

THEODORE G. NICHOLS)
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 Claimant-Respondent)
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 v.)
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 INGALLS SHIPBUILDING, INCORPORATED) DATE ISSUED: _____
)
 Self-Insured)
 Employer-Petitioner) DECISION AND ORDER

Appeal of the Order Granting Summary Decision of Quentin P. McColgin, Administrative Law Judge, United States Department of Labor.

John F. Dillon (Maples & Lomax), Pascagoula, Mississippi, for claimant.

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

Before: STAGE, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, LAWRENCE, Administrative Law Judge.*

PER CURIAM:

Employer appeals the Order Granting Summary Decision (88-LHC-2930) of Administrative Law Judge Quentin P. McColgin 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, on April 2, 1987, filed a claim for benefits under the Act, contending that he had sustained a work-related binaural hearing loss while working for employer. Before the administrative law judge, both parties moved for summary judgment on the issue of whether compensation should be awarded to claimant, a retiree, pursuant to Section 8(c)(13), 33 U.S.C. §908(c)(13)(1988), or Section 8(c)(23), 33 U.S.C. §908(c)(23)(1988), of the Act.

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in

1984, 33 U.S.C. §921(b)(5)(1988).

In his Order Granting Summary Decision, dated January 26, 1989, the administrative law judge, after initially noting that the resolution of the sole issue presented by the parties would not by itself permit the entry of an award of benefits, found that claimant's benefits should be calculated pursuant to Section 8(c)(13) of the Act. Thereafter, in an Order of Remand dated February 2, 1989, the administrative law judge remanded the case to the district director for proper disposition.

On appeal, employer contends that, as claimant was a retiree at the time of injury, any award of compensation to claimant for a loss of hearing should be made pursuant to Section 8(c)(23), rather than Section 8(c)(13), of the Act. We disagree. In the time since employer filed its brief on appeal, the United States Supreme Court issued its decision in Bath Iron Works Corp. v. Director, OWCP, U.S. , 113 S.Ct. 692 (1993). In Bath Iron Works, the Court held that claims for hearing loss under the Act, whether filed by current employees or retirees, are claims for a scheduled injury and must be compensated pursuant to Section 8(c)(13), rather than Section 8(c)(23), of the Act. Thus, for the reasons set forth in Bath Iron Works, we reject employer's contention that claimant's compensation for hearing loss should be calculated pursuant to Section 8(c)(23), and we affirm the administrative law judge's determination that any award of compensation to claimant must be calculated pursuant to Section 8(c)(13) of the Act. As the administrative law judge in this case made no findings of fact and remanded the case to the district director, we remand the case to the district director for such proceedings as are necessary to the award of benefits.

Accordingly, the administrative law judge's Order Granting Summary Decision is affirmed, and the case is remanded to the district director for further proceedings consistent with this decision.

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

LEONARD N. LAWRENCE
Administrative Law Judge