BRB No. 00-0856

HIXON MILLENDER, JR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	DATE ISSUED:
	)	
	)	
Self-Insured Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Additional Benefits and Decision on Motion for Reconsideration of David W. Di Nardi, Administrative Law Judge, United States Department of Labor.

Sue Esther Dulin (Dulin and Dulin, LTD.), Gulfport, Mississippi, for claimant.

Paul B. Howell (Franke, Rainey & Salloum, PLLC), Gulfport, Mississippi, for self-insured employer.

Before: SMITH and DOLDER, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Additional Benefits and Decision on Motion for Reconsideration (99-LHC-1046) of Administrative Law Judge David W. Di Nardi 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, a mobile crane operator, injured his neck, upper back, and right shoulder, and alleged that he suffers from right ulnar nerve entrapment, right carpal tunnel syndrome, and an aggravation of his pre-existing hypertension as a result of a work injury on November 13, 1995. Claimant also alleged in March 1998 that he sustained bilateral carpal tunnel syndrome due to repetitive use. Employer voluntarily paid claimant various periods of total disability benefits for the 1995 injury but denied that any injury occurred in 1998. Claimant sought various periods of temporary total disability benefits after November 15, 1995, and permanent partial disability benefits after December 15, 1997, and continuing, and a 15 percent scheduled award for a permanent impairment to the right arm due to ulnar nerve entrapment and carpal tunnel syndrome. Claimant alternatively sought a nominal award.

The administrative law judge found that claimant's neck injury and ulnar nerve entrapment are work-related, but that claimant's hypertension is not work-related. The administrative law judge found that claimant does not have carpal tunnel syndrome. With respect to the extent of claimant's disability, the administrative law judge found that claimant established his *prima facie* case of total disability but that employer established the availability of suitable alternate employment by providing claimant a light duty job in its facility at the same rate of pay as he received prior to his injury. Consequently, the administrative law judge awarded claimant total disability benefits from November 15 through November 28, 1995, May 15 through May 19, 1996, May 22 through June 18, 1996, and June 25, 1996, through March 8, 1998, based upon an average weekly wage of $561.90, which are the same benefits employer voluntarily paid to claimant.[1] Thus, the administrative law judge denied claimant additional disability benefits, as well as a nominal award. The administrative law judge found that claimant's counsel is not entitled to an attorney's fee. The administrative law judge denied summarily claimant's motion for reconsideration.

On appeal, claimant challenges the administrative law judge's determination of his average weekly wage. In addition, claimant asserts that the administrative law judge erred in finding that his hypertension is not work-related and that he does not have carpal tunnel syndrome. Claimant contends he is entitled to additional disability and medical benefits.

[1]Permanent total disability benefits were awarded from December 16, 1997, as the administrative law judge found that claimant reached maximum medical improvement on December 15, 1997. Decision and Order at 18, 29-30.

Employer responds in support of the administrative law judge's decision.

Claimant first contends that the administrative law judge erred in calculating his average weekly wage. Claimant argues that his average weekly wage should be $640.01 or $581.20, and not $561.90 as the administrative law judge found, and that the administrative law judge erred in calculating his average weekly wage without using claimant's actual daily wage records which were admitted into evidence. Section 10(a), 33 U.S.C. §910(a), looks to the actual wages of the injured worker who is employed for substantially the whole year prior to the injury as the monetary base for the determination of the amount of compensation, and is premised on the injured employee's having worked the substantially the entire year prior to the injury.[2] *Duncanson-Harrelson Co. v. Director, OWCP [Freer]*, 686 F.2d 1336 (9th Cir. 1982), *vacated on other grounds*, 462 U.S. 1101 (1983), *decision after remand*, 713 F.2d 462 (9th Cir. 1983). A calculation under Section 10(a) is made by determining the total income claimant earned in the 52 weeks preceding the work injury, dividing that sum by the actual number of days claimant worked, multiplying by 260 (for a five day per week worker as here), and dividing that number by 52. *See Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); 33 U.S.C. §910(d). The use of Section 10(a) is premised on the availability of information in the record from which the number of days claimant worked can be ascertained. *See Taylor v. Smith & Kelly Co.*, 14 BRBS 489 (1981). In *Wooley v. Ingalls Shipbuilding, Inc.*, 33 BRBS 88 (1999), *aff'd*, 204 F.3d 615, 34 BRBS 12(CRT) (5th Cir. 2000), the Board affirmed the administrative law judge's finding that "days" should not be created by dividing by eight the vacation pay claimant received in lieu of vacation days. The Board stated that doing so would dilute claimant's earnings by creating additional work days, and is contrary to the language of Section 10(a). *See* n.2, *supra*. In affirming the Board's decision, the United States Court of Appeals for the Fifth Circuit, in whose jurisdiction this case arises, stated that the administrative law judge's finding that vacation days the claimant actually took were to be treated as days worked was

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[2]The administrative law judge's use of Section 10(a) is uncontested on appeal. Section 10(a) states:

> If the injured employee shall have worked in the employment in which he was working at the time of the injury, whether for the same or another employer, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary for a six-day worker and two hundred and sixty times the average daily wage or salary for a five-day worker, which he shall have earned in such employment *during the days when so employed.*

33 U.S.C. §910(a) (emphasis added).

supported by substantial evidence. *Wooley*, 204 F.3d at 618, 34 BRBS at 14(CRT). Similarly, the court found that the administrative law judge's decision not to treat the vacation pay claimant received in lieu of vacation days as days worked was supported by substantial evidence. *Id.*

In calculating claimant's average weekly wage in the instant case, the administrative law judge divided the total number of hours that claimant worked in the year pre-injury, 1977.6, inclusive of vacation hours, by eight to arrive at the number of days claimant worked pre-injury, 247.2. The administrative law judge then divided claimant's total wages of $27,781.78 by 247.2 to arrive at a daily wage of $112.38 which he multiplied by 260, as claimant was a five day a week worker, to arrive at $29,218.80. Next, the administrative law judge divided $29,218.80 by 52 to arrive at his determination that claimant's average weekly wage was $561.90. We agree with claimant that the administrative law judge erred in calculating claimant's average weekly wage without reference to claimant's daily wage records, which were admitted into evidence. Claimant alleges that these wage records show that he worked 217, exclusive of vacation days, and 239 days, including vacation days.[3] Cl. Ex. 4, *see generally Wooley*, 33 BRBS at 90. Thus, we vacate the administrative law judge's calculation of claimant's average weekly wage, and remand this case to the administrative law judge for a recalculation of claimant's average weekly wage with reference to the wage records in evidence. Employer's assertion that any error in the administrative law judge's calculation is harmless because claimant's pre-injury hourly wage of $13.70 plus a shift premium of $8 per week equals an amount close to the administrative law judge's calculation of $561.90 per week is without merit as Section 10(a) applies and requires a specific method of calculating claimant's average weekly wage.

Claimant next challenges the administrative law judge's finding that employer established rebuttal of the presumption at Section 20(a) of the Act, 33 U.S.C. §920(a), with

[3]We reject employer's contention that *Diosdado v. Newpark Shipbuilding & Repair, Inc.*, 31 BRBS 70 (1997), mandates affirmance of the decision herein. In *Diosdado*, the Board affirmed the administrative law judge's division of the total number of hours claimant worked in the year prior to injury by eight to arrive at the number of days claimant worked pre-injury, as did the administrative law judge in this case. In *Diosdado*, however, no daily wage records were admitted into evidence.

respect to his hypertension. Claimant argues that the administrative law judge erred in finding that his hypertension is not work-related based on the uncontradicted opinion of Dr. McCloskey as the physician's opinion was indeed contradicted by the opinions of Drs. Stewart and Nolan. Section 20(a) provides claimant with a presumption that the injury he sustained is causally related to his employment if he establishes a *prima facie* case by showing that he suffered an injury and that employment conditions existed or a work accident occurred which could have caused the injury or aggravated a pre-existing condition. *See Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998). Once claimant has invoked the Section 20(a) presumption, the burden shifts to employer to rebut it with substantial countervailing evidence that claimant's condition was not caused or aggravated by his employment. *See Prewitt*, 194 F.3d 684, 33 BRBS 187(CRT). If the administrative law judge finds that the Section 20(a) presumption is rebutted, then all relevant evidence must be weighed to determine if a causal relationship has been established with claimant bearing the burden of persuasion. *See Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96 (CRT)(5th Cir. 2000)*; see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT)(1994).

In the instant case, the administrative law judge found that claimant's hypertension is not work-related, stating it is a "personal condition" and "there is no evidence that such condition was aggravated or exacerbated by his maritime employment." Decision and Order at 13. The administrative law judge also stated that he accepted Dr. McCloskey's uncontradicted opinion that claimant's work injury did not cause his hypertension, noting that Dr. Nolan agreed. In so finding, the administrative law judge erred. As claimant correctly asserts, Dr. McCloskey's opinion is not uncontradicted; the record contains the opinion of Dr. Stewart that claimant's hypertension is work-related and that of Dr. Nolan, who initially stated that claimant's continued problems with hypertension are not work-related, but then subsequently deferred to claimant's treating physician, Dr. Stewart, on the issue.[4] As the issue is rebuttal of Section 20(a), moreover, the burden was upon employer to produce substantial evidence that claimant's hypertension was not aggravated by his work. As Dr. McCloskey opined only that claimant's hypertension was not caused by his

[4]Dr. Stewart checked "yes" to the statement that claimant's work injury permanently aggravated or materially contributed to his hypertension. Cl. Ex. 12. In Dr. Nolan's subsequent opinion, he checked "yes" to the statement, "I defer to [claimant's] treating physician for his hypertension as to whether [claimant's] industrial accident . . . permanently aggravated or materially contributed to [claimant's] hypertension." Cl. Ex. 29. Dr. Nolan also commented that, "I am unable to draw an opinion regarding the contribution of his industrial accident to [claimant's] hypertension. This is not my area of expertise nor did I follow [claimant] continually (?) before and after his accident." *Id.* Dr. McCloskey's opinion and Dr. Nolan's initial opinion were that claimant's work injury did not cause his hypertension and that claimant's hypertension was not work-related, respectively. Emp. Exs. 17 at 69, 22 at 4.

employment, this opinion cannot rebut Section 20(a), as it does not address whether claimant's employment aggravated his pre-existing hypertension. *See Prewitt*, 194 F.3d 684, 33 BRBS 187(CRT). Moreover, Dr. Nolan also did not address aggravation in his initial opinion and, in any event, subsequently abandoned the position that claimant's hypertension is not work-related. Dr. Stewart opined that claimant's condition was work-related. As the record lacks substantial evidence rebutting Section 20(a), we reverse the administrative law judge's finding that claimant's hypertension is not work-related, and hold that claimant's hypertension is work-related as a matter of law. *See generally Louisiana Ins. Guar. Ass'n v. Bunol*, 211 F.3d 294, 34 BRBS 29(CRT)(5th Cir. 2000); *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988); Decision and Order at 13-14; Cl. Exs. 12, 29; Emp. Exs. 17 at 69, 22 at 4.

Claimant further contends that the administrative law judge erred in finding the absence of probative evidence that claimant suffers from carpal tunnel syndrome. In this regard, the administrative law judge relied on the opinion of Dr. Millette that claimant's hand problems are the result of a chronic C8-T1 lesion and the opinion of Dr. McCloskey, whom the administrative law judge stated agreed with Dr. Millette. The administrative law judge gave less weight to the opinion of Dr. Wyatt that claimant has carpal tunnel syndrome, finding this opinion to be "tentative," and noting that Dr. Wyatt had not seen claimant since March 31, 1998. The administrative law judge's opinion cannot be affirmed, however, because in evaluating the medical evidence, he mischaracterized the opinions of Drs. McCloskey and Wyatt. Although Dr. McCloskey, on September 24, 1997, stated he agreed with Dr. Millette that claimant's right hand problems were related to his cervical injury, Emp. Ex. 17 at 26, 51-53, Dr. McCloskey, on March 19, 1999, checked "yes" to the statement that claimant's work injury caused or materially contributed to his right carpal tunnel syndrome, that claimant's employment as a crane operator with employer for 30 years caused or materially contributed to his right carpal tunnel syndrome, and that claimant reached maximum medical improvement on July 17, 1998, for his right carpal tunnel syndrome which resulted in a 15 percent permanent partial impairment. Emp. Ex. 17 at 56. Moreover, while Dr. Wyatt initially only "suspected" carpal tunnel syndrome, Emp. Ex. 19 at 4, he subsequently wrote the following on April 20, 1998: "This is to state categorically that [claimant] does have carpal tunnel syndrome, that it is related to his employment, and the [claimant] should receive appropriate care at the earliest possible time." Cl. Exs. 11 at 1; 16 at 2. Because the administrative law judge did not discuss and weigh Dr. McCloskey's later opinion and his conclusion that Dr. Wyatt's opinion is tentative is inconsistent with that physician's opinion as stated above, the administrative law judge's finding that claimant does not have carpal tunnel syndrome is vacated, and the case is remanded to the administrative law judge for reconsideration of all relevant opinions. *See generally McCurley v. Kiewest Co.*, 22 BRBS 115 (1989); *see also Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141 (1990); Decision and Order at 14; Cl. Exs. 11 at 1, 16 at 2; Emp. Ex. 17 at 26, 51-53, 56. If the administrative law judge determines that claimant has carpal tunnel syndrome, he must also

determine whether it is work-related, and if so, whether claimant is entitled to a scheduled award for this injury. *See* 33 U.S.C. §908(c)(1), (3); Emp. Ex. 17 at 56.

Claimant further contends that the administrative law judge erred in failing to award additional total disability benefits after March 8, 1998. Claimant argues that he is entitled to disability benefits from March 23, 1998, to February 1, 1999, as employer did not place him in suitable light duty employment during this time, for March 15, April 12, 13, 26, June 20, July 12 and 13, and August 30, 1999, when claimant sought medical treatment with Dr. McCloskey, and from July 23 until September 20, 1999, during which employer again did not make suitable light duty work available to him. Claimant establishes his *prima facie* case of total disability if he is unable to perform his usual employment duties due to a work-related injury. *See Gacki v. Sea-Land Service, Inc.*, 33 BRBS 127 (1998). The burden then shifts to employer to establish the availability of suitable alternate employment, which it may do by providing claimant with a suitable light duty job at its facility. *Darby v. Ingalls Shipbuilding, Inc.*, 99 F.3d 685, 30 BRBS 93(CRT) (5th Cir. 1996); *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981).

In the instant case, the administrative law judge found that claimant sustained no economic disability after March 8, 1998, since employer provided suitable light duty work for claimant at this time with no loss in actual wages. The administrative law judge found that claimant's light duty job as of March 23, 1998, as a flagman in the area of the gantry tracks, was suitable for claimant based on the opinion of Mr. Walker, a vocational rehabilitation consultant hired by the Department of Labor, to that effect. Decision and Order at 19; Emp. Ex. 24 at 5, 10. We cannot affirm the denial of additional benefits for several reasons. First, in view of our holding that claimant's hypertension is related to his employment, the administrative law judge must consider Dr. Stewart's opinion regarding claimant's ability to work with his hypertension. Dr. Stewart excused claimant from working from March 23 to September 2, 1998, and from January 19 through February 2, 1999. Cl. Exs. 12 at 26, 25 at 138, 164. Moreover, although the administrative law judge correctly characterized Dr. McCloskey's opinions, his conclusion does not follow from those opinions. Dr. McCloskey excused claimant from work on March 23 and 24, 1998, and imposed new restrictions on July 17, 1998. Emp. Ex. 17 at 44. The administrative law judge noted that Dr. McCloskey released claimant to return to work with the additional restriction against flagging which requires him to hold his right arm in the air. Decision and Order at 20; Emp. 17 at 44; Cl. Ex. 10 at 54. Subsequently, on December 2, 1998, Dr. McCloskey modified this restriction which allowed claimant to be available for light duty employment as a flagman. Decision and Order at 20; Emp. Ex. 17 at 48; Cl. Ex. 10 at 51. The administrative law judge stated that employer did not provide light duty employment to claimant within the later restrictions until January 25, 1999, although claimant did not report to work until February 1, 1999, as he was excused from work from January 19 through February 2, 1999, by Dr. Stewart. Decision and Order at 20. Nonetheless, despite the

absence of suitable alternate employment during these periods, the administrative law judge did not award claimant additional benefits. Thus, we vacate the denial of additional benefits and remand the case for the administrative law judge to consider claimant's entitlement to benefits for the periods he was medically unable to work or employer did not provide suitable alternate employment.[5]

Claimant further contends that the administrative law judge erred in denying him continuing permanent total disability benefits or, alternatively, a nominal award. Claimant argues that he is totally disabled because he continues to work through extraordinary effort and in spite of excruciating pain and diminished strength. Alternatively, claimant argues that he is entitled to a nominal award as the odds are significant that his post-injury wage-earning capacity will fall below his pre-injury wages at some point in the future. A claimant who works post-injury only in spite of excruciating pain or extraordinary effort may be entitled to total disability benefits despite his continued employment. *Haughton Elevator Co. v. Lewis*, 572 F.2d 447, 7 BRBS 838 (4th Cir. 1978). Where claimant's pain and limitations do not rise to this level, such factors nonetheless are relevant in determining claimant's post-injury wage-earning capacity, and may support an award of partial disability benefits despite the fact that claimant's actual wages have not decreased. *See, e.g., Container Stevedoring Co. v. Director, OWCP [Gross]*, 935 F.2d 1544, 24 BRBS 213(CRT)(9th Cir. 1991); *Ezell v. Direct Labor, Inc.*, 33 BRBS 19 (1999). Claimant may be entitled to a nominal award if he establishes that, despite the absence of a present loss in wage-earning capacity, there is a significant possibility of future economic harm as a result of his injury. *Metropolitan Stevedore Co. v. Rambo [Rambo II]*, 521 U.S. 121, 31 BRBS 54(CRT)(1997); *Hole v. Miami Shipyards Corp.*, 640 F.2d 769, 13 BRBS 237 (5th Cir. 1981).

The administrative law judge's findings that claimant is not entitled to continuing

[5]The administrative law judge also should address claimant's entitlement to disability benefits on the dates claimant sought medical treatment, *see* Cl. Ex. 10, and for the period of July 23 until September 20, 1999, during which time employer sought clarification of claimant's restrictions from Dr. McCloskey, claimant sought treatment from Drs. McCloskey and Stewart, and employer did not place claimant in suitable light duty work. *See* Tr. at 112-117; Cl. Exs. 10 at 15, 12 at 13.

disability benefits or a nominal award with respect to his cervical injury cannot be affirmed. In the instant case, the administrative law judge relied on the opinions of Drs. Wyatt and McCloskey, as well as the testimony of claimant's co-worker, Mr. Taylor, claimant's current supervisor, Mr. Chambers, employer's return to work coordinator, Ms. Wiley, and the report of Mr. Sanders, a vocational rehabilitation consultant, to find that claimant could perform his current light duty job, which is within his restrictions and for which he receives his regular wages and retains his job title as mobile crane operator. Decision and Order at 15-16, 20. The administrative law judge's reliance on Dr. Wyatt's opinion is problematic in that Dr. Wyatt's most recent opinion is dated April 20, 1998, and thus cannot address the suitability of claimant's light duty job in 1999. Cl. Exs. 11 at 1, 16 at 2. The administrative law judge's reliance on the testimony of Mr. Chambers and Ms. Wiley also is problematic in that their depositions occurred on October 6, 1999, wherein they testified that claimant could perform his current light duty job within his restrictions, yet Dr. McCloskey on October 13, 1999, after reporting that claimant stated "the job is killing [him]," sought to investigate whether claimant's current job is indeed within his restrictions. *See* Cl. Exs. 10 at 8, 24, 26. On February 25, 1999, Mr. Sanders reported that claimant's current job is within his restrictions, but conditioned his opinion on whether Dr. McCloskey restricted claimant from alternately sitting, standing, and walking versus primarily standing with intermittent walking. Mr. Sanders noted that claimant stands or walks seven out of eight hours a day, according to claimant's supervisor, Mr. Chambers. Emp. Ex. 27 at 5. Moreover, the administrative law judge relied on the testimony of Mr. Taylor in support of his findings that claimant can perform his current work as it is within his restrictions; however, Mr. Taylor's testimony describes claimant's current job as a flagman and states that claimant works in pain and has missed time from work because of pain. Tr. at 42-91. In concluding that claimant is not entitled to continuing disability benefits or a nominal award, the administrative law judge did not discuss and weigh this evidence. The administrative law judge also did not discuss and weigh the fact that claimant continues to undergo treatment with Drs. McCloskey and Stewart and has received two disciplinary warnings from employer. *See* Cl. Exs. 10, 12, 30.

Moreover, the administrative law judge found that claimant's unwillingness to return to work, or in making half-hearted attempts to perform the duties when he does show up for work, is influenced by other factors such as his qualification for and receipt of Social Security Administration disability benefits while out of work or by his essential hypertension, which the administrative law judge describes as a personal illness. As we have reversed the administrative law judge's finding that claimant's hypertension is not work-related, we cannot affirm the administrative law judge's finding that claimant's hypertension is not relevant to his disability status. Moreover, although the administrative law judge repeatedly questions claimant's motivation for not reporting to work, the sole basis for this appears to be claimant's use, in 1998, of a cervical collar and cane, which Dr. Wyatt stated was not

medically necessary. Emp. Ex. 19 at 7.[6] Thus, as there is evidence of record which the administrative law judge did not discuss, we vacate the administrative law judge's denial of additional disability benefits and a nominal award and remand this case to the administrative law judge for further consideration of this issue consistent with law. *See Rambo II,* 521 U.S. 121, 31 BRBS 54(CRT); *Barbera v. Director, OWCP*, 245 F.3d 282 (3d Cir. 2001).

Claimant also contends that the administrative law judge erred in not awarding future medical benefits for his cervical injury in light of Dr. McCloskey's opinion that claimant may need future periodic medical treatment and evaluation. Claimant is entitled to medical benefits for a work-related injury if the treatment is necessary for his work-related injury. *Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989). Although Dr. McCloskey's opinion may support an award of future medical benefits for claimant's cervical injury, any error in the administrative law judge's failure to make such an award is harmless because a claim for medical benefits is never time-barred and employer concedes in its response brief that it never controverted claimant's entitled to medical benefits for his cervical injury. *See Ryan v. Alaska Constructors, Inc.*, 24 BRBS 65 (1990); Decision and Order at 29; Emp. Br. at 31; Emp. Ex. 17 at 56. Thus, claimant may later file a claim for payment of medical expenses by employer for his cervical injury. *See generally Strachan Shipping Co. v. Hollis*, 460 F.2d 1108 (5th Cir.), *cert. denied*, 409 U.S. 887 (1972), 423 U.S. 885 (1975).

Claimant further contends that the administrative law judge erred in denying his counsel an attorney's fee. The administrative law judge denied claimant's counsel an attorney's fee because claimant did not receive greater benefits than those employer voluntarily paid. On remand, the administrative law judge must award claimant's counsel a reasonable attorney's fee if claimant obtains additional benefits. *See Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14 (CRT)(5th Cir. 1993); *George Hyman Constr. Co. v. Brooks*, 963 F.2d 1532, 25 BRBS 161(CRT)(D.C. Cir. 1992); Decision and Order at 28-29.

Finally, claimant asserts that he "is also entitled to penalties, interest, costs, and adjustments." Because claimant does not explain why he is entitled to penalties, interest, costs, and adjustments, or allege specific error with respect to the administrative law judge's findings on these issues, we decline to review these issues. *See Plappert v. Marine Corps Exchange*, 31 BRBS 109 (1997), *aff'g on recon. en banc* 31 BRBS 13 (1997)*; Collins v. Oceanic Butler, Inc.*, 23 BRBS 227 (1990); Cl. Br. at 42.

Accordingly, the administrative law judge's calculation of claimant's average weekly

[6]Dr. Wyatt stated that claimant feels that he needs to use these devices. Emp. Ex. 19 at 7.

wage, his finding that claimant does not have carpal tunnel syndrome, and his denial of additional disability benefits and of an attorney's fee award are vacated, and the case is remanded to the administrative law judge for further consideration of these issues. The administrative law judge's finding that claimant's hypertension is not work-related is

reversed, and we hold that claimant's hypertension is work-related as a matter of law. In all other respects, the administrative law judge's Decision and Order - Denying Additional Benefits and Decision on Motion for Reconsideration are affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge