BRB Nos. 86-2456
and 86-2456A

PRUDENCIO CHAVEZ	)	
	)	
Claimant-Respondent	)	
Cross-Petitioner	)	
	)	
v.	)	
	)	
TODD SHIPYARDS CORPORATION	)	
	)	
and	)	
	)	
AETNA CASUALTY & SURETY COMPANY	)	DATE ISSUED:_____
	)	
Employer/Carrier-Petitioners	)	
Cross-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	DECISION and ORDER
Cross-Respondent	)	on REMAND

On remand from the United States Court of Appeals for the Ninth Circuit.

Diane L. Middleton, San Pedro, California, for claimant.

Daniel F. Valenzuela and Eric A. Dupree (Samuelson, Gonzalez, Valenzuela & Sorkow), San Pedro, California, for employer/carrier.

Samuel J. Oshinsky (Thomas S. Williamson, 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.

SMITH, Administrative Appeals Judge:

This case is on remand from the United States Court of Appeals for the Ninth Circuit. In the original proceedings before the Board, employer appealed and claimant cross-appealed the Decision and Order (85-LHC-2482) of Administrative Law Judge Henry B. Lasky awarding benefits 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 applicable law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant worked for employer as a laborer and leadman from 1954 to 1980. During his employment, claimant was exposed to asbestos, dust, smoke, fumes, and high levels of noise. He developed asbestosis and hypertension and retired in 1980 because of an inability to perform his job. Claimant, who has not worked since that time, filed a claim seeking permanent total disability benefits.

Two hearings were held and two decisions were issued in this case. In the first Decision and Order, Administrative Law Judge John V. Evans determined that claimant is permanently totally disabled as a result of "his combined pulmonary and hypertension problems[.]" Evans at 3. Consequently, he awarded claimant benefits and employer Section 8(f) relief. *Id.* at 5; 33 U.S.C. §§908(c)(21), (f). Judge Evans' decision was not appealed. Subsequent to the hearing before Judge Evans, claimant filed approximately 15 third-party claims against asbestos manufacturers, suppliers, and distributors. Employer later contended that two of the cases were settled without its consent. Claimant denied the occurrence of any settlements, and the parties requested a hearing to determine the effect of the possible third-party settlements on the compensation awarded under the Act.

The second hearing was held on June 19, 1986 before Administrative Law Judge Henry B. Lasky. Judge Lasky found that no third-party settlements had been consummated and accordingly, found that claimant was not barred from receiving compensation and medical benefits by Section 33(g), 33 U.S.C. §933(g) (1988). Lasky at 4. Further, he determined that the Section 33(f), 33 U.S.C. §933(f) (1988), credit issue was ripe for decision because settlements in the third-party actions have been prevented due to the pending Longshore claim and determination of claimant's rights therein. The administrative law judge, however, rejected claimant's theory of apportionment as being statutorily precluded because he found it would result in a partial lien on any third-party recovery, which violates the provisions of Section 33(b) of the Act, 33 U.S.C. §933(b) (1988),[1] and

[1]Section 33(b) provides in pertinent part:

> Acceptance of compensation under an award in a compensation order filed by the deputy commissioner, an administrative law judge, or the Board shall operate as an assignment to the employer of all rights of the person entitled to compensation to recover damages against such third person unless such person shall commence an

instead, he approved a full lien against the third-party recovery. *Id.* at 4-6. The Board affirmed Judge Lasky's finding that no settlements had occurred but vacated his findings concerning the Section 33(f) credit, stating that, as there had not been any settlements, his method of calculating the credit was wholly speculative and the issue was not ripe for decision. *Chavez v. Todd Shipyards Corp.*, 24 BRBS 71, 76-77 (1990), *aff'd in part and rev'd in part sub nom., Chavez v. Director, OWCP*, 961 F.2d 1409, 25 BRBS 134 (CRT) (9th Cir. 1992).

On appeal to the United States Court of Appeals for the Ninth Circuit, employer again challenged the administrative law judge's finding that claimant had not entered into any settlements with third parties. Denying employer's parol evidence and collateral estoppel arguments, the Ninth Circuit agreed with the Board and held that the record contains substantial evidence to support the administrative law judge's finding that no settlements had occurred. *Chavez*, 961 F.2d at 1413-1414, 25 BRBS at 139-141 (CRT). However, the Ninth Circuit reversed the Board's determination that the Section 33(f) issue is not ripe and held that, under the traditional analysis, the issue is ripe.[2] *Id.*, 961 F.2d at 1415-1416, 25 BRBS at 143 (CRT). The court declined to resolve the issue on its merits and remanded the case for the Board to consider the positions presented by claimant, employer and the Director, Office of Workers' Compensation Programs (the Director), and to determine whether the administrative law judge erred in finding that employer is entitled to an offset against the entire net proceeds from any third-party settlements.[3] *Id.*, 961 F.2d at 1416, 25 BRBS at 144 (CRT).

Claimant contends that employer's right to offset its liability for compensation against his recovery in the third-party actions should be apportioned to account for his two work-related disabilities, asbestosis and hypertension. Although claimant concedes employer's entitlement to an offset against any settlement recovery to recoup 100 percent of the compensation for that portion of claimant's disability which is related to asbestosis, he contends that employer should be allowed to offset only 25 percent of the compensation it has paid against the third-party recovery as only 25

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action against such third person within six months after such acceptance.

33 U.S.C. §933(b) (1988).

[2]Citing *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967), the court defined the traditional analysis as one which "consists of two prongs: the fitness of the issue for review and the hardship to the parties if review is withheld." *Chavez*, 961 F.2d at 1414, 25 BRBS at 141-142 (CRT). The court determined that the Section 33(f) credit issue is ripe for review because it is purely a question of law whose facts have been developed significantly (the only remaining fact is how much claimant will receive), and it determined that withholding review would cause "immediate financial hardship and . . . possible financial loss." *Id.*, 961 F.2d at 1415, 25 BRBS at 142 (CRT).

[3]All references herein to employer's entitlement to an offset also include the right of the Special Fund to an offset, as employer was granted Section 8(f) relief. *See* Evans at 5.

percent of claimant's disability is caused by asbestosis.[4] Employer insists that to determine an employer's liability under the "aggravation rule"[5] and its right to credit or offset by the apportionment doctrine is to foster discrimination. Employer states that this discrimination would present itself in the form of an incentive to discharge or not hire those workers who have a pre-existing permanent impairment, as the employer would be liable under the aggravation theory for any further impairment but would be recompensed only to the extent the claimant's third-party recovery represents his work-related disability. Instead, employer contends that the administrative law judge's decision to disallow apportionment should be affirmed as apportionment is inappropriate, and that the net amount of claimant's recovery in third-party litigation should be offset against employer's liability for compensation pursuant to Section 33(f). In support, employer asserts Judge Evans' finding that claimant's condition was caused by a combination of pulmonary problems and hypertension with no apportionment between the two. Evans at 3. The Director also responds to claimant's contention and maintains that the amount of employer's offset should depend on whether each of claimant's disabilities is work-related and not on the asbestosis-related fraction of his entire disability.[6]

Discussion of whether apportionment of claimant's recovery in third-party actions is permitted under the Act, properly begins with Section 33(f) of the Act. Section 33(f) provides:

> If the person entitled to compensation institutes proceedings within the period prescribed in subsection (b) of this section the employer shall be required to pay as compensation under this chapter a sum equal to the excess of the amount which the Secretary determines is payable on account of such injury or death over the net amount recovered against such third person. Such net amount shall be equal to the actual amount recovered less the expenses reasonably incurred by such person in respect to such proceedings (including reasonable attorneys' fees).

33 U.S.C. §933(f) (1988). If a claimant files suit against a third person who is potentially liable in damages "on account of a disability or death for which compensation is payable"[7] under the Act, in

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[4]Dr. Dahlgren, whose testimony was not rebutted, attributed 75 percent of claimant's disability to hypertension and the remaining 25 percent to asbestosis. Lasky at 2; Tr. at 31.

