

BRB No. 93-914

JOHN MICHAEL)
)
 Claimant-Petitioner)
)
 v.)
)
 GENERAL DYNAMICS CORPORATION) DATE ISSUED:
)
 Self-Insured)
 Employer-Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS,)
 UNITED STATES DEPARTMENT)
 OF LABOR)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order on Remand - Awarding Benefits of Anthony J. Iacobo,
Administrative Law Judge, United States Department of Labor.

Stephen C. Embry and Timothy C. Spayne (Embry & Neusner), Groton, Connecticut, for
claimant.

Edward J. Murphy, Jr. (Murphy and Beane), Boston, Massachusetts, for self-insured
employer.

Karen B. Kracov (Thomas S. Williamson, Jr., Solicitor of Labor; Carol DeDeo, Associate
Solicitor; Janet R. Dunlop, Counsel for Longshore), Washington, D.C., for the
Director, Office of Workers' Compensation Programs, United States Department of
Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand - Awarding Benefits (90-LHC-3220) of Administrative Law Judge Anthony J. Iacobo 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, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant filed a claim under the Act for a work-related monaural hearing loss. In a Decision and Order dated April 8, 1991, the administrative law judge found that claimant's monaural hearing loss is not related to his employment and thus denied claimant's request for benefits. Claimant appealed this decision to the Board, which reversed the administrative law judge's decision and remanded the case to the administrative law judge for entry of an award of benefits and for consideration of employer's entitlement to Section 8(f) relief, 33 U.S.C. §908(f). *Michael v. General Dynamics Corp.*, BRB No. 91-1239 (Sept. 17, 1992) (unpublished). In a Decision and Order on Remand issued December 22, 1992, the administrative law judge awarded claimant compensation, pursuant to Section 8(c)(13)(B), 33 U.S.C. §908(c)(13)(B)(1988), for a 65.6 percent monaural hearing loss, which the administrative law judge converted to a 10.93 percent binaural hearing loss, pursuant to the American Medical Association *Guides to the Evaluation of Permanent Impairment*. Additionally, employer was awarded relief pursuant to Section 8(f) of the Act.

Claimant appealed this award of benefits, contending that compensation for a monaural hearing loss should be awarded pursuant to Section 8(c)(13)(A), 33 U.S.C. §908(c)(13)(A)(1988), of the Act.

In the time since claimant filed his brief in the instant case, the United States Court of Appeals for the Second Circuit, within whose jurisdiction the case arises, issued its decision in *Rasmussen v. General Dynamics Corp.*, 993 F.2d 1014, 27 BRBS 17 (CRT) (2d Cir. 1993). In *Rasmussen*, the court held that claimants who suffer from a monaural impairment should be compensated under Section 8(c)(13)(A) of the Act. *Rasmussen*, 993 F.2d at 1016-1017, 27 BRBS at 22-23 (CRT). Thereafter, employer filed a motion to remand the instant case to the administrative law judge for entry of an order consistent with the court's decision in *Rasmussen*. Both claimant and the Director, Office of Workers' Compensation Programs, responded to employer's motion, stating that they had no objection to the case's being remanded to the administrative law judge.

Given that all parties are in agreement that the case should be remanded to the administrative law judge for the entry of an order consistent with *Rasmussen*, we hereby grant employer's motion and remand this case to the administrative law judge.¹

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

¹We note that the delay in issuing this Order was caused by the unavailability of the record, which was received on April 6, 1995.