

BRB No. 93-1096

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| NORMAN F. FERRAZZANO |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| GENERAL DYNAMICS |) | DATE ISSUED: |
| CORPORATION |) | |
| |) | |
| Self-Insured |) | |
| Employer-Respondent |) | DECISION and ORDER |

Appeal of the Decision and Order - Denying Benefits of David W. Di Nardi, Administrative Law Judge, United States Department of Labor.

David A. Salzillo (Sinapi Law Associates, Ltd.), Cranston, Rhode Island, for claimant.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (92-LHC-1422) of Administrative Law Judge David W. Di Nardi 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 findings of fact and conclusions of law of the administrative law judge which 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 shipfitter, was injured on August 17, 1988, when he slipped, injuring his left elbow. Following surgery claimant returned to restricted duty work on June 18, 1990. Claimant filed both state and federal claims as a result of this work incident. Claimant subsequently settled his Rhode Island state workers' compensation claims for \$7,192.06. *See* RX 8; RX 9. Employer also paid claimant benefits under the Act for a 23 percent permanent disability of the arm less a credit for the \$7,192.06 received by claimant pursuant to the state act.

The only issue before the administrative law judge was whether employer was entitled to credit the monies it paid claimant under the Rhode Island Act against its award under this Act. In his Decision and Order, the administrative law judge found employer entitled to a credit under Section 3(e) of the Act, and therefore concluded that claimant was entitled to no additional benefits.

Claimant now appeals, arguing that the administrative law judge erred in allowing employer a credit for monies paid to him under the Rhode Island Workers' Compensation Act. Employer has

not responded to this appeal.

We affirm the administrative law judge's conclusion that employer is entitled to a credit for claimant's Rhode Island workers' compensation award. Section 3(e) of the Act, 33 U.S.C. §903(e), states, in pertinent part, that:

Notwithstanding any provision of law, any amounts paid to an employee for the same injury, disability, or death for which benefits are claimed under this chapter pursuant to any other workers' compensation law . . . shall be credited against any liability imposed by this chapter.

33 U.S.C. §903(e)(1988). Thus, pursuant to Section 3(e), a claimant is precluded from receiving a double recovery where he has received state and federal compensation awards for damages from the same injury. See *D'Errico v. General Dynamics Corp.*, 996 F.2d 503, 27 BRBS 24 (CRT)(1st Cir. 1993); *Bouchard v. General Dynamics Corp.*, 963 F.2d 541, 25 BRBS 152 (CRT)(2d Cir. 1992); *Lustig v. U.S. Dept. of Labor*, 881 F.2d 593, 22 BRBS 159 (CRT)(9th Cir. 1984). Accordingly, while claimant is free to file both a state and federal claim, employer is entitled to a credit for the amount of state benefits claimant receives for the same injury. *Shafer v. General Dynamics Corp.*, 23 BRBS 212 (1990); *Garcia v. National Steel & Shipbuilding Co.*, 21 BRBS 314 (1986). In this regard, claimant's reliance on *Sun Ship, Inc. v. Commonwealth of Pennsylvania*, 447 U.S. 715, 12 BRBS 890, *reh'g denied* 448 U.S. 916 (1980), is misplaced since, in that case, the Supreme Court specifically noted that state and federal act jurisdiction may run concurrently in areas where state law constitutionally may apply, but that there is no danger of double recovery as one award would be credited against the other. See *Sun Ship*, 447 U.S. at 722-725 n.8, 12 BRBS 894 n.8. In the instant case, it is uncontroverted that claimant received both state and federal awards as a result of his August 17, 1988, work-related injury; we therefore affirm the administrative law judge's determination that employer is entitled to a credit pursuant to Section 3(e) of the Act, as that finding is rational and in accordance with law.¹

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

¹Contrary to claimant's assertion, the decision of the Maine Supreme Judicial Court in *Bouford v. Bath Iron Works*, 514 A.2d 470 (Me. 1986), *cert. denied*, 479 U.S. 1065 (1987), does not control the disposition of this case. The decision of the state tribunal in *Bouford* is not binding precedent on this Board. Moreover, that case involved a credit for Longshore benefits against a state award and thus did not require interpretation of Section 3(e) as in the instant case. Claimant's reliance on *Borders v. Board of Governors*, 728 F.Supp. 839 (D.R.I. 1990), a case arising under the Jones Act, is similarly misplaced.

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge