

NORFLET MANGUM	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	DATE ISSUED: _____
BETHLEHEM STEEL CORPORATION	)	
	)	
Self-Insured	)	
Employer-Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order of John C. Holmes, Administrative Law Judge, United States Department of Labor.

Bernard G. Link, Lutherville, Maryland, for claimant.

Richard W. Scheiner (Semmes, Bowen & Semmes), Baltimore, Maryland, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (90-LHC-3281) of Administrative Law Judge John C. Holmes awarding benefits 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 administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with applicable law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

As of the date of the hearing, claimant had worked for employer for 23 years. Tr. at 11. On August 21, August 28, and September 6, 1989, claimant underwent audiological evaluations conducted by Dr. Rosell. The results of the examinations were identical, each revealing a 9.4 percent binaural impairment. Cl. Ex. 1. On May 16, 1990, claimant underwent a fourth evaluation conducted by Mr. Rembe, an audiologist, under the supervision of Dr. Baker, the results of which revealed a zero percent binaural impairment. Emp. Ex. 1. One month later, on June 15, 1990, claimant underwent a fifth evaluation conducted by Mr. Seipp, an audiologist. The results of that evaluation revealed a binaural impairment of 13.75 percent. Cl. Ex. 2. Thereafter, claimant filed a claim for compensation.

A hearing was held on September 13, 1991, wherein the parties stipulated that claimant had been exposed to noise, that the date of injury was August 2, 1989, and that the applicable average

weekly wage is \$420.49. The sole issue before the administrative law judge was the parties' dispute as to the extent of claimant's disability. Decision and Order at 1. The administrative law judge found that claimant has an 11.6 percent binaural impairment and is entitled to benefits pursuant to Section 8(c)(13) of the Act, 33 U.S.C. §908(c)(13) (1988). Decision and Order at 4, 7. Employer appeals the decision, contending it is irrational and is not supported by substantial evidence. Claimant responds, urging affirmance.

Before the administrative law judge, the parties disputed the credibility of the audiological evaluations. Claimant argued that Dr. Baker's test is flawed because Mr. Rembe, and not Dr. Baker, conducted the examination, and that the most reliable test is that conducted by Mr. Seipp. Decision and Order at 2. Employer contended that claimant bears the burden of showing the extent of his disability, that Dr. Rosell's evaluations are not credible, and that claimant cannot perform better than his actual capacity to hear. Therefore, employer argued that Dr. Baker's test results indicating a zero percent impairment are the most reliable. Decision and Order at 3.

After considering the medical evidence of record and the arguments of the parties concerning the proper weight to give each audiogram, the administrative law judge initially concluded that "[e]mployer's argument that a claimant cannot show better results than his actual capacity is the better view." Decision and Order at 3. The administrative law judge then acknowledged claimant's concern over the fact that Dr. Baker did not conduct his own test, and that Mr. Rembe was not cross-examined; however, he determined that claimant did not discredit Dr. Baker's test results. Thus, he concluded they are equally as credible as Mr. Seipp's. *Id.* The administrative law judge found Dr. Rosell's results were not as credible as the others because it is unusual to obtain identical results on three different occasions. *Id.* Despite his credibility findings, the administrative law judge determined:

Even though Dr. Rosell's tests are not as credible as the other tests, they still merit some weight. Since Dr. Rosell's tests form a "cluster" with Mr. Seipp's results, each bolsters the credibility of the other. Moreover, the two test results which are so close together decrease the credibility of Dr. Baker's test results. Therefore, I find that the "cluster" of Dr. Rosell's results and Mr. Seipp's results is more convincing evidence of the extent of Claimant's hearing loss than the lower value obtained by Dr. Baker. Hence, I find that the Claimant's compensable hearing loss is the average of 13.75% and 9.4% which equals 11.6%.

Decision and Order at 4.<sup>1</sup>

Questions of witness credibility, including those concerning medical witnesses, are for the administrative law judge as the trier-of-fact. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th

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<sup>1</sup>The remainder of the Decision and Order is a commentary of the manner in which the extent of a claimant's hearing loss could be determined. Decision and Order at 4-7.

Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). On appeal, the Board will not interfere with the administrative law judge's credibility determinations unless they are "inherently incredible or patently unreasonable." *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 1335, 8 BRBS 744, 747 (9th Cir. 1978), *aff'g* 4 BRBS 284 (1976), *cert. denied*, 440 U.S. 911 (1979). However, the Board is not bound to accept an ultimate finding or inference if the decision discloses that it was reached in an invalid manner. *Howell v. Einbinder*, 350 F.2d 442 (D.C. Cir. 1965). In this case, it is clear the administrative law judge's conclusion as to the extent of claimant's impairment does not comport with his credibility determinations. Therefore, we must vacate the finding that claimant has an 11.6 percent binaural impairment.

First, although the administrative law judge found employer's "best results" argument to be the "better view," he did not conclude that claimant has a zero percent binaural impairment. Additionally, regardless of his decision to credit Dr. Baker's results on par with Mr. Seipp's, the administrative law judge failed to include Dr. Baker's results in his calculations. Moreover, even though he found Dr. Rosell's results to be less credible than Dr. Baker's or Mr. Seipp's, he gave them 50 percent of the weight in his computations.<sup>2</sup> Consequently, his ultimate finding that claimant is entitled to benefits for an 11.6 percent binaural impairment is irrational, and in light of his credibility determinations, it cannot stand. *See generally Howell*, 350 F.2d at 442. On remand, the administrative law judge must reconsider the extent of claimant's hearing loss and render an internally consistent decision.

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<sup>2</sup>We note there are five audiological evaluations of record, resulting in the following percentages of binaural impairment: 9.4, 9.4, 9.4, 0, and 13.75. Had the administrative law judge computed claimant's impairment on a straight average, he would have awarded benefits for an 8.39 percent impairment (41.95 divided by 5). Instead, he averaged only two of the five results, 9.4 percent and 13.75 percent, and obtained an impairment rating of 11.6 percent.

Accordingly, the Decision and Order is vacated, and the case is remanded for the administrative law judge to reconsider the extent of claimant's disability.

SO ORDERED.

NANCY S. DOLDER, Acting Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge