BRB No. 01-0603

RICHARD BREES	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
FALCON MARINE	)	DATE ISSUED: April 18, 2002
	)	
and	)	
	)	
AMERICAN INTERNATIONAL GROUP	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits and Order Denying Employer's Motion for Reconsideration and Awarding Attorney Fees of Alexander Karst, Administrative Law Judge, United States Department of Labor.

James Bendell, Port Townsend, Washington, for claimant.

Robert J. Burke, Jr., and Raymond H. Warns, Jr. (Holmes Weddle & Barcott), Seattle, Washington, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits and Order Denying Employer's Motion for Reconsideration and Awarding Attorney Fees (99-LHC-0748) of Administrative Law Judge Alexander Karst 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).

Claimant, while working as a welder/fitter for employer on or about September 7, 1997,[1] felt his "back give out." On September 10, 1997, claimant sought treatment for back pain and swelling from Dr. Reis, whose immediate recommendation for claimant to visit an emergency room was not followed. On February 28, 1997, claimant saw Dr. Whitney, who diagnosed a work-related low back injury with probable herniated intervertebral disc and recommended chiropractic treatment and/or physical therapy. Claimant, however, did not return to Dr. Whitney's office, instead opting for self-treatment of his back injury.

At employer's behest, claimant was examined on June 30, 1999, by Dr. McCollum, who opined that the September 1997 work accident caused only a lumbar strain, that claimant's condition was "fixed and stable," and that claimant's present condition did not warrant therapy, work restrictions, or complaints of constant pain. Dr. McCollum rejected Dr. Whitney's diagnosis of a herniated disc because he felt that it was unsupported by Dr. Whitney's examination.

In January 2000, Dr. Earle diagnosed a lumbosacral strain, probable L4-5 disc herniation, a compressed radicular nerve secondary to the herniated disc, and a likely L3-L4 spondylolisthesis, all of which he related to the 1997 work accident. In addition, Dr. Earle found that claimant suffered from pre-existing degenerative disc disease. He further stated that it is more probable than not that claimant is physically incapable of returning to longshore or other medium duty work.

Meanwhile, after missing a week of work due to back pain in September 1997, claimant met with employer's owner, Dan Johnson, which resulted in an offer and acceptance of a light duty supervisory position as a quality control inspector. Claimant continued to work in this capacity until employer went out of business on February 6, 1998. On or about February 25, 1998, claimant filed the instant claim for benefits, and employer controverted, among other things, whether the notice of injury was timely filed pursuant to 33 U.S.C. §912(a).

[1]As the administrative law judge notes in his decision, the exact date of the accident is unclear as witness accounts and documents from this period are inconsistent.

In his decision, the administrative law judge determined that the claim was not barred by Section 12(a) as employer had actual knowledge of the injury and was not prejudiced by the late notice of the claim. The administrative law judge next found that claimant was entitled to invocation of the Section 20(a) presumption, 33 U.S.C. §920(a), and that employer did not establish rebuttal. Accordingly, he determined that claimant sustained a work-related back injury. The administrative law judge further found that claimant is not capable of performing his usual work, that the light duty position he held with employer until February 6, 1998, constituted sheltered employment, and that employer did not otherwise establish the availability of suitable alternate employment. He awarded temporary total disability benefits from September 8, to September 15, 1997, and then continuing from February 6, 1998,[2] based on an average weekly wage of $520, and past and future medical benefits related to the work injury pursuant to 33 U.S.C. §907. Employer's motion for reconsideration was denied.

On appeal, employer challenges the administrative law judge's determination that the claim is not barred under Section 12(a), and alternatively challenges his findings that claimant established a work-related injury, that claimant has not reached maximum medical improvement, and that claimant is entitled to total disability benefits, as well as the calculation of claimant's average weekly wage.[3] Claimant responds, urging affirmance.

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[2]The administrative law judge found that claimant has not as yet reached maximum medical improvement with regard to his back condition. Additionally, with regard to the extent of claimant's disability, the administrative law judge did not award any compensation for the post-injury period claimant worked for employer as a quality control inspector as his actual wages exceeded his pre-injury average weekly wage, and further concluded that subsequent to leaving that position, claimant was totally disabled despite his intermittent periods of employment with First Mate Marine and as a real estate agent.

[3]Employer also raises, as error, the administrative law judge's failure to address its request for Section 8(f) relief, 33 U.S.C. §908(f).

Section 12

Employer argues that contrary to the administrative law judge's determination, it did not have knowledge of claimant's alleged injury until February 25, 1998, a full five months after the supposed incident. Employer further argues that the late notice provided by claimant cannot be excused as, in contrast to the administrative law judge's finding, it prejudiced employer's development of its case.

Claimant concedes that he did not file a written notice of the injury with employer or the district director pursuant to Section 12(a). Nonetheless, Section 12(d) of the Act, 33 U.S.C. §912(d), provides in pertinent part:

> Failure to give such notice required by Section 12(a) shall not bar any claim under this chapter (1) if the employer . . . or the carrier had knowledge of the injury or death, (2) the deputy commissioner determines that the employer or carrier has not been prejudiced by failure to give such notice, or (3) if the deputy commissioner excuses such failure [for one of the enumerated reasons]. . . .

Because Section 12(d) is written in the disjunctive, claimant's failure to file a notice of injury will not bar a claim if any of three reasons is met: employer had actual knowledge of the injury, employer was not prejudiced by the failure to give formal notice, or the district director excused the failure to file. *See Boyd v. Ceres Terminals*, 30 BRBS 218 (1997); *Sheek v. General Dynamics Corp.*, 18 BRBS 151 (1986), *modifying on recon.* 18 BRBS 1 (1985). The implementing regulation states that "actual knowledge" of the injury is deemed to exist if claimant's immediate supervisor is aware of the injury. 20 C.F.R. §702.216. This imputed knowledge under Section 12(d)(1) requires knowledge of the fact of injury, as well as knowledge of its work-relatedness. *Addison v. Ryan-Walsh Stevedoring Co.*, 22 BRBS 32 (1989). Moreover, prejudice under Section 12(d)(2) may be established where employer provides substantial evidence that due to claimant's failure to provide timely written notice, it was unable to effectively investigate the injury to determine the nature and extent of the illness or to provide medical services. A conclusory allegation of prejudice or of an inability to investigate the claim when it is fresh is insufficient to meet employer's burden of proof. *See Kashuba v. Legion Ins. Co.*, 139 F.3d 1273, 32 BRBS 62 (CRT)(9th Cir. 1998), *cert. denied*, 119 S.Ct. 866 (1999); *Jones Stevedoring Co. v. Director, OWCP [Taylor]*, 133 F.3d 683, 31 BRBS 178(CRT) (9th Cir. 1997); *Bustillo v. Southwest Marine, Inc.*, 33 BRBS 15 (1999).

In the instant case, the administrative law judge found that the injury report submitted to employer was prepared on or about February 25, 1998, more than five months after the date of the injury. Nevertheless, the administrative law judge concluded, based chiefly on

claimant's testimony, that employer's staff had actual knowledge of the injury on the day that it happened, and that its owner, Dan Johnson, knew one week after the accident occurred.[4] *Boyd*, 30 BRBS 218. In particular, the administrative law judge found significant the fact that within two weeks of the date of injury employer offered, and claimant accepted, a modified light duty position so that he could continue to work within the physical limitations due to claimant's work-related back injury. As substantial evidence supports the finding, we affirm the conclusion that employer had actual knowledge of the injury under Section 12(d)(1).

Alternatively, the administrative law judge found that employer was not prejudiced by claimant's failure to give timely written notice of the injury because employer had sufficient information, at the time of the injury and most certainly within two weeks of that date, with which to conduct an investigation. *Id.* Specifically, he found that employer had access to its own internal records and was not precluded from taking the deposition of any of its former employees or of the treating physician.[5] *Id.* Moreover, employer has not shown that it was prejudiced by an inability to supervise claimant's medical care, as there is no evidence that its supervision would have altered the course of claimant's self-treatment. *Bustillo*, 33 BRBS 15. Consequently, as employer has not shown that it was unable to effectively investigate the injury or to provide medical services to claimant, the administrative law judge's finding that employer was not prejudiced by claimant's failure to file a Section 12 notice of injury is affirmed.[6] *Boyd*, 30 BRBS 218. Thus, the administrative law judge's conclusion that the claim is not barred by operation of Section 12(a) is affirmed. 33 U.S.C. §912(a).

Causation

[4]Additionally, the administrative law judge relied on the testimony of claimant's co-worker, Terry Nowell, that immediately following claimant's accident he and several other co-workers escorted claimant to the lunchroom where Terry Burg, who was described as the owner's assistant and right-hand man, took over so that everyone else could return to work. Employer's Exhibit (EX) 13 at 15, 16. Mr. Nowell further stated that "just about everybody there in management" had to know that claimant sustained an injury at work. *Id.*

[5]There may have been difficulty deposing employer's owner, Dan Johnson, as he disappeared once the business closed in 1998. Nonetheless, there is nothing in the record to indicate that his right-hand man, Mr. Burg, could not have been found to provide testimony in this case.

[6]Although it need only be established that employer either had actual knowledge or was not prejudiced by claimant's delayed notice, we affirm the administrative law judge's findings on both counts. *Boyd*, 30 BRBS 218.

Employer asserts that the administrative law judge violated the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), by not considering the relevant evidence of record and in summarily concluding that it failed to rebut the Section 20(a) presumption. Specifically, employer asserts that the administrative law judge failed to consider certain relevant evidence and that he did not adequately consider Dr. McCollum's entire opinion, including, in particular, his statement that he cannot attribute any of claimant's current symptoms to a work-related injury.

Once the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment. *See Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT)(9th Cir. 1999); *Manship v. Norfolk & Western Ry. Co.*, 30 BRBS 175 (1996). It is employer's burden on rebuttal to present substantial evidence sufficient to sever the causal connection between the injury and the employment. *See Duhagon*, 169 F.3d 615, 33 BRBS 1(CRT); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990). If the administrative law judge finds that the Section 20(a) presumption is rebutted, he must weigh all of the evidence and resolve the causation issue based on the record as a whole, with claimant bearing the burden of persuasion. *See Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153 (1985); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

In considering rebuttal, the administrative law judge specifically addressed the opinion of Dr. McCollum. The administrative law judge found that Dr. McCollum's statement that "the records, by history, suggest that [claimant] had a lumbar strain from this [work] incident," indicates that claimant did indeed sustain a work-related back injury. Moreover, as the administrative law judge found, Dr. McCollum's opinion focuses more on the nature and extent of claimant's injury than on whether claimant sustained any industrial injury at all. As Dr. McCollum did not affirmatively state that claimant's back condition is not related to his employment, his opinion cannot rebut Section 20(a). We therefore affirm the administrative law judge's finding that employer did not establish rebuttal of the Section 20(a) presumption, and thus, that claimant has established a work-related back injury.[7] *See*

[7]As evidenced above, the administrative law judge's consideration of the evidence pursuant to Section 20(a) is in accordance with the APA and thus employer's contention to the contrary is rejected. 5 U.S.C. §557(c)(3)(A); *Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988); *Williams v. Newport News Shipbuilding & Dry Dock Co.*, 17 BRBS 61 (1985). Additionally, employer's assertion that the evidence on causation is, at best, in equipoise, is likewise without merit as the medical evidence of record, including the opinion of Dr. McCollum, establishes that claimant sustained a back injury as a result of the

generally Kubin v. Pro-Football, Inc., 29 BRBS 117 (1995); *Caudill v. Sea Tac Alaska Shipbuilding*, 25 BRBS 92 (1991), *aff'd mem. sub. nom. Sea Tac Alaska Shipbuilding v. Director, OWCP*, 8 F.3d 29 (9th Cir. 1993).

September 1997 work incident.

Nature of Disability

Employer asserts that the administrative law judge erred in determining that claimant has not as yet reached maximum medical improvement with regard to his work-related back injury. Specifically, employer argues that the administrative law judge erred in crediting the opinions of Drs. Whitney and Earle over the contrary opinion of Dr. McCollum.

The determination of when maximum medical improvement is reached is primarily a question of fact based on medical evidence. *Eckley v. Fibrex & Shipping Co., Inc.*, 21 BRBS 120 (1988); *Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988). A claimant's condition may be considered permanent when it has continued for a lengthy period and appears to be of lasting and indefinite duration, as opposed to one in which recovery merely awaits a normal healing period. *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649 (5th Cir. 1968), *cert. denied*, 394 U.S. 976 (1969). If a physician believes that further treatment should be undertaken, then a possibility of improvement exists, and even if, in retrospect, the treatment was unsuccessful, maximum medical improvement does not occur until the treatment is complete. *See Louisiana Ins. Guaranty Ass'n v. Abbott*, 40 F.3d 122, 29 BRBS 22 (CRT) (5th Cir. 1994), *aff'g* 27 BRBS 192 (1993); *Leech v. Service Engineering Co.*, 15 BRBS 18 (1982).

In resolving the conflicting evidence on this issue, the administrative law judge accorded greatest weight to the opinions of Drs. Whitney and Earle that claimant continued to need treatment for his back condition, as their examinations were conducted as part of claimant's medical treatment, while Dr. McCollum, who opined that claimant's back condition was "fixed and stable" by the time of his examination on June 30, 1999, merely saw claimant for forensic reasons. In addition, the administrative law judge found that Dr. Whitney's examination occurred closest to time to the date of the accident and that Dr. Earle's later examination, which due to the taking of x-rays appears to be the most thorough, supports those earlier findings. Consequently, the administrative law judge found that the evidence establishes that claimant is currently in need of further diagnostic tests and medical treatment. As the administrative law judge's weighing of the evidence is supported by substantial evidence, his finding that claimant's work-related back condition has not yet reached maximum medical improvement is affirmed.[8] *Abbott*, 40 F.3d 122, 29 BRBS 22(CRT)*; Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963).

[8]In light of our affirmance of the administrative law judge's finding that claimant's back injury has not as yet reached a state of permanency, employer's contention regarding its entitlement to Section 8(f) relief is presently moot. *Director, Office of Workers' Compensation Programs v. Campbell Industries, Inc.*, 678 F.2d 836, 14 BRBS 974 (9th Cir. 1982), *cert. denied*, 459 U.S. 1104 (1983).

Extent of Disability

With regard to the extent of disability, employer first avers that the administrative law judge erred in concluding that claimant's post-injury light duty work for employer as an inspector was sheltered employment as claimant himself agreed that this work was "vital," and the record contains other evidence, not discussed by the administrative law judge in violation of the APA, which supports its position. Employer further argues that the administrative law judge erred in finding that it did not establish the availability of suitable alternate employment via its vocational evidence. Specifically, employer maintains that it identified a number of suitable jobs in its labor market surveys and that the administrative law judge erred in finding that claimant was incapable of performing this work.

Once claimant establishes that he cannot return to his usual work, the burden shifts to employer to establish the availability of suitable alternate employment. *See Hairston v. Todd Shipyards Corp.*, 849 F.2d 1194, 21 BRBS 122(CRT) (9th Cir. 1988); *Caudill v. Sea Tac Alaska Shipbuilding, Inc.*, 25 BRBS 92 (1991), *aff'd mem. sub nom. Sea Tac Alaska Shipbuilding v. Director, OWCP*, 8 F.3d 29 (9th Cir. 1993). In order to meet this burden, the United States Court of Appeals for the Ninth Circuit, within whose jurisdiction the present case arises, has held that employer must demonstrate that specific job opportunities, which claimant could perform considering his age, education, background, work experience, and physical restrictions, are realistically and regularly available in claimant's community. *See Edwards v. Director, OWCP*, 999 F.2d 1374, 27 BRBS 81(CRT) (9th Cir. 1993); *Bumble Bee Seafoods v. Director, OWCP*, 629 F.2d 1327, 12 BRBS 660 (9th Cir. 1980). The administrative law judge must compare the specific requirements of the jobs identified with claimant's physical restrictions to determine whether they are suitable. *See generally Fox v. West State Inc.*, 31 BRBS 118 (1997). The Board has affirmed a finding of suitable alternate employment where employer offers claimant a job tailored to his specific restrictions so long as the work is necessary. *Larsen v. Golten Marine* Co., 19 BRBS 54 (1986); *Darden v. Newport News Shipbuilding & Dry Dock Co.*, 18 BRBS 224 (1986). Sheltered employment, on the other hand, is a job for which claimant is paid even if he cannot do the work and which is unnecessary; such employment is insufficient to constitute suitable alternate employment. *Harrod v. Newport News Shipbuilding & Dry Dock Co.*, 12 BRBS 10 (1980). In order to defeat employer's showing of the availability of suitable alternate employment, claimant must establish that he diligently pursued alternate employment opportunities but was unable to secure a position. *Palombo v. Director, OWCP*, 937 F.2d 70, 25 BRBS 1 (CRT)(2d Cir. 1991).

We need not address the issue of whether claimant's post-injury work for employer as quality control inspector was sheltered employment, as that position is, in and of itself, insufficient to meet employer's burden to show the availability of suitable alternate

employment. *See Edwards*, 999 F.2d 1374, 27 BRBS 81(CRT). Specifically, as claimant held this job for only five months and lost it for reasons unrelated to any actions on his part, this position is insufficient to prove that suitable alternate employment was "realistically and regularly available" to claimant in the open market. *Id.; see also Norfolk Shipbuilding & Dry Dock Corp. v. Hord*, 193 F.3d 797, 33 BRBS 170(CRT)(4th Cir. 1999); *Mendez v. National Steel & Shipbuilding Co.*, 21 BRBS 22 (1988).

The administrative law judge also considered employer's vocational evidence consisting of three labor market surveys drafted by its vocational counselor, Merrill Cohen.[9] Based on Dr. Earle's opinion that claimant is physically incapable of returning to longshore or other medium duty work, the administrative law judge found that employer identified only a few specific jobs that claimant could realistically perform,[10] but concluded that given his age, education, background, and physical capabilities, it has not been shown that there exists a reasonable likelihood that claimant would be hired if he diligently sought these positions. As the administrative law judge noted, claimant testified that he contacted 8 to 12 of the 32 employers, targeting the ones that he thought might accommodate his "special needs," HT at 64-65, 82-83, but his inquiries went unanswered. The administrative law judge found that this testimony was not contradicted by Ms. Cohen's statements that she contacted 22 of these employers and three acknowledged that claimant had at least made an inquiry. Moreover, the administrative law judge observed that claimant testified that he attended two job fairs and sought the assistance of a "head hunter." HT at 65. He therefore concluded that employer has failed to carry its burden of showing that there is suitable alternate employment.

[9]In addition, the administrative law judge considered claimant's attempts at alternative employment after the time that employer went out of business but he rationally concluded, based on claimant's credible and uncontradicted testimony, that these positions failed to provide steady income and were sporadic such that claimant remained entitled to total disability benefits even though he was working during part of this time.

[10]Specifically, the administrative law judge determined that only 5 of the 32 jobs identified in Ms. Cohen's labor market surveys dated January 14, 1999, July 20, 1999, and April 26, 2000, were potentially suitable given claimant's overall situation.

While the administrative law judge's conclusion that employer did not satisfy its burden with regard to showing the availability of suitable alternate employment is not supported by his finding that the labor market surveys contained five suitable jobs, any error in this regard is harmless as his findings establish that claimant, despite a diligent job search, was unable to secure such employment. *See generally DM & IR Ry. Co. v. Director, OWCP*, 151 F.3d 1120, 32 BRBS 188(CRT) (8th Cir. 1998). As the administrative law judge's determination that claimant undertook a diligent job search is supported by substantial evidence, it is affirmed. *Id.* As this finding is sufficient to rebut a showing of suitable alternate employment, we affirm the administrative law judge's award of temporary total disability benefits.

Average Weekly Wage

Employer argues that the administrative law judge erred in concluding that claimant's average weekly wage is $520 based upon an hourly rate of $13 multiplied by a 40 hour work week. Specifically, employer objects to the administrative law judge's consideration of post-injury earnings in calculating claimant's pre-injury average weekly wage. Rather, employer asserts that the best approximation of claimant's earning capacity should be the earnings he had in the year prior to the injury, $13,906, which when divided by 52 yields an average weekly wage of $267.42. Alternatively, employer argues that the administrative law judge should disregard the hours that claimant worked post-injury and only consider the time period prior to the injury wherein claimant worked on average 28.37 hours a week, which, when multiplied by claimant's hourly rate of $13 establishes an average weekly wage of $368.81.

Claimant's average weekly wage is determined at the time of injury by utilizing one of three methods set forth in Section 10 of the Act. Section 10(c) of the Act, 33 U.S.C. §910(c), is a catch-all provision to be used in instances when neither Section 10(a) nor Section 10(b), 33 U.S.C. §910(a), (b), can be reasonably and fairly applied.[11] *See Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Newby v. Newport News Shipbuilding & Dry Dock Co.*, 20 BRBS 155 (1988). The object of Section 10(c) is to arrive at a sum which reasonably represents the claimant's annual earning capacity at the time of his injury. *See Empire United Stevedores v. Gatlin*, 936 F.2d 819, 25 BRBS 26(CRT) (5th Cir. 1991). The Board will affirm an administrative law judge's determination of claimant's average weekly wage under Section 10(c) if the amount represents a reasonable estimate of claimant's annual earning capacity at the time of the

[11]Neither employer nor claimant argues that Section 10(a) or Section 10(b) is applicable to the instant case.

injury. *See generally Bonner v. National Steel & Shipbuilding Co.*, 5 BRBS 290 (1977), *aff'd in pert. part*, 600 F.2d 1288 (9th Cir. 1979).

Applying Section 10(c), and citing *Lozupone v. Stephano Lozupone & Sons*, 14 BRBS 462 (1981), the administrative law judge multiplied claimant's rate of pay at the time of his injury, $13 per hour, by a time variable of 40 hours based on the hours claimant worked for employer throughout 1997, to arrive at an average weekly wage of $520. On reconsideration, the administrative law judge observed that this would result in a predicted annual wage of $27,040, which is reasonable when compared to claimant's annual earnings from previous years, *i.e.*, claimant indicated that he earned from $25,000 to $35,000 per year for the last ten years. In making this determination, the administrative law judge rejected employer's request that claimant's actual earnings in the year preceding his injury be used to calculate his average weekly wage, as such an estimate would be clearly inadequate because the sum suggested by employer, $13,906, reflects only claimant's earnings for the first three quarters of 1997, and does not include the fourth quarter of 1996, when claimant was self-employed. In addition, the administrative law judge found that the record does not contain any information on whether claimant had actual earnings during the last quarter of 1996. Moreover, the administrative law judge rejected employer's suggestion that a time variable of only 28.37 hours a week be used because such a variable does not take into account the rather large increase in hours that claimant worked pre-injury during the second and third quarters of 1997. As the formula used by the administrative law judge, pursuant to Section 10(c), in calculating claimant's average weekly wage is reasonable, supported by substantial evidence, and consistent with the goal of arriving at a sum which reasonably represents claimant's annual earnings at the time of his injury, his finding that claimant's average weekly wage at the time of his injury was $520 is affirmed. *See Gatlin*, 935 F.2d 819, 25 BRBS 26 (CRT); *Gilliam v. Addison Crane Co.*, 21 BRBS 91 (1988).

Accordingly, the administrative law judge's decisions are affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge