, as the administrative law judge's conclusion that employer, as the last employer to expose claimant to vibrating tools and equipment, is the responsible employer is supported by substantial evidence and is consistent with applicable law, it is affirmed.⁷ *Ibos*, 317 F.3d 480, 36 BRBS 93(CRT); *Luizza*, 293 F.3d 741, 36 BRBS 18(CRT).

Extent of Disability

Employer next challenges the administrative law judge's award of total disability benefits from June 8, 2005 to December 2, 2005; specifically, employer avers that claimant did not have a loss of wage-earning capacity since it offered claimant "transitional work" within his physical restrictions during this period of time. In order to establish a *prima facie* case of total disability, claimant bears the burden of establishing that he is unable to return to his usual work. *See Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988). If claimant establishes his *prima facie* case of total disability, the burden shifts to employer to establish the availability of suitable alternate employment. *See New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 14 BRBS 156(CRT) (5th Cir. 1991); *see also Avondale Shipyards, Inc. v. Guidry*, 967 F.2d 1039, 26 BRBS 30(CRT) (5th Cir. 1992). The United States Court of Appeals for the Fifth Circuit, within whose jurisdiction this case arises, has held that in order to meet this burden, employer must establish that job opportunities are available within the geographic area in which claimant resides, which he is capable of performing, considering his age, education, work experience, and physical restrictions, and which he could realistically secure if he diligently tried. *See Ledet v. Phillips Petroleum Co.*, 163 F.3d 901, 32 BRBS 212(CRT) (5th Cir. 1998); *P & M Crane Co. v. Hayes*, 930 F.2d 424, 24 BRBS 116(CRT) (5th Cir.), *reh'g denied*, 935 F.2d 1293 (5th Cir. 1991); *Turner*, 661 F.2d 1031, 14 BRBS 156.

⁶ We note that although Drs. Blevins and Freeman concluded that the use of vibrating tools related to his hand condition, no testing was addressed establishing a possible relationship between claimant's duties for Masse and his condition.

⁷ The same result would be reached if claimant's injury was not considered an occupational disease but the result of repetitive trauma. *See Vanover v. Foundation Constructors*, 22 BRBS 453 (1989), *aff'd sub nom. Foundation Constructors, Inc. v. Director, OWCP*, 950 F.2d 621, 25 BRBS 71(CRT) (9th Cir. 1991).

Employer can meet this burden by offering claimant a job in its facility, including a light-duty job. *Darby v. Ingalls Shipbuilding, Inc.*, 99 F.3d 685, 30 BRBS 93(CRT) (5th Cir. 1996); *Larson v. Golten Marine Co.*, 19 BRBS 54 (1986).

We affirm the administrative law judge's determination that claimant is entitled to total disability benefits during the period of June 8, 2005 to December 2, 2005. The administrative law judge found that claimant's treating physician, Dr. Blevins, never released claimant to light duty work during the disputed period of time. This finding is supported by the evidence as the reports of Dr. Blevins state that claimant was unable to return to work until December 2, 2005. Additionally, the administrative law judge found that Ms. Owens, employer's present branch manager who was employed as an account representative at the time of claimant's injury, had no personal knowledge as to whether employer offered a light duty job to claimant; in this regard, claimant testified that employer never offered him a light duty position. The administrative law judge thus concluded that claimant was totally disabled between June 8, 2005, and December 2, 2005.

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 from the evidence. *See Todd Shipyards Corp.*, 300 F.2d 741; *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2^d Cir. 1961). In this case, employer has not established error in the administrative law judge's finding that claimant's treating physician did not release him to return to work until December 2, 2005, nor has employer presented evidence of actual, light-duty employment opportunities which it offered to claimant.⁸ We therefore affirm the administrative law judge's conclusion that claimant is entitled to total disability compensation from June 8 to December 2, 2005. *See Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 29 BRBS 79(CRT) (5th Cir. 1995); *Mijangos*, 948 F.2d 941, 25 BRBS 78(CRT).

Attorney's Fee

Lastly, employer challenges the attorney's fee awarded to claimant's counsel by the administrative law judge. The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *See Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980). In this regard, an attorney's fee must be awarded in

⁸ Employer's reliance on claimant's signature on its "Availability of Transitional Duty Work/Release of Medical Information Form" dated June 8, 2005, is misplaced as that document states only that claimant is required to return to employer's office for a transitional job assignment if "[claimant's] medical provider releases [claimant] to return to work in a transitional (light) duty position." *See* JX 13. As properly found by the administrative law judge, Dr. Blevins, claimant's treating physician, did not release claimant to return to work until December 2, 2005. *See* JX 5 at 10 – 33.

accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, 20 C.F.R. §702.132, which provides that any attorney's fee approved shall be reasonably commensurate with the necessary work done, the complexity of the legal issues involved and the amount of benefits awarded. *See generally Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989). In the instant case, claimant's attorney requested a total fee of \$20,093.82, representing 101.18 hours of services rendered at an hourly rate of \$200, plus costs of \$629.30. In his supplemental decision, the administrative law judge awarded the hourly rate requested, reduced the number of requested hours by 3.5, and approved the \$629.30 in requested expenses. Accordingly, the administrative law judge awarded counsel a fee of \$20,165.30, representing 97.68 hours at \$200 per hour, plus costs of \$629.30.

Employer contends that the administrative law judge erred by failing to reduce the attorney's fee sought by counsel due to claimant's degree of success. In addressing this objection, the administrative law judge found that, with the exception of establishing entitlement to a carpal tunnel release, claimant was successful on all of the issues presented for adjudication before him, including the nature of his injury, the party responsible for the payment of benefits due claimant, and the nature and extent of his disability. As claimant therefore successfully prosecuted his claim for benefits under the Act payable by employer, we affirm the administrative law judge's determination that counsel's fee request should not be reduced on this basis. *Hensley v. Eckerhart*, 461 U.S. 424 (1983).

Employer next argues that the administrative law judge erred in awarding counsel a fee for services performed before the claim was transferred to the Office of Administrative Law Judges (OALJ). We agree that the administrative law judge erred in this regard. As the claim was transferred to OALJ on November 15, 2006, services rendered by claimant's counsel prior to that date are unrelated to work performed before the administrative law judge. We therefore reduce the number of hours awarded to claimant's counsel by the administrative law judge by the 27.15 hours of services documented between December 15, 2005, and November 14, 2006, as these services pertain to work performed before the case was transferred to the administrative law judge.

Employer also contends that claimant's counsel inappropriately billed for services in quarter-hour increments, that various itemized entries approved by the administrative law judge should be reduced or disallowed, and that the hourly rate of \$200 awarded by the administrative law judge should be reduced to \$150. The administrative law judge addressed each of employer's objections to the time entries and hourly rate sought by claimant's counsel and reduce counsel's requested time by 3.5 hours. Supp. Decision and Order at 4 – 8. Employer's assertions on appeal are insufficient to meet its burden of establishing that the administrative law judge abused his discretion in his award of a fee. Thus, we decline to further reduce or disallow the hours approved by the administrative law judge. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989). Moreover,

contrary to employer's assertion of error, the administrative law judge committed no error in awarding counsel one-quarter of an hour for the preparation of his fee petition. *See Hill v. Avondale Industries, Inc.*, 32 BRBS 186, (1998), *aff'd sub nom. Hill v. Director, OWCP*, 195 F.3d 790, 33 BRBS 184(CRT) (5th Cir. 1999), *cert. denied*, 530 U.S. 1213 (2000). Lastly, the administrative law judge rationally found that an hourly rate of \$200 is warranted based on the facts of this case. Supp. Decision and Order at 4. Therefore, the administrative law judge's award of an attorney's fee to claimant's counsel for services performed after November 15, 2006, is affirmed. The fee award is modified to reflect claimant's counsel's entitlement to a fee totaling \$14,861.30, representing 71.16 hours of services performed before the administrative law judge at an hourly rate of \$200, and expenses of \$629.30.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed. The administrative law judge's Supplemental Decision and Order Awarding Attorney's Fee is modified to reflect claimant's counsel's entitlement to a fee and costs totaling \$14,861.30, payable by employer.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge