BRB No. 05-0853

JAMES G. WILKINSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
BATON ROUGE MARINE CONTRACTORS	)	
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LIMITED	)	DATE ISSUED: 06/19/2006
	)	
Employer/Carrier-Petitioners	)	
	)	
LOUISIANA STEVEDORES	)	
	)	
and	)	
	)	
EMPLOYERS NATIONAL INSURANCE COMPANY	)	
	)	
and	)	
	)	
FIDELITY AND CASUALTY COMPANY OF NEW YORK	)	
	)	
and	)	
	)	
NATIONAL BEN FRANKLIN INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA,	)	
	)	
and	)	
	)	
LOUISIANA INSURANCE GUARANTY ASSOCIATION	)	

Employer/Carrier-Respondents	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits, Erratum, and Supplemental Decision and Order Award Attorney Fees of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

John Dillon, Folsom, Louisiana, for claimant.

Traci M. Castille (Franke, Rainey & Salloum, PLLC), Gulfport, Mississippi, for Baton Rouge Marine Contractors and Signal Mutual Indemnity Association, Limited.

Peter B. Silvain, Jr. (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and Boggs, Administrative Appeals Judges.

PER CURIAM:

Baton Rouge Marine Contractors and Signal Mutual Indemnity Association, Limited (hereinafter employer) appeal the Decision and Order Awarding Benefits, Erratum, and Supplemental Decision and Order Award Attorney Fees (2004-LHC-1793) of Administrative Law Judge Clement J. Kennington 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 was employed by various maritime employers, including employer and Louisiana Stevedores, as a longshoreman at the Port of Baton Rouge from the 1960's until his retirement in July 1990. Claimant testified that while working in the sole warehouse at the Port during the 1960's and 1970's he handled, and was exposed to, asbestos cargo. Bags of raw asbestos were last exported from the Port on July 28, 1974. In 1994, claimant was diagnosed with a pulmonary condition. On November 22, 2002, x-rays taken of claimant's lungs were interpreted as showing evidence of bilateral pleural plaque formation and, on November 24, 2003, claimant was diagnosed as having sustained a ten percent impairment as a result of his lung condition. Claimant sought benefits under the Act for his lung condition.[1] In support of his claim for benefits, claimant submitted into evidence the depositions of additional workers at the Port who testified regarding the presence of asbestos cargo in the 1960's and 1970's, as well as the testimony of Mr. Parker, a Board-certified industrial hygienist, who testified regarding the continual exposure to asbestos fibers absent the decontamination of an asbestos-exposed site.

In his Decision and Order, the administrative law judge initially determined that claimant was entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption, based upon his findings that claimant suffered from an asbestos-related disease of his lungs, and that claimant was exposed to asbestos during his employment with employer. Next, the administrative law judge found that employer produced no evidence to rebut Mr. Parker's testimony that asbestos exposure would have continued indefinitely at the Port's warehouse subsequent to the last asbestos shipment in 1974. The administrative law judge therefore found that claimant's lung condition is causally related to his continued exposure to asbestos while working at the Port. As employer was the last longshore employer to expose claimant to asbestos, the administrative law judge found employer and its carrier at the time of claimant's retirement in July 1990, Signal, to be responsible for the payment of claimant's permanent partial disability benefits. The administrative law judge awarded claimant permanent partial disability benefits for a 10 percent pulmonary impairment, as well as future medical monitoring costs related to claimant's lung condition.[2] 33 U.S.C. §§907, 908(c)(23). In a Supplemental Decision and Order, the administrative law judge awarded claimant's attorney a fee of $20,468.75, representing 81.875 hours of legal services rendered at an hourly rate of $250, plus costs of $5,407.73.

[1] Although claimant initially filed a claim against employer, he subsequently joined Louisiana Stevedores as a party to his claim.

[2] In an Erratum dated June 22, 2005, the administrative law judge amended his decision to reflect claimant's entitlement to ongoing permanent partial disability benefits for a 10 percent impairment commencing November 24, 2003, based upon the national average weekly wage as of that date. 33 U.S.C. §§908(c)(23), 910(d)(2).

On appeal, employer contends that the administrative law judge erred in awarding claimant disability benefits and ongoing medical monitoring costs. Alternatively, employer avers that the administrative law judge erred in finding that it is the employer responsible for those benefits or, if it is responsible, that Signal is the carrier on the risk. Additionally, employer challenges the attorney's fee awarded. Claimant and the Director, Office of Workers' Compensation Programs, respond, urging affirmance. Employer has filed reply briefs in support of its position.

Employer initially contends that the administrative law judge erred in finding that claimant sustained a compensable injury that is related to his maritime employment. We disagree. In determining whether an injury is work-related, claimant is aided by the Section 20(a), 33 U.S.C. §920(a), presumption, which may be invoked only after he establishes a *prima facie* case. To establish his *prima facie* case, claimant must show that he sustained a harm and that conditions existed or an accident occurred at work which could have caused or aggravated the harm. *See Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); *see generally U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996) If claimant establishes his *prima facie* case, Section 20(a) applies to relate the harm to his employment. *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.2d 285, 34 BRBS 96(CRT) (5th Cir. 2000). Thereafter, in a multiple employer case, if any of the employers rebuts the presumption with substantial evidence that claimant's condition is not caused or aggravated by his employment, the presumption no longer controls, and the issue of causation must be resolved on the evidence of record as a whole, with the claimant bearing the burden of persuasion. *See McAllister v. Lockheed Shipbuilding*, 39 BRBS 35 (2005); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

In addressing this issue, the administrative law judge found that Dr. Jones, who examined claimant's medical records on behalf of employer, opined that claimant suffers from asbestos-related pleural plaques, that Dr. Gomes, claimant's physician, opined that claimant has a clear case of asbestosis, and that claimant's x-rays revealed bilateral pleural plaque formation, interstitial fibrosis, and pleural thickening. Thus, as the administrative law judge's finding that claimant established the harm element of his *prima facie* case, specifically asbestos-related conditions of his lungs, is supported by substantial evidence, it is affirmed. *See Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989). Moreover, the administrative law judge rationally found the credible testimony of claimant and his fellow employees, that they were exposed to asbestos dust while working at the Port, as well as the testimony of Mr. Parker, that asbestos exposure likely continued at the Port's warehouse through 1990 absent decontamination of that site, sufficient to establish the existence of working conditions through the date of claimant's retirement in July 1990 that could have caused his asbestos-related condition. *See generally Mijanjos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th

Cir. 1991). As substantial evidence supports the administrative law judge's finding that claimant established the working conditions element of his *prima facie* case that finding, and his consequent invocation of the Section 20(a) presumption, is affirmed. *See Quinones v. H.B. Zachery, Inc.*, 32 BRBS 6 (1998), *aff'd in pert. part, rev'd on other grounds*, 206 F.3d 474, 34 BRBS 23(CRT) (5th Cir. 2000). The administrative law judge found that employer did not present any evidence that claimant's asbestos-related lung condition was not caused by his exposure to asbestos while in the course of employment covered under the Act, and this finding is not appealed. Thus, claimant has established the compensability of his claim, and the issue now turns to the identity of the employer responsible for the payment of compensation under the Act. *See Schuchardt v. Dillingham Ship Repair*, 39 BRBS 64, *modified in part on recon.*, 40 BRBS 1 (2005); *see Avondale Industries, Inc. v. Director, OWCP [Cuevas]*, 977 F.2d 186, 26 BRBS 111(CRT) (5th Cir. 1992); *see also Norfolk Shipbuilding & Drydock Corp. v. Faulk*, 228 F.3d 378, 34 BRBS 71(CRT) (4th Cir. 2000), *cert. denied*, 531 U.S. 1112 (2001); *Susoeff v. The San Francisco Stevedoring Co.*, 19 BRBS 149 (1986).

Pursuant to *Travelers Ins. Co. v. Cardillo*, 225 F.2d 137 (2d Cir.), *cert. denied*, 350 U.S. 913 (1955), the responsible employer in an occupational disease case is the last covered employer to expose the employee to injurious stimuli prior to the date he becomes aware that he is suffering from an occupational disease arising out of his employment. *Zeringue v. McDermott, Inc.*, 32 BRBS 275 (1998). Claimant does not bear the burden of proving which employer is liable; rather, each employer bears the burden of establishing it is not the responsible employer. *See Cooper/T. Smith Stevedoring Co., Inc. v. Liuzza*, 293 F.3d 741, 36 BRBS 18(CRT) (5th Cir. 2002); *Cuevas*, 977 F.2d 186, 26 BRBS 111(CRT); *Susoeff*, 19 BRBS 149. In order to establish that it is not the responsible employer, an employer must demonstrate either that the employee was not exposed to injurious stimuli in sufficient quantities at its facility to have the potential to cause his disease or that the employee was exposed to injurious stimuli while working for a subsequent covered employer. *Liuzza*, 293 F.3d 741, 36 BRBS 18(CRT); *see New Orleans Stevedores v. Ibos*, 317 F.3d 480, 36 BRBS 93(CRT) (5th Cir. 2003), *cert. denied*, 540 U.S. 1141 (2004). Since the determination of the responsible employer involves the assessment of liability under the Act, the responsible carrier is the carrier insuring the last covered employer to expose the employee to injurious stimuli. *See Maes v. Barrett & Hilp*, 27 BRBS 128 (1993).

The administrative law judge initially found that claimant worked for employer, and not Louisiana Stevedores, on July 27, 1974, the last weekend that asbestos cargo was shipped from the Port. Next, the administrative law judge found that employer produced no evidence to rebut the testimony of Mr. Parker, whom he found to be a credible witness in the areas of industrial hygiene and environmental engineering, that due to the contamination of the worksite in the 1960's and 1970's and the lack of an asbestos removal program, asbestos exposure continued indefinitely in the Port's warehouse

subsequent to 1974 and that, consequently, claimant would have been exposed to asbestos fibers through his last day of employment in July 1990. Specifically, the administrative law judge noted that employer produced no air quality studies to show the absence of asbestos in 1990, nor did employer produce an expert witness to counter Mr. Parker's opinion that exposure to asbestos continued until 1990.

We reject employer's contention that the administrative law judge erred in failing to find that claimant was last exposed to asbestos while working for Louisiana Stevedores on July 27, 1974. It is well established that the administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963). In addressing this contention, the administrative law judge found that claimant's employment records are inconclusive as to whether claimant worked for employer or Louisiana Stevedores on the day in question. The administrative law judge, however, concluded that the testimony of claimant and Ms. LeFebvre, the individual responsible for employer's human resource department, is sufficient to support a finding that employer employed claimant on July 27, 1974, and that employer did not submit substantial evidence to the contrary. As employer concedes that claimant could have worked for it on July 27, 1974, *see* Emp. Brief at 18, we affirm the administrative law judge's finding as it is rational and supported by the substantial evidence.

We similarly reject employer's challenge to the administrative law judge's finding that claimant was exposed to asbestos through the last day of his employment with employer in July 1990. While employer posits that claimant did not establish his actual exposure to asbestos subsequent to July 1974, employer misconstrues the burden-shifting framework that underlies the last employer rule. Specifically, there is no requirement that claimant prove that employer in fact was the last employer; rather, as discussed *supra*, once claimant establishes a compensable claim, the burden is on employer to establish that it is not the responsible employer. *See McAllister*, 39 BRBS at 37; *see also Liuzza*, 293 F.3d 741, 36 BRBS 18(CRT); *Lins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 62 (1992). In the instant case, although employer had the burden of proof, it presented no evidence of asbestos eradication efforts subsequent to July 1974, it did not question claimant regarding the whereabouts of his employment for it within the Port subsequent to that date, nor did it present any evidence that claimant was not exposed to asbestos throughout his employment with it.[3] *See Cuevas*, 977 F.2d at 192, 26 BRBS at 115(CRT). Rather, employer bases its defense upon what it avers is the lack of Mr. Parker's credibility on the issue of whether asbestos residuals remained subsequent to the

[3] While acknowledging that employer handled asbestos cargo through the mid-1970's, Ms. LeFebvre provided no testimony regarding the actual physical conditions of claimant's employment for employer. *See* Tr. at 76-77.

last physical asbestos cargo shipment on July 28, 1974, and the lack of affirmative evidence that claimant was actually exposed to asbestos throughout his continued employment with employer at the Port after that date.[4] In finding that claimant was

[4] We reject employer's argument that the administrative law judge's decision to give determinative weight to Mr. Parker's testimony cannot stand in light of the holding in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), as the principles discussed in that case are inapplicable to cases arising under the Act. Section 23(a) of the Act provides:

> In making an investigation or inquiry or conducting a hearing the deputy commissioner or Board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter; but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties.

33 U.S.C. §923(a); *see also* 20 C.F.R. §§702.338, 702.339. Under the Rules of Practice and Procedure Before the Office of Administrative Law Judges, "relevant evidence" is defined as:

> evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

29 C.F.R. §18.401, and

> All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, pursuant to executive order, by these rules, or by other rules or regulations prescribed by the administrative agency pursuant to statutory authority.

29 C.F.R. §18.402. Thus, the administrative law judge has wide discretion in admitting relevant evidence. *Olsen v. Triple A Machine Shops, Inc.* 25 BRBS 40 (1991), *aff'd mem. sub nom. Olsen v. Director, OWCP*, Nos. 91-70642, 92-70444 (9th Cir. 1993); *McCurley v. Kiewest Co.*, 22 BRBS 115 (1989). Moreover, employer is not challenging the admissibility of Mr. Parker's opinion, but the weight accorded it by the administrative law judge. *Casey v. Georgetown Univ. Medical Center*, 31 BRBS 147 (1997); 20 C.F.R. §§702.338, 702.339. Mr. Parker's credentials as a Board-certified industrial hygienist, licensed asbestos consultant, and environmental engineer qualify him as an expert witness who could be credited by an administrative law judge.

exposed to asbestos throughout his period of employment at the Port with employer, the administrative law judge rationally credited the testimony of Mr. Parker that, taking into consideration the substantial work with asbestos that occurred during the 1960's and 1970's at the Port and the lack of an asbestos eradication program, asbestos residue remained to which claimant would have been exposed during his continued employment until his retirement. *See Calbeck,* 306 F.2d 693. Accordingly, as substantial evidence supports the administrative law judge's finding that claimant's last exposure to asbestos was during his employment with employer, we affirm the administrative law judge's finding that employer and its carrier on the risk as of claimant's retirement in July 1990 are responsible for the payment of the benefits due claimant under the Act. *See Liuzza*, 293 F.3d 741, 36 BRBS 18(CRT).

In this regard, we reject employer's contention that the administrative law judge erred in relying upon the opinion of Dr. Gomes in determining the degree of claimant's lung impairment. Employer contends that claimant's pulmonary function studies are insufficient to establish the existence of impairment under the AMA *Guides to the Evaluation of Permanent Impairment.* Employer thus contends that Dr. Jones's opinion, that claimant's pleural plaques are not impairing his lung function, is entitled to greater weight. The administrative law judge is not bound to accept the opinion or theory of any particular witness. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). The administrative law judge found that Dr. Gomes's impairment opinion and the pulmonary function study results are not inconsistent as both indicate a miminal impairment. He further found that Dr. Jones's opinion is entitled to less weight because he did not examine claimant or address the effects of interstitial fibrosis and scarring on claimant's condition. Decision and Order at 23-24. As Dr. Gomes's opinion constitutes substantial evidence to support the administrative law judge's finding, we affirm the administrative law judge's determination that claimant suffers from a ten percent permanent impairment as a result of his work-related lung condition. 33 U.S.C. §§902(10), 908(c)(23); *see generally Larrabee v. Bath Iron Works Corp.,* 25 BRBS 185 (1991); *Barlow v. Western Asbestos Co.,* 20 BRBS 179 (1988)

Employer next challenges the administrative law judge's finding that it is liable for claimant's future medical costs, including x-rays, pulmonary function studies and immunizations, required to monitor claimant's lung condition.[5] Once claimant has

[5] Employer on appeal has misinterpreted the administrative law judge's award of medical benefits to claimant. The administrative law judge did not, as employer avers, award claimant medical monitoring costs from January 1994; rather, the administrative law judge specifically held employer liable for claimant's *future* reasonable medical care and treatment. *See* Decision and Order at 30, 32. Accordingly, we need not address employer's contention that the administrative law judge erred in awarding claimant medical benefits prior to the filing of his claim.

established that his injury is work-related, employer is liable for reasonable and necessary medical expenses related to that injury. 33 U.S.C. §907(a); *Weikert v. Universal Maritime Serv. Corp.*, 36 BRBS 38 (2002); *Romeike*, 22 BRBS 57. Employer is liable for medical monitoring of a work-related condition if claimant sets forth an evidentiary basis to support a finding that such monitoring is reasonable and necessary. *See Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5th Cir. 1993); *Romeike*, 22 BRBS 57. The administrative law judge found that claimant is at a heightened risk for developing more serious impairments as a result of his present asbestos-related lung condition. Relying upon the opinion of Dr. Gomes that claimant undergo annual chest x-rays, pulmonary function studies and immunizations, the administrative law judge found that these examinations are reasonable and necessary in order to monitor the progression of claimant's disease. Accordingly, as substantial evidence supports the administrative law judge's finding that medical monitoring of claimant's lung condition is reasonable and necessary in light of the present state of claimant's lung disease, the administrative law judge's award of medical benefits to claimant is affirmed.[6] 33 U.S.C. §907; *Baker*, 991 F.2d 163, 27 BRBS 14(CRT); *Davison v. Bender Shipbuilding & Repair Co., Inc.*, 30 BRBS 45 (1996).

Lastly, employer challenges the attorney's fee awarded to claimant's counsel by the administrative law judge. The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *See Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980). In this regard, an attorney's fee must be awarded in accordance with the applicable regulation, Section 702.132, 20 C.F.R. §702.132, which provides that any attorney's fee approved shall be reasonably commensurate with the necessary work done, the complexity of the legal issues involved, and the amount of benefits awarded. *See generally Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989). In the instant case, claimant's attorney requested a fee of $22,031.25, representing 88.125 hours of services rendered at an hourly rate of $250, plus costs of $6,634.23. In his supplemental decision, the administrative law judge awarded the hourly rate requested, reduced the number of requested hours by 6.25, and disallowed $1,226.50 in requested expenses. Accordingly, the administrative law judge awarded counsel a fee of $20,468.75, representing 81.875 hours at $250 per hour, plus costs of $5,407.73. We conclude that the administrative law judge's fee award must be upheld, as employer has failed to show the award to be unreasonable or an abuse of the administrative law judge's discretion.

[6] For the reasons stated in *Weikert v. Universal Maritime Serv. Corp.*, 36 BRBS 38 (2002), we reject employer's assertion that this issue is controlled by the Supreme Court's decision in *Metro-North Commuter Railroad v. Buckley*, 521 U.S. 424 (1997).

Initially, we reject employer's assertion that the administrative law judge's award of an attorney's fee is premature. Fee awards do not do not become effective, and thus are not enforceable, until all appeals have been exhausted. *See Thompson v. Potashnick Constr. Co.*, 812 F.2d 574 (9th Cir. 1987); *Thompson v. Potashnik Constr. Co.*, 21 BRBS 59, *on recon.*, 21 BRBS 63 (1988); *see also Wells v. Int'l Great Lakes Shipping Co.*, 693 F.2d 663, 15 BRBS 47(CRT) (7th Cir. 1982); *Williams v. Halter Marine Serv., Inc.* 19 BRBS 248 (1987). Thus, the administrative law judge may enter a fee award while an appeal is pending.

Employer next contends that the administrative law judge erred by failing to consider whether the attorney's fee should be reduced due to claimant's degree of success. Although the administrative law judge did not explicitly address this factor, we hold that any error in this regard is harmless. It is uncontroverted that claimant prevailed on all of the issues that were contested at the hearing before the administrative law judge. Specifically, claimant was successful in establishing a causal relationship between his present medical condition and his employment, the extent of his present medical impairment, and consequently his entitlement to ongoing permanent partial disability benefits, and employer's liability for the medical monitoring costs of his lung condition. In light of claimant's complete success in establishing entitlement to these ongoing benefits under the Act,[7] that the potential total benefit to claimant over his lifetime may be relatively small is an insufficient basis, alone, for reducing counsel's requested attorney's fee. *Hensley v. Eckerhart*, 461 U.S. 424 (1983).

Employer also contends that the hourly rate awarded is too high and that various itemized entries should be reduced or disallowed. Before the administrative law judge, employer raised over twenty-five specific objections to time entries, the hourly rate, and the costs sought by claimant's counsel, each of which was addressed by the administrative law judge in reducing counsel's requested time by 6.25 hours and costs by $1,226.50. Supp. Decision and Order at 2-3. Employer's assertions on appeal are insufficient to meet its burden of establishing that the administrative law judge abused his discretion in his award of a fee. Thus, we decline to further reduce or disallow the hours approved by the administrative law judge. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989). Moreover, the administrative law judge rationally found that an hourly rate of $250 is warranted based on the complexity of the issues involved and counsel's expertise. Supp. Decision and Order at 2; *Brown v. Marine Terminals Corp.*, 30 BRBS 29 (1996)(*en banc*) (Brown and McGranery, JJ., concurring and dissenting). Therefore, the administrative law judge's award of an attorney's fee and costs to claimant's attorney is affirmed. *See generally Welch v. Pennzoil Co.*, 23 BRBS 395 (1990).

[7] Claimant receives weekly disability benefits of $34.36, as of November 24, 2003.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits, Erratum, and Supplemental Decision and Order Award Attorney Fees are affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge