

DAISY W. WRIGHT)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

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

Rebecca J. Ainsworth (Maples & Lomax P.A.), Pascagoula, Mississippi, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order On Remand Awarding Benefits (88-LHC-3251) 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 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).

On March 10, 1987, claimant filed a claim for a 37.81 percent noise-induced work-related binaural hearing impairment. Employer did not file a notice of controversion. The case was referred to the Office of Administrative Law Judges for a formal hearing on August 12, 1988. Thereafter, both parties filed motions for summary judgment, alleging that no factual dispute existed other than the issue of whether benefits should be awarded pursuant to Section 8(c)(13) of the Act, 33 U.S.C. §908(c)(13), or Section 8(c)(23), 33 U.S.C. §908(c)(23)(1988). By Order dated December 30, 1988, the administrative law judge granted claimant's Motion for Summary Judgment and ordered employer to pay claimant compensation under Section 8(c)(13) pursuant to *MacLeod v. Bethlehem*

Steel Corp., 20 BRBS 234 (1988). Employer paid claimant's widow \$15,257.85 in compensation and \$2,633.40 in interest on March 6, 1989, for a 37.81 percent binaural loss based upon the stipulated compensation rate of \$201.77 per week.

Employer appealed and the Director, Office of Workers' Compensation (the Director), cross-appealed the administrative law judge's decision. By Order dated September 15, 1991, the Board granted employer's motion to remand the case to the administrative law judge for further action consistent with *Ingalls Shipbuilding, Inc. v. Director, OWCP (Fairley)*, 898 F.2d 1088, 23 BRBS 61 (CRT) (5th Cir. 1990). The Board further instructed the administrative law judge to consider whether claimant was entitled to a Section 14(e), 33 U.S.C. §914(e), assessment. *Wright v. Ingalls Shipbuilding, Inc.*, BRB Nos. 89-598 and 89-598A (September 13, 1991)(unpublished).

In his Decision and Order On Remand Awarding Benefits, the administrative law judge, consistent with the Fifth Circuit's decision in *Fairley*, 898 F.2d at 1088, 23 BRBS at 61 (CRT), awarded claimant benefits pursuant to Section 8(c)(23) for a 13 percent whole man impairment under the American Medical Association *Guides to the Evaluation of Permanent Impairment*. In addition, the administrative law judge held employer liable for a Section 14(e) assessment.

On appeal, claimant contends that the administrative law judge erred in failing to calculate his award of hearing loss benefits pursuant to Section 8(c)(13) of the Act, citing *Bath Iron Works Corp. v. Director, OWCP*, U.S. ,113 S.Ct. 692 (1993). Employer responds, stating that it has no opposition to the issuance of a decision in accordance with *Bath Iron Works*.

Subsequent to the issuance of the administrative law judge's Decision and Order On Remand in this case, the United States Supreme Court held in *Bath Iron Works* that claims for hearing loss under the Act, whether filed by current employees or retirees, are claims for a scheduled injury and must be compensated pursuant to Section 8(c)(13). Consequently, pursuant to the Supreme Court's holding in *Bath Iron Works*, we vacate the administrative law judge's award of hearing loss benefits under Section 8(c)(23) and modify his award to reflect that claimant is entitled to receive permanent partial disability compensation for a 37.81 percent binaural hearing loss pursuant to Section 8(c)(13)(B), the degree of hearing loss ultimately agreed upon by the parties.

Accordingly, pursuant to the Supreme Court's holding in *Bath Iron Works Corp.*, the administrative law judge's award of compensation pursuant to Section 8(c)(23) is vacated, and is modified to reflect claimant's entitlement to an award of compensation benefits for a 37.81 percent binaural hearing impairment under Section 8(c)(13). In all other respects, the administrative law judge's Decision and Order on Remand Awarding Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge