

RONALD BOWERS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
BATH IRON WORKS CORPORATION)	DATE ISSUED:
)	
and)	
)	
BIRMINGHAM FIRE INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	DECISION AND ORDER

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

Marcia J. Cleveland (McTeague, Higbee, Libner, MacAdam, Case & Watson), Topsham, Maine, for claimant.

James C. Hunt (Robinson, Kriger, McCallum & Green, P.A.), Portland, Maine, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order-Awarding Benefits (91-LHC-2354) 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant was employed as a marine electrician at employer's shipyard. On May 14 and 15, 1987, claimant was exposed to noxious fumes generated from the heating by a co-worker of the lubricant CRC-226. He felt a burning sensation in his nose and throat and the fumes left a bad taste in his mouth. Claimant sought treatment from the first aid station, where he was administered

oxygen and then sent home. He returned to work one week later, and was assigned to work in the same area where he was first affected by the fumes. Claimant continued to be affected by dust and fumes and on June 9 or 10, 1987, he stopped working when he was exposed to the exhaust fumes of a fork lift truck. Claimant has not returned to work and sought permanent total disability benefits under the Act. In addition, claimant was awarded benefits under the Maine workers' compensation statute. Claimant received his last payment of compensation under the state act on August 12, 1990, at which time it was determined by a state commissioner that the effects of claimant's exposure to the fumes had ended.

The administrative law judge found that the physicians' opinions of record establish that claimant's respiratory impairment following the incident on May 14 and 15 was causally related to the phosgene and chlorine gases resulting from the breakdown of CRC-226. The administrative law judge also found that there was no evidence sufficient to rebut the Section 20(a), 33 U.S.C. §920(a), presumption of causation. After weighing all the evidence, the administrative law judge also concluded that claimant is permanently and totally disabled from returning to his regular job as a marine electrician at least in part because of the lingering effects of his exposure to noxious fumes in employer's shipyard. Thus, as no evidence of suitable alternate employment was presented, that administrative law judge found that claimant is entitled to permanent total disability benefits. 33 U.S.C. §908(a). The administrative law judge awarded employer a credit pursuant to Section 3(e), 33 U.S.C. §903(e) (1988), for amounts paid to claimant under the state act.

On appeal, employer contends that the Maine Workers' Compensation Commission found that any effect of claimant's exposure to the breakdown products of CRC-226 had ended as of August 1990. Thus, in accordance with the doctrines of collateral estoppel and *res judicata*, employer contends the administrative law judge was required to give preclusive effect to this prior factual finding. Claimant responds, urging affirmance of the administrative law judge's Decision and Order as collateral estoppel and *res judicata* do not apply inasmuch as the two proceedings do not share the same factual determinations.

On appeal, employer contends that the related doctrines of collateral estoppel, *res judicata* and full faith and credit require that the factual findings of the Maine Workers' Compensation Commission that the effects of the work place exposure had ended be given preclusive effect. Thus, employer contends that the award of benefits should be reversed. However, our review of the record reveals that at no time below did employer address the issues of collateral estoppel, *res judicata*, or full faith and credit; rather, with regard to the state claim, employer stated only that it would be entitled to a Section 3(e) credit for payment of benefits under the state compensation statute and otherwise argued the case on the merits.

The Board has consistently adhered to the longstanding principle that an issue cannot be presented initially when the case is on review. *Hite v. Dresser Guiberson Pumping*, 22 BRBS 87 (1989); *see also Parker v. Motorboat Sales*, 314 U.S. 244, 251 (1941), *reh'g denied*, 314 U.S. 716 (1942); *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27 (CRT) (9th Cir. 1988) (court affirms Board's decision refusing to address laches issue for first time on appeal). Before the administrative law judge, employer contended that claimant's condition, as a result of exposure to CRC-226, was not permanent and it did not argue that the administrative law judge should give preclusive effect to the factual findings of the state workers' compensation commission on this issue. Accordingly, as employer failed to raise this issue before the administrative law judge, we will not address it for the first time on appeal. Moreover, as employer has not raised any other issues on appeal, we affirm the administrative law judge's award of benefits. *See generally Collins v. Oceanic Butler, Inc.*, 23 BRBS 227 (1990).

Accordingly, the Decision and Order-Awarding Benefits of the administrative law judge is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge