

BRB Nos. 93-0915
and 93-0915A

CHRIS A. LOPEZ)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SEA-LAND SERVICES,)	DATE ISSUED: _____
INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	
Cross-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Cross-Petitioner)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Thomas Schneider, Administrative Law Judge, United States Department of Labor.

Michael G. Gerson (Boxer, Elkind & Gerson), Oakland, California, for claimant.

Frank B. Hugg (Law Offices of Frank B. Hugg), San Francisco, California, for self-insured employer.

LuAnn Kressley (J. Davitt McAteer, Acting Solicitor of Labor; Carol A. DeDeo, Associate Solicitor; Janet R. Dunlop, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals, and the Director, Office of Workers' Compensation Programs (the Director) cross-appeals, the Decision and Order Denying Benefits (92-LHC-1163) of Administrative Law Judge Thomas Schneider 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 law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant sustained injuries to his right shoulder on February 13, 1985, and on July 15, 1985. Employer voluntarily paid claimant temporary total disability benefits from July 16, 1985 through July 6, 1986. 33 U.S.C. §908(b). Thereafter, claimant filed a claim for permanent partial disability benefits, which the administrative law judge awarded in accordance with Section 8(c)(21) of the Act, 33 U.S.C. §908(c)(21), in his original Decision and Order issued on December 29, 1988. Employer appealed this decision to the Board. While employer's appeal was pending before the Board, claimant sustained an injury to both knees on April 26, 1991; employer voluntarily commenced payment of benefits to claimant as a result of this new injury.

The Board vacated the administrative law judge's findings regarding claimant's post-injury loss of wage-earning capacity and remanded the case to the administrative law judge for reconsideration of the evidence of record. *Lopez v. Sea-Land Services, Inc.*, BRB No. 89-900 (June 28, 1991) (unpub.). Subsequent to the Board's decision, claimant filed a claim for temporary total disability benefits for his April 26, 1991, knee injury.

On remand, the administrative law judge consolidated claimant's shoulder and knee injury claims and found that, while claimant had not lost any wage-earning capacity as a result of his shoulder injury, claimant is entitled to benefits from August 22 to October 20, 1991, as a result of his knee injury. Next, the administrative law judge determined that because claimant sustained no loss in wage-earning capacity as a result of his shoulder injury, claimant was not entitled to the approximately \$7,000 that employer paid to him pursuant to the administrative law judge's initial decision; the administrative law judge then found that employer was entitled to offset this \$7,000 overpayment against the \$3,628 it owed claimant as a result of claimant's knee injury and concluded that claimant is thus not entitled to further compensation as a result of his two claims.

On appeal, both claimant and the Director contend that the administrative law judge erred in concluding that employer is entitled to credit the overpayment of compensation it made as a result of claimant's 1985 shoulder injury against its liability for compensation due as a result of claimant's subsequent, unrelated 1990 knee injury. Specifically, claimant contends that the administrative law judge's decision is contrary to Section 3(e) of the Act, 33 U.S.C. §903(e); in her cross-appeal, the Director asserts that the administrative law judge's decision is contrary to Section 14(j) of the Act. 33 U.S.C. §914(j). Employer responds, urging affirmance of the administrative law judge's decision.

Initially, we note that Section 3(e) of the Act provides a statutory credit for state workers' compensation benefits received by employees. *See* 33 U.S.C. §903(e). Inasmuch as the administrative law judge did not award employer a credit for state compensation received but, rather, allowed employer to offset its prior payment of benefits made under the Act for claimant's shoulder injury against benefits awarded under the Act for claimant's knee injury, we need not address claimant's Section 3(e) argument since Section 14(j) of the Act is the section applicable to resolving the issue on appeal.

Section 14(j) of the Act, 33 U.S.C. §914(j), provides the only method whereby an employer may be entitled to reimbursement of advance compensation payments made by it to a claimant. Specifically, Section 14(j) provides:

If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due.

33 U.S.C. §914(j). The Act, therefore, provides for reimbursement of advance compensation payments made by an employer only if unpaid installments of compensation remain owing. *See Ceres Gulf v. Cooper*, 957 F.2d 1199, 25 BRBS 125 (CRT)(5th Cir. 1992). Subsequent to the administrative law judge's decision in this case, the Board issued its decision in *Vinson v. Newport News Shipbuilding & Dry Dock Co.*, 27 BRBS 220 (1993), which is dispositive of the issues raised on appeal. In *Vinson*, the Board held that pursuant to Section 14(j), an employer is not entitled to reduce its liability for compensation due as a result of a subsequent work-related injury by crediting an overpayment of compensation made as a result of a prior, unrelated work injury. *See Vinson*, 27 BRBS at 223; *see also Stevedoring Services of America, Inc. v. Eggert*, 953 F.2d 552, 25 BRBS 92 (CRT)(9th Cir. 1992), *cert. denied*, 112 S.Ct. 3056 (1992).

For the reasons stated in *Vinson*, we hold that the administrative law judge erred in determining that employer is entitled to offset its overpayment of compensation made to claimant as a result of claimant's 1985 shoulder injury against its liability for compensation due claimant as a result of claimant's subsequent, unrelated 1991 knee injury. In the instant case, no party challenges the administrative law judge's finding that claimant is entitled to disability benefits in the amount of \$3,628 as a result of his 1991 knee injury. Accordingly, we reverse the administrative law judge's finding that employer is entitled to an offset for its previously paid benefits resulting from claimant's 1985 injury, and we modify the administrative law judge's decision to reflect that claimant is entitled to benefits payable by employer in the amount of \$3,628 as a result of his 1991 knee injury.

Accordingly, the decision of the administrative law judge granting employer an offset for benefits previously paid to claimant as a result of a prior unrelated work injury is reversed, and the decision is modified to reflect employer's liability to claimant for benefits for claimant's subsequent 1991 knee injury in accordance with the administrative law judge's findings. In all other respects, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge