

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

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

Mitchell G. Lattof, Sr. (Lattof & Lattof, P.C.), Mobile, Alabama, for claimant.

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (92-LHC-2941) of Administrative Law Judge A.A. Simpson, Jr., 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 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. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant sustained a hearing loss while working as a welder for employer. Cl. Ex. 1. The only audiogram of record, dated July 20, 1991, reflects a zero percent loss in the

¹By letter dated October 19, 1993, the Board was informed that claimant, James R. Martin, died on September 6, 1993. Counsel requested that Inez Martin, his widow, be substituted as claimant. Any accrued benefits owed to claimant are payable to his estate pursuant to 33 U.S.C. §908(d). *Wood v. Ingalls Shipbuilding, Inc.*, 28 BRBS 27 (1994), *modified in part on recon.*, 28 BRBS 156 (1994).

right ear and a 3.75 percent loss in the left ear, for a .62 percent binaural hearing loss. Cl. Ex. 7. In his Decision and Order, the administrative law judge awarded claimant compensation for a .62 percent binaural hearing impairment pursuant to Section 8(c)(13)(B), 33 U.S.C. §908(c)(13)(B), based on an average weekly wage of \$498.22, commencing July 20, 1991 for 1.24 weeks, plus interest. The administrative law judge also found that claimant is entitled to medical benefits pursuant to the provisions of Section 7 of the Act, 33 U.S.C. §907, as he sustained a work-related injury.

Claimant appeals, contending that he should receive compensation for a monaural hearing loss pursuant to Section 8(c)(13)(A) rather than for a binaural hearing loss pursuant to Section 8(c)(13)(B). Employer responds, conceding that the holding of the United States Court of Appeals for the Fifth Circuit in *Tanner v. Ingalls Shipbuilding, Inc.*, 2 F.3d 143, 27 BRBS 113 (CRT) (5th Cir. 1993), that where claimant has a measurable occupational hearing loss in only one ear compensation should be calculated pursuant to Section 8(c)(13)(A), is the controlling law in the instant case.

We agree that claimant is entitled to benefits for a monaural impairment. The sole audiogram of record reflects that claimant has a zero percent loss in the right ear and a 3.75 percent hearing loss in the left ear. Cl. Ex. 7. In *Tanner*, 2 F.3d 143, 27 BRBS 113 (CRT), the Fifth Circuit held that it was the intent of Congress that loss of hearing in only one ear should be compensated on a monaural basis according to the specific language of subsection 8(c)(13)(A). See also *Baker v. Bethlehem Steel Corp.*, 24 F.3d 632, 28 BRBS 27 (CRT) (4th Cir. 1994); *Rasmussen v. General Dynamics Corp.*, 993 F.2d, 27 BRBS 115 (CRT) (2nd Cir. 1993). We therefore modify the administrative law judge's decision to provide that claimant is entitled to compensation for a 3.75 percent monaural hearing impairment pursuant to Section 8(c)(13)(A).

Accordingly, the administrative law judge's Decision and Order awarding benefits is modified to reflect claimant's entitlement to compensation for a 3.75 percent monaural hearing impairment pursuant to Section 8(c)(13)(A). In all other respects, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge