

A.P.)
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 Claimant-Petitioner)
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 v.)
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 STEVEDORING SERVICES OF AMERICA)
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 and)
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 EAGLE PACIFIC INSURANCE COMPANY) DATE ISSUED: 02/21/2008
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 and)
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 HOMEPORT INSURANCE COMPANY)
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 Employer/Carriers-)
 Respondents) DECISION and ORDER

Appeal of the Decision and Order on Remand of John M. Vittone, Chief Administrative Law Judge, United States Department of Labor.

Charles Robinowitz, Portland, Oregon, for claimant.

Russell A. Metz (Metz & Associates, P.S.), Seattle, Washington, for employer/Eagle Pacific Insurance Company.

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

PER CURIAM:

Claimant appeals the Decision and Order (1992-LHC-2469, 1999-LHC-1653) of Chief Administrative Law Judge John M. Vittone 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’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

This case has been before the Board previously and has a lengthy procedural history. See *Price v. Stevedoring Services of America*, 36 BRBS 56 (2002); *Price v. Brady-Hamilton Stevedore Co.*, 31 BRBS 91 (1996). Claimant sought benefits for two separate work injuries, one sustained on October 2, 1991, and the other on July 3, 1998. The 1998 claim has been finally resolved. *Stevedoring Services of America v. Price*, 382 F.3d 878, 38 BRBS 51(CRT) (9th Cir. 2004), *cert. denied*, 544 U.S. 960 (2005). The 1991 claim was remanded to the administrative law judge for further wage calculations. *Stevedoring Services of America v. Price*, Nos. 02-71201, 02-71578, 38 BRBS 34(CRT) (9th Cir. May 11, 2004) (unpublished).

On remand, the administrative law judge found that claimant’s average weekly wage at the time of the 1991 injury was \$1,198.09, with a maximum compensation rate pursuant to 33 U.S.C. §906 of \$699.29. The administrative law judge applied the Board’s decision in *Reposky v. Int’l Transportation Services*, 40 BRBS 65 (2006), in finding that the applicable maximum compensation rate is the one in effect at the time of the injury rather than at the time an award is entered. The administrative law judge also awarded interest on past-due benefits on a simple basis, at a rate determined according to 28 U.S.C. §1961.

Claimant appeals, contending that the maximum compensation rate should be that in effect when the award of benefits is entered rather than the one in effect at the time of injury. Claimant also contends that an award of interest should be on a compound basis and at a rate derived from 26 U.S.C. §6621. Employer responds, urging affirmance of the administrative law judge’s Decision and Order on Remand. Claimant has filed a reply brief.

For the reasons stated in *Reposky*, 40 BRBS at 73-77, we affirm the administrative law judge’s application of the maximum compensation rate in effect as of October 2, 1991, which is the date claimant’s disability commenced. 33 U.S.C. §906(b), (c). In *Reposky*, the Board fully discussed the Fifth Circuit’s decision in *Wilkerson v. Ingalls Shipbuilding, Inc.*, 125 F.3d 904, 31 BRBS 150(CRT) (5th Cir. 1997), and stated that *Wilkerson* was not persuasive authority for overruling the precedent set in *Puccetti v. Ceres Gulf*, 24 BRBS 25 (1990) and followed in *Reposky*. As claimant herein merely reiterates the contention that *Wilkerson* should control, we reject his contention.

We also reject claimant’s contention that the award of interest should be on a compound rather than simple basis and at a rate set with respect to 26 U.S.C. §6621 rather than 28 U.S.C. §1961. These contentions were fully addressed and rejected by the

Board in its decision in *B.C. v. Stevedoring Services of America*, 41 BRBS 107 (2007). For the reasons stated therein, we affirm the administrative law judge's award of interest.

Accordingly, we affirm the administrative law judge's Decision and Order on Remand.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge