



BRB No. 20-0073

ROBERT GILBERT)	
)	
Claimant)	
)	
v.)	
)	
ELECTRIC BOAT CORPORATION)	
)	
Self-Insured)	DATE ISSUED: 05/22/2020
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Petitioner)	ORDER on MOTION
)	for RECONSIDERATION

The Director, Office of Workers' Compensation Programs (Director), has filed a timely motion for reconsideration of the Benefits Review Board's decision in this case, *Gilbert v. Electric Boat Corp.*, BRB No. 20-0073 (May 22, 2020). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Employer has not responded. The Director asserts the Special Fund is not liable for reimbursing Employer more than \$51,514.57 (\$72,234.38 - \$20,719.81), citing *Blanchette v. Director, OWCP*, 998 F.2d 109, 27 BRBS 58(CRT) (2d Cir. 1993), and *Director, OWCP v. Bethlehem Steel Corp. [Brown]*, 868 F.2d 759, 22 BRBS 47(CRT) (5th Cir. 1989), and contends the Board erred holding otherwise. We grant the motion for reconsideration and the relief requested.

Upon further review of this case, we agree with the Director and hold the Special Fund is entitled to credit the amount Employer paid on Claimant's initial claim against its liability for benefits for his entire pre-existing hearing loss. Our prior decision, while acknowledging the absence of Claimant's receiving a double recovery and ensuring Employer paid for the full extent of the second work injury, inadvertently relieved Employer of liability for Claimant's first work-related hearing loss. *Gilbert*, slip op. at 4-

6; see *Blanchette*, 998 F.2d at 110-112, 27 BRBS at 70-71(CRT); *Brown*, 868 F.2d at 762, 22 BRBS at 51(CRT).

Therefore, liability for Claimant’s benefits is as follows:

% Impairment	Amount	Calculation	Liable Party
27.35% first claim	\$ 20,719.81	54.7 wks x \$378.79 ¹	Employer
39.0625% (27.35% + 11.7125%) entire pre-existing loss	\$ 29,855.81 \$ 21,658.76	54.7 wks x \$545.81 ² 23.425 wks x \$924.60 ³	Special Fund Special Fund
35.7375% subsequent work injury	\$ 66,085.78	71.475 wks x \$924.60 ⁴	Employer
Total Paid to Claimant	\$138,320.16		

Accordingly, we grant the Director’s motion for reconsideration, vacate the order that the Special Fund reimburse Employer \$72,234.38, and modify the decision to reflect the Special Fund is entitled to credit \$20,719.81 against its liability for the pre-existing 39.0625% hearing loss. The Special Fund must reimburse Employer \$51,514.57.⁵ 20

¹ 0.2735 x 200 weeks = 54.7 weeks; compensation rate was \$378.79 per week.

² This amount reflects the difference between Claimant’s 1990 and 2016 compensation rates.

³ 39.0625 - 27.35 = 11.7125. 0.117125 x 200 weeks = 23.425 weeks. This is the remainder of the 39.0625% pre-existing condition for which Claimant had not been paid, and which is paid at the 2016 rate of \$924.60.

⁴ 0.357375 x 200 weeks = 71.475 weeks (less than 104 weeks, so Employer is liable for the entire second work-related hearing loss, 33 U.S.C. §908(c)(13)(B)).

⁵ We need not address the Director’s remaining arguments.

C.F.R. §802.409.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge