

BRB No. 98-1641

BETTIE A. EVANS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BERGERON BARGES, INCORPORATED)	DATE ISSUED: <u>9/3/99</u>
)	
and)	
)	
NORTH RIVER INSURANCE)	
c/o GRAY INSURANCE COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order on Section 22 Modification, Order Denying Motion for Reconsideration, Order Denying Filing, and Order Denying Claimant’s Motion for Reconsideration of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

Bettie A. Evans, Demopolis, Alabama, *pro se*.

Douglas L. Brown (Armbrecht, Jackson, DeMouy, Crowe, Holmes & Reeves, L.L.C.), Mobile, Alabama, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order on Section 22 Modification, Order Denying Motion for Reconsideration, Order Denying Filing, and Order Denying Claimant’s Motion for Reconsideration (94-LHC-533) of Administrative Law Judge James W. Kerr, Jr., 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 representation by counsel, 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. *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On December 22, 1982, while working as a fitter for employer, claimant sustained a severe injury to her left eye when a cracked grinder disc struck that eye. Claimant subsequently underwent two surgical procedures, one of which resulted in the removal of her left eye. Due to the resulting lack of depth perception, claimant has not returned to work as a fitter since the date of this incident; claimant has, however, been gainfully employed in a number of positions following her surgeries. Employer voluntarily paid claimant 35.57144 weeks of temporary total disability compensation for various periods of time between December 23, 1982 and December 1, 1991, and 160 weeks of permanent partial disability benefits pursuant to the schedule, based on an average weekly wage of \$239.50, as well as \$3,500 in disfigurement benefits. *See* 33 U.S.C. §908(b), (c)(5), (c)(20).

In a Decision and Order Awarding Benefits dated September 6, 1996, Administrative Law Judge McColgin awarded claimant temporary total disability compensation for the periods of December 23, 1982 to March 17, 1983, November 6, 1990 to December 17, 1990, December 18, 1990 to January 29, 1991, February 19, 1991 to April 2, 1991, and October 27, 1991 to December 1, 1991. Next, after noting that claimant conceded that she retained a post-injury wage-earning capacity, Judge McColgin found that claimant was limited to the amount of benefits set forth in the Act's schedule, and thus awarded claimant permanent partial disability compensation for 160 weeks for the loss of her left eye, based upon an average weekly wage of \$397.80. Lastly, Judge McColgin determined that claimant was entitled to disfigurement benefits and interest. Following the issuance of this decision, employer tendered two checks to claimant purporting to represent the additional amounts of compensation and interest due claimant pursuant to Judge McColgin's order.

Claimant subsequently sought a rehearing, asserting *inter alia* that employer had failed to fully satisfy its obligation to pay compensation and interest pursuant to Judge McColgin's Decision and Order. The case was thereupon assigned to Administrative Law Judge Kerr (the administrative law judge) who, at the formal hearing, informed claimant that she had no standing to raise the issue of the applicability of Section 8(f) of the Act, 33 U.S.C. §908(f), to the instant claim. In his Decision and Order, the administrative law judge, after calculating the total amount of compensation and interest due claimant pursuant to Judge McColgin's decision, compared this sum to the amount of monies paid to claimant by employer and determined that employer owed claimant the sum of \$257.62 plus interest. Claimant's two requests for reconsideration, as well as an attempt to file additional correspondence in support of her claim, were denied by the administrative law judge.

On appeal, claimant, representing herself, challenges the administrative law judge's decision. Employer responds, urging affirmance of the administrative law judge's decisions.

Initially, we reject claimant's assertion that she is entitled to additional compensation due to a post-injury loss in wage-earning capacity. Where, as in the instant case, claimant's

injury is of a kind specifically identified in the schedule set forth in Section 8(c)(1) - (20) of the Act, 33 U.S.C. §908(c)(1) - (20), and it is uncontroverted that suitable alternate employment is available to claimant, claimant is limited to a schedule award and cannot seek a higher recovery under Section 8(c)(21) of the Act, 33 U.S.C. §908(c)(21). *See Potomac Electric Power Co. v. Director, OWCP*, 449 U.S. 268, 14 BRBS 363 (1980); *Gilchrist v. Newport News Shipbuilding & Dry Dock Co.*, 135 F.3d 915, 32 BRBS 15 (CRT)(4th Cir. 1998); *Winston v. Ingalls Shipbuilding Co.*, 16 BRBS 168 (1984). Accordingly, we hold that compensation under the schedule is the exclusive remedy for the disability sustained by claimant as a result of the injury to her left eye.

We additionally hold that the administrative law judge's committed no error in barring claimant from raising the applicability of Section 8(f) of the Act to this case. Section 8(f) shifts liability to pay compensation for permanent disability after 104 weeks from an employer to the Special Fund established in Section 44 of the Act. 33 U.S.C. §§908(f), 944; *see Louis Dreyfus Corp. v. Director, OWCP*, 125 F.3d 884, 31 BRBS 141 (CRT)(5th Cir. 1997). A claimant who has a valid, compensable claim under the Act is entitled to full compensation for his or her disability; having established that entitlement, however, claimant has no cognizable interest in the source of the compensation. *See Coats v. Newport News Shipbuilding & Dry Dock Co.*, 21 BRBS 77 (1988); *Azzolino v. Marine Terminals Corp.*, 9 BRBS 566 (1978). Accordingly, we affirm the administrative law judge's decision on this issue.

Claimant additionally asserts that she is owed additional monies pursuant to the initial decision rendered in this case by Judge McColgin. As set forth *infra*, the administrative law judge thoroughly discussed this issue and, as his calculations and conclusions are mathematically correct and supported by the record, they are affirmed. The administrative law judge began his analysis of this issue by calculating the total amount of monies paid to claimant by employer. In this regard, the administrative law judge initially accepted as accurate the amount of compensation voluntarily paid by employer as stipulated by the parties in the initial decision, *i.e.*, \$5,679.34 for 35 4/7 weeks of temporary total disability compensation, \$25,545.60 for 160 weeks of permanent partial disability compensation, and \$3,500 in disfigurement benefits, the sum of which is \$34,724.94. *See* CTX-1. The administrative law judge next added together the amounts of the three checks tendered to, and endorsed and deposited by, claimant between July 1995 and November 1996, *i.e.*, \$11,319.67, \$14,339.20, and \$7,480.61, to arrive at a sum of \$33,139.48. *See* RX-2. Adding these two figures together, the administrative law judge concluded that claimant had received \$67,864.42 from employer as a result of her claim for compensation under the Act.

Next, the administrative law judge, after noting that Judge McColgin had awarded claimant benefits at an average weekly wage higher than that initially utilized by employer in voluntarily tendering benefits to claimant, calculated the actual amount of benefits due

claimant pursuant to the initial award. Utilizing \$397.80 as claimant's average weekly wage, and the resulting compensation rate of \$265.20, the administrative law judge determined that employer was liable for \$9,433.56 in temporary total disability compensation (35.5714285 weeks x \$265.20), \$42,432 in permanent partial disability compensation (160 weeks x \$265.20), \$3,500 in disfigurement benefits, and \$12,756.48 in interest, for a total of \$68,122.04. Based upon a comparison of the amount paid to claimant with the amount due, the administrative law judge thus concluded that employer owed claimant \$257.62 in compensation, plus interest, pursuant to Judge McColgin's award. Based upon our review of the evidence before us, we can find no error in the administrative law judge's calculations. In the instant case, the administrative law judge fully addressed each of claimant's assertions and his determinations, including his evaluation of the documentary evidence of record, are rational, mathematically correct, and within his authority as a fact finder. *See generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Thus, as the administrative law judge's determinations regarding the amount of benefits due claimant pursuant to Judge McColgin's decision are supported by the uncontroverted evidence of record, we affirm the administrative law judge's findings on this issue.

Finally, claimant contends that the administrative law judge demonstrated bias against her during her pursuit of additional compensation. We hold that claimant's summary references to the administrative law judge's conduct throughout the course of the proceeding below fail to rise to the level necessary to indicate prejudicial bias by the administrative law judge. *See Raimer v. Willamette Iron & Steel Co.*, 21 BRBS 98 (1988). Adverse rulings alone are insufficient to show bias. *Orange v. Island Creek Coal Co.*, 786 F.2d 724, 8 BLR 2-912 (6th Cir. 1986). Claimant has thus failed to demonstrate that the administrative law judge's actions regarding this claim were arbitrary, capricious, or an abuse of discretion. *See O'Keefe*, 380 U.S. at 359.

According, the administrative law judge's decisions are affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge