

BRB No. 10-0273

AUGUST PAGLIA)
)
 Claimant-Respondent)
)
 v.)
) DATE ISSUED: 08/26/2010
 JONES STEVEDORING COMPANY)
)
 Self-Insured)
 Employer-Petitioner) DECISION and ORDER

Appeal of the Decision and Order on Remand of Steven B. Berlin, Administrative Law Judge, United States Department of Labor.

Amie C. Peters (Law Office of William D. Hochberg), Edmonds, Washington, for claimant.

William Tomlinson and Kennedy K. Luvai (Lindsay, Hart, Neil & Weigler, LLP), Portland, Oregon, for self-insured employer.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand (2007-LHC-1528) of Administrative Law Judge Steven B. Berlin 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 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 law. 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

This case is before the Board for the second time. Claimant alleged that he suffered a work-related hearing loss. In his initial decision, the administrative law judge found claimant entitled to invocation of the Section 20(a) presumption that his hearing loss is work-related. 33 U.S.C. §920(a). The administrative law judge found that employer rebutted the presumption and that claimant failed to establish that his work

environment contributed to or aggravated his hearing loss. Thus, the administrative law judge denied the claim. Claimant appealed the administrative law judge's decision.

In its decision, *A.P. [Paglia] v. Jones Stevedoring Co.*, BRB No. 08-0614 (Mar. 16, 2009)(unpubl.), the Board held that the circumstantial and negative evidence upon which the administrative law judge based his finding that employer rebutted the Section 20(a) presumption is legally insufficient to rebut because this evidence did not state that claimant's work exposure did not cause, contribute to, or aggravate claimant's hearing loss. *Id.*, slip op. at 5. The Board thus reversed the administrative law judge's finding that employer rebutted the Section 20(a) presumption and held that claimant's hearing loss is work-related as a matter of law. The Board remanded the case to the administrative law judge for consideration of the remaining issues.

On remand, the administrative law judge allowed the submission of additional evidence by both parties but found that none of employer's evidence is sufficient to rebut the Section 20(a) presumption. The administrative law judge awarded claimant compensation for a scheduled permanent partial disability based on a binaural impairment rating of 18.75 percent. 33 U.S.C. §908(c)(13).

On appeal, employer does not challenge the administrative law judge's findings on remand. Rather, employer avers that its only contention is that the Board erred in finding in its prior decision that its evidence is legally insufficient to rebut the Section 20(a) presumption. Employer asks the Board to summarily affirm the Decision and Order on Remand so that it may appeal the Board's initial decision to the court of appeals. Thus, as employer raises no issues with regard to the administrative law judge's award of benefits on remand, and as the Board's previous decision on the issue raised constitutes the law of the case, *see, e.g. Boone v. Newport News Shipbuilding & Dry Dock Co.*, 37 BRBS 1 (2003); *Ravalli v. Pasha Maritime Services*, 36 BRBS 91 (2002), *denying recon. in* 36 BRBS 47 (2002), we grant employer's motion for summary affirmance. The administrative law judge's Decision and Order on Remand is affirmed.

Accordingly, the administrative law judge's Decision and Order on Remand is affirmed.¹

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

¹ Claimant's counsel requests a fee for work performed on appeal before the Board. 33 U.S.C. §928. As claimant was successful before the Board, his attorney is entitled to an attorney's fee for work performed before the Board. *See, e.g., Smith v. Alter Barge Line, Inc.*, 30 BRBS 87, 89 (1996); 20 C.F.R. §802.203. Claimant's counsel, however, must first file a fee petition conforming to 20 C.F.R. §802.203.