

ROGER L. JOHNSON)	
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Claimant-Petitioner)	
)	
v.)	
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HUNTING INGALLS INDUSTRIES, INCORPORATED)	DATE ISSUED: 09/23/2013
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)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order – Awarding Benefits of Alan L. Bergstrom, Administrative Law Judge, United States Department of Labor.

Roger L. Johnson, Newport News, Virginia, *pro se*.

Benjamin M. Mason (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for self-insured employer.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order – Awarding Benefits (2012-LHC-00799, 2012-LHC-00800, 2012-LHC-00801) of Administrative Law Judge Alan L. Bergstrom 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). In an appeal by a claimant without legal representation, the Board will review the administrative law judge’s findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and in accordance with law. If they are, they must be affirmed. 33 U.S.C. §921(b)(3); *O’Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant filed three hearing loss claims dated January 20, 1996, August 26, 1999, and March 31, 2001.¹ He worked for employer from April 8, 1968 until his retirement,

¹The administrative law judge properly merged the unadjudicated claims as claimant was employed only by employer. *See, e.g., Spear v. General Dynamics Corp.*, 25 BRBS 254 (1991); Decision and Order at 9.

unrelated to his hearing loss, on September 1, 2002; his last day of work for employer was March 26, 2001. During the course of his employment, claimant worked as a sandblaster, a rigger, and a forklift operator. Decision and Order at 3; Tr. at 12-16.

In light of claimant's working conditions, and audiogram reports showing a hearing loss, the administrative law judge found that claimant is entitled to invocation of the Section 20(a), 33 U.S.C. §920(a), presumption relating his hearing loss to his employment. Absent substantial evidence to the contrary, the administrative law judge found that employer did not rebut the presumption and that claimant has a work-related hearing loss. Decision and Order at 12-13. Based on an audiogram conducted June 3, 2005, the administrative law judge found that claimant sustained a 2.8 percent binaural hearing loss, and he awarded claimant disability and medical benefits.² *Id.* at 10, 14-15; *see* 33 U.S.C. §§907, 908(c)(13); EX 9. Claimant, without legal representation, appeals the administrative law judge's award of only a 2.8 percent binaural impairment. Employer responds, urging affirmance of the administrative law judge's decision.

The record in this case contains a number of audiograms administered both during and after claimant's employment with employer. CX 1; EX 1, 4-11. Mr. Zambas, manager of employer's audiology department, testified and explained the reports. *See* Tr. at 41-51. Pursuant to his testimony, the administrative law judge found that claimant's audiogram of December 6, 1979 represented claimant's baseline hearing of zero percent impairment, and the audiogram of June 3, 2005 represented the most reliable evidence of the extent of claimant's hearing loss at the time of his retirement.³ Decision and Order at 10-12; EX 1. Although the record contains an audiogram dated December 9, 2011, which Mr. Zambas stated demonstrates a binaural hearing loss of 21.563 percent, he opined that this is an unreliable test because a December 19, 2011 audiogram exhibits a zero percent binaural loss. CX 1; EX 11; Tr. at 50-51. Moreover, he testified that the December 19, 2011, audiogram is more consistent with the initial 1979 testing and with the reliable 2005 evaluation. Tr. at 43, 47-48. The administrative law judge, therefore, found that the results of the December 19 audiogram undermine the results of the December 9 test, and he gave the December 9 audiogram no weight. He also gave the

²The administrative law judge awarded disability benefits based on the agreed-upon average weekly wage of \$859.54, reimbursement of \$25 for the expense of the use of a hearing aid during a trial period, and continuing reasonable and necessary medical benefits. Decision and Order at 15; Tr. at 14.

³The administrative law judge properly discounted the audiograms dated July 22, 2002 and November 11, 2003 as they failed to comply with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. *See* 33 U.S.C. §908(c)(13)(E); *Green-Brown v. Sealand Serv., Inc.*, 586 F.3d 299, 43 BRBS 57(CRT) (4th Cir. 2009).

December 19 audiogram no weight, however, because he found that the administrator of the audiogram stated that the results were consistent with the natural aging process, but failed to also address the effect of claimant's 33 years of noise exposure. Accordingly, the administrative law judge credited the June 3, 2005 audiogram as the most reliable, and he found that claimant has a 2.8 percent binaural work-related hearing loss. Decision and Order at 12. As the administrative law judge has considerable discretion in evaluating and weighing the evidence, there is substantial evidence supporting his finding, and his rationale for reaching his conclusion is reasonable, we reject claimant's assertion that he has a greater hearing loss. *Ceres Marine Terminals, Inc. v. Green*, 656 F.3d 235, 45 BRBS 67(CRT) (4th Cir. 2011); *Norwood v. Ingalls Shipbuilding, Inc.*, 26 BRBS 66 (1992). We affirm the finding that claimant has a hearing impairment of 2.8 percent. See *Bath Iron Works Corp. v. Director, OWCP*, 506 U.S. 153, 26 BRBS 151(CRT) (1993); *Labbe v. Bath Iron Works Corp.*, 24 BRBS 159 (1991).

Section 8(c)(13)(B) of the Act, 33 U.S.C. §908(c)(13)(B), provides that a claimant with a work-related binaural hearing loss is entitled to permanent partial disability benefits based on a percentage of loss of hearing in two ears. As the administrative law judge found, and we affirm, that claimant has a binaural loss of 2.8 percent, the proper calculation is as follows: 2.8 percent x 200 weeks = 5.6 weeks. The administrative law judge accepted the agreement of the parties that claimant's average weekly wage was \$859.54, with a resulting compensation rate of \$573.03, and he awarded claimant 5.6 weeks of benefits at a rate of \$573.03 for a total award of \$3,208.97. The administrative law judge's calculations are correct and are affirmed. See, e.g., *Potomac Electric Power Co. v. Director, OWCP*, 449 U.S. 268, 14 BRBS 363 (1980); *Boone v. Newport News Shipbuilding & Dry Dock Co.*, 37 BRBS 1 (2003).

Accordingly, we affirm the administrative law judge's Decision and Order – Awarding Benefits.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge