

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

Appeal of the Decision and Order on Remand Denying Compensation of Quentin P. McColgin, Administrative Law Judge, United States Department of Labor.

Rebecca J. Ainsworth (Maples & Lomax, P.A.), Pascagoula, Mississippi, for claimant.

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

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order on Remand Denying Compensation (89-LHC-271) of Administrative Law Judge Quentin P. McColgin 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 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).

This case is before the Board for the second time. To briefly reiterate the history of this case, claimant filed a claim for benefits under the Act for a work-related hearing impairment. In the initial Decision and Order issued on August 28, 1990, the administrative law judge determined that claimant sustained a hearing loss in the course of his employment with employer. The administrative law judge further found, on the basis of "in-house" audiometric testing conducted by employer on April 13, 1987, that claimant suffered from an 8 percent binaural impairment, and ordered employer to pay benefits under Section

8(c)(13)(B) of the Act, 33 U.S.C. §908(c)(13)(B), as well as a Section 14(e) penalty, 33 U.S.C. §914(e). Finally, the administrative law judge found claimant entitled to medical benefits under Section 7, 33 U.S.C. §907, for any medical services related to claimant's work injury. On reconsideration, the administrative law judge reaffirmed his finding as to the extent of claimant's hearing loss.

Employer appealed to the Board, assigning error only to the administrative law judge's determination of the extent of claimant's hearing loss and to the administrative law judge's finding that employer is liable for a Section 14(e) penalty. In its decision, the Board vacated the administrative law judge's finding that the April 3, 1987 audiogram is presumptive evidence of the extent of claimant's hearing loss and remanded the case for the administrative law judge to reconsider all of the record evidence regarding the extent of claimant's hearing loss.¹ *Strayham v. Ingalls Shipbuilding, Inc.*, BRB No. 91-900 (Aug. 18, 1994)(unpublished).

The sole issue addressed by the administrative law judge on remand was the extent of claimant's hearing loss. The administrative law judge found an audiogram conducted on September 6, 1989, at employer's request, to be determinative of the extent of claimant's hearing loss; that audiogram was interpreted by Dr. Lamppin as being compatible with noise-induced hearing loss equivalent to a zero percent binaural impairment under the American Medical Association *Guides to the Evaluation of Permanent Impairment (AMA Guides)*. Accordingly, the administrative law judge concluded that claimant's hearing loss is not compensable; the Decision and Order on Remand was silent with respect to the previous award of Section 7 medical benefits.

On appeal, claimant requests clarification by the Board that the administrative law judge's original award of medical benefits remains effective. However, claimant does not assert entitlement to specific medical expenses, either past or future, but, rather, seeks affirmance of the administrative law judge's original finding of entitlement to Section 7 medical benefits.² In response, employer concedes that, pursuant to the decision of the United States Courts of Appeals for the Fifth Circuit in *Ingalls Shipbuilding, Inc. v. Director*,

¹The Board rejected employer's contentions with respect to the Section 14(e) penalty, holding that claimant would be entitled to the penalty if benefits were awarded by the administrative law judge on remand.

²We note that claimant does not challenge the administrative law judge's denial of compensation benefits for his hearing loss.

OWCP [Baker], 991 F.2d 163, 27 BRBS 14 (CRT)(5th Cir. 1993), a claimant with a work-related hearing loss is entitled to Section 7 medical benefits even if there is no measurable impairment under the *AMA Guides*. Employer contends, however, that claimant in the case at bar has no need for medical benefits.

Initially, we note that employer, in its prior appeal to the Board, BRB No. 91-900, did not challenge the administrative law judge's award of medical benefits in his initial Decision and Order. Rather, employer sought to reverse only those findings regarding the penalty provisions of Section 14(e) and the extent of claimant's work-related hearing loss. Thus, we find meritorious claimant's assertion that the award of medical benefits under Section 7 made by the administrative law judge in his initial Decision and Order remains effective. Moreover, we note that employer's present defense that claimant has no need for medical benefits is disputed by statements made by employer's own experts; specifically, Marianne Towell, the audiologist who administered the determinative September 6, 1989 audiogram, recommended that claimant undergo annual hearing evaluations, and Dr. Lamppin, in interpreting that audiogram, stated that hearing aids might be beneficial to claimant. See Emp. Ex. 5. Inasmuch as employer did not challenge the award of medical benefits in its initial appeal and the uncontroverted statements of employer's own experts provide an adequate evidentiary basis to support the administrative law judge's finding of Section 7 entitlement made in the original Decision and Order, the administrative law judge's award of medical benefits is affirmed. See *generally Baker*, 991 F.2d 163, 27 BRBS 14 (CRT); *Davison v. Bender Shipbuilding & Repair Co., Inc.*, 30 BRBS 45 (1996).³

Accordingly, the Decision and Order on Remand Denying Compensation is modified to reflect claimant's entitlement under Section 7 to those medical expenses that are reasonable and necessary to the treatment of claimant's work-related hearing loss.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

³We note that employer may raise the issue of whether any particular medical expense is reasonable and necessary at the time claimant seeks authorization for a particular medical service. See *generally* 33 U.S.C. §907; *Baker*, 991 F.2d at 163, 27 BRBS at 14 (CRT).

NANCY S. DOLDER
Administrative Appeals Judge