[5]Under this theory, employer is required to pay compensation for the totality of claimant's disability regardless of the cause of the original disability with which the work-related disability combined. *See, e.g., Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45 (CRT) (5th Cir. 1986) (*en banc*); *Chavez v. Todd Shipyards Corp.*, 21 BRBS 272 (1988).

[6]When the present case was first before the Board, the Director agreed with employer and argued that no apportionment is permitted under the Act, citing *Chavez v. Todd Shipyards Corp.*, 21 BRBS 272 (1988). The Director changed his position at oral argument before the Board and further developed it before the Ninth Circuit.

[7]Section 33(a) of the Act provides:

addition to his claim for benefits under the Act, then his employer is required to pay only those benefits "on account of such injury" under the Act in excess of the net amount of the third-party recovery. *See Castorina v. Lykes Brothers Steamship Co., Inc.*, 21 BRBS 136, 139 (1988); 33 U.S.C. §933(a), (b), (f) (1988). The Act looks with disfavor on partial offsets and does not require apportionment of the offset among the types of damages a claimant may receive in third-party litigation. Thus, an employer is permitted to offset its compensation liability against the net amount of claimant's third-party recovery of economic and non-economic damages, including pain and suffering and punitive damages. *Force v. Director, OWCP*, 938 F.2d 981, 25 BRBS 13 (CRT) (9th Cir. 1991), *aff'g in part and rev'g in part Force v. Kaiser Aluminum & Chemical Corp.*, 23 BRBS 1 (1989). However, because an employer is entitled to an offset against only those proceeds recovered by the claimant and/or the "person entitled to compensation" under the Act, amounts recovered are to be apportioned among the third-party litigants. *Force*, 938 F.2d at 985, 25 BRBS at 18-19 (CRT). Based on the above-stated general rule against apportionment, and on the Board's previous rejection of an argument similar to claimant's contention herein in *Chavez v. Todd Shipyards Corp.*, 21 BRBS 272 (1988),[8] we reject claimant's contention in the present case. Although the general rule supports employer's position against the apportionment of any settlement funds claimant may receive in his third-party actions, we believe the facts of this case warrant adoption of the Director's position, as the Director is the administrator of the Act and his position represents a reasonable interpretation of the statute in the face of an ambiguity. *See generally Estate of Cowart v. Nicklos Drilling Co.*, ___ U.S. ___, 112 S.Ct. 2589, 2594, 26 BRBS 49, 51 (CRT) (1992); *Force*, 938 F.2d at 983, 25 BRBS at 16 (CRT).

The Director contends that the amount of employer's offset should depend on whether the injury for which employer is liable under the Act is the same injury involved in the third-party claim. The Director's position is supported by the plain language of Sections 33(a) and (f), and is based on two fundamental principles: a) the tortfeasor is primarily liable and the employer acts only as a guarantor of a minimum recovery; and b) the tortfeasor's liability can reduce or eliminate employer's liability for compensation provided the tortfeasor's actions caused the compensable disability. Because employer is liable only for a compensable disability, and is entitled only to an offset against third-party proceeds on account of that same compensable disability, the Director's position requires the determination of the cause of each of claimant's disabilities.

> If on account of a disability or death for which compensation is payable under this chapter the person entitled to such compensation determines that some person other than the employer or a person or persons in his employ is liable in damages, he need not elect whether to receive such compensation or to recover damages against such third person.

33 U.S.C. §933(a).

[8]This case does not involve the same claimant as the present case.

The Director first submits that if only claimant's asbestosis is work-related, then employer is entitled to offset its liability against claimant's entire net recovery from the third-party litigation, including any settlements which may occur in this case. This is consistent with Section 33(a) because asbestosis would be the disability "for which compensation is payable" under the Act, and with Section 33(f) by allowing employer an offset for the net third-party recovery "on account of such injury" for which it is liable under the Act. It is also consistent with the aggravation theory and with the general rule against apportionment among types of damages to the "person entitled to compensation." *See Force*, 938 F.2d at 981, 25 BRBS at 13 (CRT); *Chavez*, 21 BRBS at 272; *Castorina*, 21 BRBS at 136.

The Director contends, however, that if claimant's hypertension alone, or if both the hypertension and the asbestosis are employment-related, then employer is not entitled to any offset. If claimant's hypertension is his only work-related disability, then his asbestosis cannot be the disability compensable under the Act. *See* 33 U.S.C.§933(a). Consequently, employer would not be entitled to offset its liability against claimant's third-party recovery in the asbestos suits because under Section 33(f) employer is required to pay deficiency compensation "on account of such injury" only after it receives an offset of the net amount of claimant's third-party recovery for the same injury. If both conditions are work-related, then claimant could have sought benefits for hypertension alone and received permanent total disability benefits under the aggravation rule. The Director contends that allowing an offset from the third-party suits against asbestos manufacturers in either situation would result in a wind-fall to employer because the tortfeasor's actions did not cause the compensable injury. *See Chavez*, 961 F.2d at 1416, 25 BRBS at 144 (CRT). In effect, the Director contends, allowing employer an offset under these circumstances penalizes claimant for having more than one work-related disability.

In *Force*, *Chavez*, and *Castorina*, which espouse the general rule against apportionment, each claimant sustained a single compensable disability. *Force*, 938 F.2d at 982, 25 BRBS at 14 (CRT) (asbestos-related mesothelioma); *Chavez*, 21 BRBS at 274, 277 (moderate lung disability partially caused by asbestos); *Castorina*, 21 BRBS at 137 (asbestosis). Claimant in the present case, however, suffers from two disabilities, each potentially compensable under the Act. He suffers from hypertension which affects his circulatory system and asbestosis which affects his respiratory system. Thus, we conclude that this case is distinguishable from *Force*, *Chavez*, and *Castorina*, wherein each claimant filed third-party suits "on account of a disability . . . for which compensation is payable" under the Act. 33 U.S.C. §933(a). Instead, we conclude it is similar to *O'Berry v. Jacksonville Shipyards, Inc.*, 22 BRBS 430, 433 (1989), *modifying in pertinent part on recon.*, 21 BRBS 355 (1988), wherein the question was presented as to whether the claim under the Act and the third-party cases were filed on account of the same disability.

In *O'Berry*, the claimant filed a claim for compensation for disability resulting from siderosis in 1970. He obtained an award from the district director[9] and the employer paid permanent partial

[9]Pursuant to 20 C.F.R. §702.105, the term "district director" has been substituted for the term "deputy commissioner" used in the statute. "District director" will be used in this case except when

disability compensation. In 1982, claimant's doctor diagnosed asbestosis, and claimant filed a claim against employer under the Act as well as third-party actions against asbestos manufacturers. At the informal conference, the claims for siderosis and asbestosis were joined and referred to the Office of Administrative Law Judges.[10] Meanwhile, claimant settled the tort cases for $3,000. The administrative law judge found, *inter alia*, that claimant did not have asbestosis, and that the claim was barred under Section 33(g)(1) because of claimant's failure to obtain written consent prior to entering into settlements with third-parties. 33 U.S.C. §933(g)(1) (1988). Accordingly, the administrative law judge denied benefits. *O'Berry*, 21 BRBS at 357-361.

On appeal, the Board agreed with the administrative law judge's determination that Section 33(g) was at issue in the case based on Section 33(a) and the conclusion that siderosis and asbestosis, both occupational lung diseases, related to the same disability. The Board held on other grounds that Section 33(g) did not bar a claim for disability due to either disease and vacated the Decision and Order denying benefits and remanded the case for further consideration of claimant's siderosis claim. *O'Berry*, 21 BRBS at 361-362. The Director moved for reconsideration, and the Board granted the motion. *O'Berry*, 22 BRBS at 431, 433. The Director argued that if claimant's third-party settlements against the asbestos manufacturers invoked Section 33(a) with regard to claimant's siderosis claim because they are the same disability for which compensation was sought under the Act, then Section 33(f) also should apply and employer should be entitled to offset its liability on the siderosis claim against claimant's net third-party recovery in the asbestosis claims. *Id.* According to the Director, given the time which elapsed between the diagnosis of each disability, such an outcome would not be consistent with the law. The Board agreed that the Director's argument regarding the effect of the Board's construction of Section 33(a) on Section 33(f) might have merit. It remanded the case for the administrative law judge to determine whether claimant's asbestosis, which was diagnosed 12 years after his siderosis, constituted the same "disability" under Section 33(a) and hence, whether employer was entitled to a Section 33(f) credit against claimant's recovery from the third-party asbestosis claims for compensation it paid on the siderosis claim. *Id.*

It is clearer in this case than in *O'Berry* that claimant's conditions, hypertension and asbestosis, are distinct and separate. Therefore, because an employer is entitled to a Section 33(f) credit only when a claimant recovers proceeds from a third-party action based on the same injury for which employer is liable and the same disability for which claimant is entitled to compensation under the Act, we adopt the Director's position as discussed herein. Although the record contains evidence concerning the cause of claimant's disabilities, neither administrative law judge specifically found that claimant's employment caused his conditions.[11] *See* Cl. Exs. 1-2; Emp. Ex. 2 at 138-140.

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the statute is quoted.

[10]The 1970 siderosis claim was still open and pending because the district director exceeded his authority in issuing a compensation order in 1973, after the 1972 amendments to the Act divested the district director's authority to do this. *See O'Berry*, 22 BRBS at 431; 33 U.S.C. §919(d).

[11]Judge Evans awarded employer Section 8(f) relief after concluding claimant's disabilities combined to result in a permanent total disability, but he did not determine whether claimant's

Therefore, we remand the case to the administrative law judge for him to ascertain which disability was the basis of claimant's claim under the Act and whether each of claimant's disabilities is work-related. *O'Berry*, 22 BRBS at 433. If he determines that claimant's hypertension and asbestosis constitute two separate work-related disabilities, or if only the hypertension is work-related, then employer is not entitled to a Section 33(f) credit. If, however, only the asbestosis is work-related, then employer is allowed to offset its liability for the combined disabilities against the net proceeds obtained in any suit settled on account of claimant's asbestosis.

Accordingly, that part of the Decision and Order of the administrative law judge regarding employer's entitlement to a Section 33(f) credit is vacated, and the case is remanded for further proceedings in accordance with this decision. In all other respects the Decision and Order is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

I concur:

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NANCY S. DOLDER
Administrative Appeals Judge

McGRANERY, Administrative Appeals Judge, dissenting:

Although I concur with my colleagues' rejection of claimant's position concerning employer's entitlement to a Section 33(f) credit, I respectfully dissent from their decision to adopt the Director's position, and I would affirm the Decision and Order of the administrative law judge awarding employer a Section 33(f) credit against the net amount of any recovery which claimant may obtain in his third-party actions. In cases such as this, arising under Section 33 of the Act, employer is entitled to offset the amount of its liability for compensation against the net amount of claimant's recovery in a third-party action on account of the compensable disability and is required only to pay compensation in excess of said recovery. *Force v. Director, OWCP*, 938 F.2d 981, 25 BRBS 13 (CRT) (9th Cir. 1991), *aff'g in part and rev'g in part Force v. Kaiser Aluminum & Chemical Corp.*, 23 BRBS 1 (1989); *Chavez v. Todd Shipyards Corp.*, 21 BRBS 272 (1988); *Castorina v. Lykes Brothers Steamship Co., Inc.*, 21 BRBS 136 (1988); 33 U.S.C. §933(a), (f) (1988). Based on this well-established principle, Judge Lasky's finding that employer is entitled to a Section 33(f) credit against the net amount of any recovery claimant may obtain in his third-party cases should be affirmed.

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hypertension is work-related. Evans at 4.

When this case was first before the Board, the Director first argued in favor of the general rule against apportionment as espoused by the Board in *Chavez*, 21 BRBS at 272, and later changed his position. I agree with his original position and would not defer to his new position which bases employer's entitlement to an offset on the work-relatedness of claimant's disabilities. *See generally Estate of Cowart v. Nicklos Drilling Co.*, ___ U.S. ___, 112 S.Ct. 2589, 2594, 26 BRBS 49, 51 (CRT) (1992). In *Chavez*, 21 BRBS at 272, the claimant retired due to his on-going breathing problems. At the hearing, the parties stipulated that claimant suffered from cardiopulmonary problems caused by exposure to welding fumes combined with pre-existing pulmonary problems including bronchitis. Claimant testified he had received nearly $7,000 from settlements of lawsuits filed against several asbestos manufacturers. *Chavez*, 21 BRBS at 273. Based on the evidence before him, including the testimony of Dr. Dahlgren which attributed claimant's lung condition 50 percent to asbestos, 20 percent to other industrial exposures, and 30 percent to cigarette smoking, the administrative law judge awarded continuing permanent partial disability benefits to claimant and Section 8(f) relief to employer. *Id.* at 274; 33 U.S.C. §908(f). He found that Section 33(g) did not bar claimant from receiving compensation under the Act as Section 33(g)(1) was inapplicable and Section 33(g)(2) was satisfied when claimant informed employer of his settlements. 33 U.S.C. §933(g) (1988). The administrative law judge also awarded employer an offset against the net amount of claimant's settlements under Section 33(f). *Chavez*, 21 BRBS at 274.

On appeal, employer contended that claimant was barred from receiving compensation under the Act pursuant to Section 33(g). Claimant challenged the administrative law judge's decision to allow employer to reduce its liability by the entire net amount of the settlement. The Board affirmed the administrative law judge's findings, holding that Section 33(g)(1) was inapplicable, that Section 33(g)(2) was satisfied, and that a Section 33(f) offset was appropriate. *Id.* at 275, 277. With regard to the Section 33(f) issue, the Board noted that Dr. Dalgren's opinion attributing 50 percent of claimant's disability to asbestosis established that claimant's third-party suits against asbestos manufacturers were filed "on account of a disability . . . for which compensation is payable" under the Act. *Chavez*, 21 BRBS at 276; *see also Castorina*, 21 BRBS at 136; 33 U.S.C. §933(a). It also noted that, pursuant to the aggravation rule, employer was responsible for compensating claimant for his entire disability, regardless of the fact that the disability was caused only in part by work-related exposure to harmful fumes. *Chavez*, 21 BRBS at 276; *see also Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45 (CRT) (5th Cir. 1986) (*en banc*). Therefore, the Board held:

> [As] employer [was] liable for compensating claimant for his entire disability, even if it [was] occasioned only in part by his job with employer, it would be inconsistent to hold that under Section 33(f) employer is entitled to reduce its liability by only a portion of claimant's third-party recoveries in lawsuits stemming from the same disability for which benefits are sought under the Act.

Chavez, 21 BRBS at 276-277.

The similarity between *Chavez* and the instant case is undeniable, and the Board should

follow the precedent set by *Chavez* to affirm Judge Lasky's findings. Instead, the majority distinguishes *Chavez* from the instant case by differentiating between the types of disabilities each claimant suffers. Rather than accept Judge Evans' finding, which has not been appealed, that claimant's disability results from the combination of his hypertension and asbestosis, the majority seeks a determination as to the cause of claimant's hypertension and then bases employer's entitlement to an offset on that determination. In law, we traditionally reject speculative arguments and consider facts, and it is clear that the facts of this case fit squarely with those in *Chavez*. Claimant filed a claim under the Act based on asbestosis, the same disability for which he filed claims against asbestos manufacturers, suppliers, and distributors. Judge Evans properly awarded permanent total disability benefits as a result of claimant's "combined pulmonary and hypertension problems" based on the aggravation rule. Evans at 3. Employer, therefore, should be entitled to a credit against the net proceeds obtained from any third-party claim claimant filed because of asbestosis, which, under Section 33(a), was filed on account of a "disability" which is compensable under the Act. *Chavez*, 21 BRBS at 272; 33 U.S.C. §933(a). That claimant also may have filed a claim under the Act against employer for work-related hypertension is irrelevant and speculative. As this case falls within the scope of the general rule, employer's arguments against apportionment are more persuasive than the Director's hybrid position.

For the above reasons, I respectfully dissent and would affirm the administrative law judge's decision awarding employer a Section 33(f) credit against the net amount of any recovery claimant may obtain in his third-party litigation.

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REGINA C. McGRANERY
Administrative Appeals Judge