

BRB No. 90-0101

ROBERT LEE SIMPSON)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION AND ORDER

Appeal of the Decision and Order Of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

John F. Dillon (Maples and Lomax, P.A.), Pascagoula, Mississippi, for claimant.

Martin J. Nussbaum, Jr. (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

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

PER CURIAM:

Employer appeals the Decision and Order (88-LHC-1841) of Administrative Law Judge C. Richard Avery awarding 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).¹ 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

¹Employer's appeal of this decision was assigned BRB No. 90-0138. Employer also appealed the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees. This appeal was assigned BRB No. 90-0101. In a Decision and Order dated June 13, 1991, the Board erroneously addressed employer's appeal of the fee award under BRB No. 90-0138. The Board affirmed the fee award, and subsequently awarded claimant's counsel a fee for work performed before the Board in that appeal. We will now address employer's appeal of administrative law judge's Decision and Order under BRB No. 90-0101.

Claimant filed a claim under the Act on October 9, 1987, seeking benefits for a noise-induced hearing loss. Cl. Ex. 3. Claimant also gave employer notice of his injury on that day. Cl. Ex. 2. Previously, on July 22, 1987, employer filed a notice of controversion. Cl. Ex. 5. In his Decision and Order, the administrative law judge awarded claimant benefits for a 20.8 percent binaural impairment. 33 U.S.C. §908(c)(13)(B). He found, however, that employer is not liable for a penalty pursuant to Section 14(e) of the Act, 33 U.S.C. §914(e), inasmuch as employer filed a notice of controversion prior to the time claimant provided employer with notice of his injury.²

On appeal, employer contends that the administrative law judge erred in holding it liable for a Section 14(e) penalty. Claimant responds, urging affirmance.

Inasmuch as the administrative law judge found that employer is not liable for a Section 14(e) penalty, employer's appeal does not raise a substantial issue of law or fact, 33 U.S.C. §921(b)(3), nor is employer adversely affected or aggrieved by the administrative law judge's decision. 20 C.F.R. §802.201(a). Accordingly, employer's appeal is dismissed, and the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

²The administrative law judge noted that claimant suggested that he had filed an earlier claim, but that this claim was not documented even though the record was held open for the receipt of post-hearing evidence. Decision and Order at 4.