

DAVID D. WALLACE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING,	)	
INCORPORATED	)	DATE ISSUED: _____ )
	)	
Self-Insured	)	
Employer-Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits and Order Correcting Decision of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

Jerry L. Hutcherson, Pascagoula, Mississippi, for claimant.

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

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

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits and Order Correcting Decision (88-LHC-3539) of Administrative Law Judge James W. Kerr, Jr., 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 applicable law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, a retiree, was exposed to loud noise while in the course of his employment with employer. On March 30, 1987, claimant filed a claim for benefits under the Act for a work-related hearing loss. CX 3.

In his Decision and Order, the administrative law judge determined that claimant had sustained a 29.88 percent binaural impairment, and awarded claimant benefits pursuant to Section 8(c)(13) of the Act, 33 U.S.C. §908(c)(13) (1988), based upon an average weekly wage of \$437.51, medical expenses and interest. Additionally, claimant's counsel was found entitled to an attorney's fee payable by employer. In a subsequent Order Correcting Decision, the administrative law judge

corrected the original Decision and Order to provide that compensation be based on an average weekly wage of \$302.66.

On appeal, employer challenges the administrative law judge's decision to award claimant benefits pursuant to Section 8(c)(13) of the Act.

Employer's sole contention on appeal is 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), 33 U.S.C. §908(c)(23) (1988), 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, 26 BRBS 151 (CRT)(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 the award of compensation for claimant's hearing loss should be made pursuant to Section 8(c)(23), and we affirm the administrative law judge's award of benefits under Section 8(c)(13) of the Act.<sup>1</sup>

Accordingly, the administrative law judge's award of benefits to claimant under Section 8(c)(13) is affirmed.

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge

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<sup>1</sup>In view of our disposition of this issue, employer's motion to remand is denied.