

BRB No. 91-0862

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

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

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

Before: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (89-LHC-3337) of Administrative Law Judge C. Richard Avery 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant sought benefits under the Act for a hearing loss she alleged was caused by work exposure to noise. The administrative law judge found that claimant is entitled to the presumption at Section 20(a) of the Act, 33 U.S.C. §920(a), that her hearing loss is work-related. The administrative law judge further found this presumption rebutted by the opinion of Dr. Lamppin that claimant's hearing loss is not related to noise exposure. Upon weighing the evidence of record as a whole, the administrative law judge found that claimant's hearing loss is not work-related, and he denied benefits. Claimant appeals, contending the administrative law judge erred in weighing the evidence and in concluding that claimant's hearing loss is not work-related. Employer has not

responded to this appeal.¹

We affirm the administrative law judge's finding that claimant's hearing loss is not work-related as claimant has raised no reversible error in the administrative law judge's weighing of the evidence and his finding is supported by substantial evidence. The administrative law judge rationally relied on the opinion of Dr. Lamppin, an otolaryngologist, that claimant's hearing loss is not noise-induced, over the opinion of Dr. Wold, who has a PhD. in Speech and Hearing Science, that claimant's audiometric pattern is one that was aggravated by noise exposure. *See Avondale Shipyards, Inc. v. Kennel*, 914 F.2d 88, 24 BRBS 46 (CRT)(5th Cir. 1990); Cl. Exs. 2, 12, 23, 25; Emp. Ex. 5. In light of this rational credibility determination, any error the administrative law judge may have made in discussing the extent of claimant's exposure to noise is harmless. As claimant failed to establish that her hearing loss is work-related based on the record as a whole, we affirm the denial of benefits. *See generally Director, OWCP v. Greenwich Collieries*, ___ U.S. ___, 114 S.Ct. 2251, 28 BRBS 43 (CRT) (1994).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

¹By Order dated December 8, 1995, the Board informed the parties that the district director was unable to locate the hearing transcript and exhibits in this case. The Board ordered the parties to forward copies of the transcript and exhibits. Claimant's counsel supplied the Board with Claimant's Exhibits 1-26. Employer's counsel supplied the Board with Employer's Exhibits 1-10 and 13. Both counsel stated that they do not have a copy of the transcript. In addition Claimant's Exhibits 27 and 28, identified as noise surveys, and Employer's Exhibits 11, deposition of Marianne Towell, and 12, deposition of Dr. David Lipscomb, were not provided. Nonetheless, as this case turns on the administrative law judge's interpretation of the medical evidence and the evidence he cited is in the record before the Board, we will decide the case on the record before us.