

RICHARD DAVIS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order-Denying Benefits of A. A. Simpson, Jr., Administrative Law Judge, United States Department of Labor.

Rebecca J. Ainsworth (Maples & Lomax, P.A.), Pascagoula, Mississippi, for claimant.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and SHEA, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Decision and Order (90-LHC-1476) of Administrative Law Judge A. A. Simpson, Jr. denying 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 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 worked for employer as a welder for approximately eighteen years during which time he was exposed to loud noise. On March 28, 1987, an audiometric examination performed by Dr. Wold indicated that claimant had sustained a 41.2 percent monaural impairment in the right ear, which Dr. Wold converted to a 6.8 percent binaural impairment. *See* Cl. Ex. 2. Dr. Wold opined that claimant's hearing impairment was characteristic of a loss aggravated by noise. Subsequently, claimant underwent an audiometric examination on February 8, 1988 which Dr. Lamppin interpreted as indicating

* 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). a 39.37 percent right ear hearing impairment which was not noise-induced. *See* Emp. Ex. 5.

In his Decision and Order, the administrative law judge found that claimant had a 40.29 percent monaural right ear impairment based on the average of the two audiograms. Crediting claimant's testimony that he was exposed to chipping gun, grinding and other workplace noises, the administrative law judge determined that claimant was entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), presumption. Based on the testimony of Dr. Lamppin, however, the administrative law judge determined that employer had rebutted the presumption. Relying on Dr. Lamppin's opinion that noise-induced hearing loss is a bilateral process, and claimant's testimony that he had previously received welding slag injuries in one or both ears over the years, the administrative law judge ultimately concluded that claimant's hearing loss was not work-related and denied benefits accordingly. Decision and Order at 2-3. Claimant appeals the denial of benefits. Employer has not responded to claimant's appeal.

On appeal, claimant contends that the administrative law judge violated the "aggravation rule" in finding rebuttal established based on Dr. Lamppin's opinion. Accordingly, claimant urges the Board to reverse the denial of benefits and to hold that claimant is entitled to benefits based on the conversion of his 40.29 percent monaural impairment to a binaural impairment as a matter of law.

Section 20(a) of the Act, 33 U.S.C. §920(a), provides claimant with a presumption that the injury he sustained is causally related to his employment if he establishes a *prima facie* case by showing that he suffered a harm and that employment conditions existed or a work accident occurred which could have caused, aggravated, or accelerated the onset of the injury. *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991). Once claimant has invoked the presumption, the burden shifts to employer to rebut the presumption with substantial countervailing evidence. If the administrative law judge finds that the Section 20(a) presumption is rebutted, he must then weigh all the relevant evidence and resolve the causation issue based on the record as a whole. *Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990).

We agree with claimant that the administrative law judge erred in finding Dr. Lamppin's opinion sufficient to rebut the Section 20(a) presumption in this case. Once the Section 20(a) presumption has been invoked in a case such as the present one, where the claim is based on cumulative exposure to noise over an eighteen year period, employer bears the burden of coming forward with evidence that claimant's hearing loss was neither caused nor aggravated by his employment over that lengthy period. *See Peterson v. General Dynamics Corp.*, 25 BRBS 71, 78 (1991), *aff'd sub nom. Insurance Company of North America v. U.S. Dept. of Labor*, 969 F.2d 1400, 26 BRBS 14 (CRT)(2d Cir. 1992), *cert. denied*, U.S. , 113 S.Ct. 1253 (1993). Although Dr. Lamppin did opine that claimant does not have a noise-induced hearing loss, his opinion indicates only that a direct causal relationship is absent; it does not address whether claimant's hearing loss was aggravated by his eighteen year exposure to work-related noise. Thus, this opinion cannot establish that claimant's eighteen year exposure to work-related noise did not aggravate or contribute to his hearing loss. Because the evidence which the administrative law judge relied upon does not establish that claimant's hearing loss was not aggravated by his employment, we reverse his finding of no causation. As employer has not submitted any evidence sufficient to rebut the presumption of

causation, we hold that causation is established in the present case as a matter of law.

Claimant's assertion that he is entitled to benefits as a matter of law based on the conversion of his 40.29 percent monaural impairment to a binaural impairment, however, is without merit. Where, as here, it is undisputed that the results of an audiogram performed on claimant show a zero percent hearing impairment in one ear and measurable impairment in the other ear, claimant is entitled to be compensated for loss of hearing in one ear pursuant to Section 8(c)(13)(A) of the Act, 33 U.S.C. §908(c)(13)(A). *See Tanner v. Ingalls Shipbuilding, Inc.*, 2 F.3d 143, BRBS (CRT)(5th Cir. 1993), *rev'g* 26 BRBS 43 (1992)(*en banc*)(Smith and Dolder, JJ., dissenting). The administrative law judge's finding that claimant suffered a 40.29 percent monaural hearing impairment is therefore affirmed, and the case is remanded for consideration of all remaining issues. *See Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988).

Accordingly, the Decision and Order - Denying Benefits of the administrative law judge is reversed. His finding that claimant suffered a 40.29 percent monaural hearing loss contained therein, however, is affirmed, and the case is remanded for consideration of all remaining issues consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge