

BRB No. 98-853

FAIRL R. MORRELL)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED:_____
INGALLS SHIPBUILDING,)	
INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Henry B. Zuber III (Parlin & Murphy), Ocean Springs, Mississippi, for claimant.

Traci M. Castille (Franke, Rainey & Salloum, P.L.L.C.), Gulfport, Mississippi, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (96-LHC-2084) of Administrative Law Judge Richard D. Mills 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant last worked for employer as a fitter and welder in May 1973. Emp. Brief at exh. D-E. In February 1992, he underwent an audiometric evaluation with Dr. Spires which revealed a sensorineural hearing loss consistent with noise exposure. However, under the American Medical Association *Guides to Evaluation of Permanent Impairment*, claimant's impairment was assessed at zero percent. In a 1995 letter regarding the 1992 evaluation, Dr. Spires explained the audiogram and stated that claimant is not a candidate for hearing amplification. Emp. Brief at exh. C. Claimant underwent a second evaluation in June 1994. Dr. Stanfield determined that claimant's evaluation revealed a bilateral sensorineural hearing loss of 8.13 percent. He recommended that claimant receive annual evaluations and hearing aids for this loss. Emp. Brief at exh. B. Based on the second audiometric evaluation, claimant filed a claim for benefits under the Act. In response, employer filed a motion for summary judgment.

In his decision, the administrative law judge set forth the applicable law regarding claimant's burden of proof in establishing a *prima facie* case under Section 20(a), 33 U.S.C. §920(a). He also discussed the results of both audiograms, and he concluded that claimant failed to establish that he has a work-related hearing loss, as he considered the 1992 audiogram valid and most representative of any hearing loss claimant may have sustained while working for employer for 20 years previously. Decision & Order at 1-2. Consequently, the administrative law judge granted employer's motion for summary judgment and denied claimant benefits. *Id.* at 3. Claimant appeals the decision, and employer responds, urging affirmance.

Claimant contends that the administrative law judge erred in granting employer summary judgment, as he asserts there remain genuine issues of material fact regarding the issues of responsible employer, causation, disability and medical benefits. Claimant seeks remand for further discovery or for further findings of fact by the administrative law judge. We hold that the administrative law judge's decision is affirmable on the merits, and thus we need not address the propriety of the administrative law judge's grant of summary judgment.

In this case, claimant last worked for employer in 1973. The first audiometric evaluation he underwent subsequent to this maritime employment was in 1992 -- nearly 20 years later. The evaluation, which the administrative law judge credited, was determined to be valid by Dr. Spires. Dr. Spires stated that this audiogram revealed a zero percent impairment, and that claimant had no need for treatment such as hearing amplification. Thus, this audiogram constitutes substantial evidence supporting the administrative law judge's denial of disability and medical benefits, regardless of the contrary results of an evaluation conducted two years

later. See *Cox v. Brady-Hamilton Stevedore Co.*, 25 BRBS 203 (1991) (administrative law judge may credit audiogram taken closest to last injurious exposure to noise); *Bruce v. Bath Iron Works Corp.*, 25 BRBS 157 (1991) (administrative law judge acted within his discretion by making inferences from the medical evidence and refusing to project a hearing loss back 15 years); see also *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14 (CRT) (5th Cir. 1993) (there must be an evidentiary basis for an award of medical benefits). As the administrative law judge's decision is rational and is supported by substantial evidence, we affirm the denial of disability and medical benefits.¹

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

¹Both audiograms of record revealed a work-related hearing loss. Thus, the administrative law judge erred in determining that claimant failed to establish a *prima facie* case relating his hearing loss to his employment. This error, however, is harmless, as the evidence credited by the administrative law judge establishes there is no measurable impairment for which compensation is due.