BRB No. 93-2026

FRANCIS JORDAN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ALABAMA DRY DOCK AND SHIPBUILDING CORPORATION	)	DATE ISSUED:
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeals of the Decision and Order and Decision on Motion for Reconsideration of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

Mitchell G. Lattof, Sr. (Lattof & Lattof, P.C.), Mobile, Alabama, for claimant.

Walter R. Meigs (Alabama Dry Dock and Shipbuilding Corporation), Mobile, Alabama, self-insured employer.

Before: BROWN, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order and Decision on Motion for Reconsideration (92-LHC-612) of Administrative Law Judge Lee J. Romero, 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). 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).

On March 31, 1988, claimant filed a notice of injury and a claim for hearing loss benefits against employer for whom claimant last worked on June 30, 1958. In his Decision and Order, the administrative law judge awarded claimant benefits for a .6 percent binaural impairment pursuant to 33 U.S.C. §908(c)(13)(B). The administrative law judge also held employer liable for interest "on any sums determined to be due and owing as of March 31, 1988 (the date of Notice of Injury)...." Decision and Order at 7.

Claimant filed a motion for reconsideration, which employer opposed, urging that interest be awarded "on all accrued compensation payments from the date of accrual thereof following the date of injury on June 30, 1958...." The administrative law judge denied the motion, finding that pursuant

to Section 14(b) of the Act, 33 U.S.C. §914(b), employer did not have knowledge of claimant's injury until March 31, 1988, and that benefits did not accrue and were not due until this time. The administrative law judge again concluded that interest accrued from March 31, 1988, rejecting claimant's contention that benefits accrued from the date of last exposure to injurious noise.

On appeal, claimant contends that interest should accrue as of June 30, 1958, the date of claimant's last covered exposure to injurious noise, and not from when employer obtained knowledge of claimant's injury. Alternatively, claimant contends that the interest awarded should be compounded annually to compensate claimant for the fact that his average weekly wage, pursuant to the decision in *Bath Iron Works Corp. v. Director, OWCP*, 113 S.Ct. 692, 26 BRBS 151 (CRT) (1993), is based on his wages in the year prior to his last exposure on June 30, 1958. Employer responds, urging affirmance of the administrative law judge's decisions.

We reject claimant's contention that his entitlement to interest accrues from his date of last exposure to injurious noise in 1958. In *Renfroe v. Ingalls Shipbuilding, Inc.*, ___ BRBS ___, BRB Nos. 91-170/A (June 24, 1996)(*en banc*), the Board held that in a hearing loss case interest accrues on compensation from the date benefits become due under Section 14(b), and accrues on all benefits due and unpaid from that date until they are paid. The Board held that an employer cannot wrongfully withhold or delay the payment of benefits until they are "due," and benefits do not become "due" under Section 14(b) until employer has knowledge of the injury, or notice of the injury pursuant to Section 12, 33 U.S.C. §912. *Renfroe*, slip op at 7, 9. Inasmuch as the instant case is controlled by *Renfroe*, and as the parties stipulated that employer received notice of claimant's injury on March 31, 1988, the administrative law judge properly held employer liable for interest on benefits accruing as of that date.[1]

[1]We reject claimant's contention that it must be presumed pursuant to 33 U.S.C. §920(b) that employer had knowledge of claimant's injury as of the time it occurred on June 30, 1958, under the Supreme Court's decision in *Bath Iron Works Corp. v. Director, OWCP*, 113 S.Ct. 692, 26 BRBS 151 (CRT)(1993), that a hearing loss injury is complete on the date of last exposure. Under Section 20(b), it is presumed, in the absence of evidence to the contrary that claimant's notice of injury was timely, *i.e.*, that claimant gave employer sufficient notice of the injury under Section 12. *See Shaller v. Cramp Shipbuilding v. Dry Dock Co.*, 23 BRBS 140 (1989). Timely notice is not an issue in this case. Moreover, "knowledge," as used in Section 12(d), requires employer to be aware of the fact of injury and the work-relatedness thereof. *See Kulick v. Continental Baking Corp.*, 19 BRBS 115 (1986). As claimant first underwent audiometric testing in 1987, employer could not have "knowledge" at any time prior to this date, on the facts of this case, and the administrative law judge found that employer did not have any notice or knowledge of claimant's injury until March 31, 1988. We therefore reject this basis for claimant's contention that interest should accrue in this case as of June 30, 1958.

We also reject claimant's contention that interest should be compounded annually to recompense claimant for his low average weekly wage as of the date of last exposure.[2] In *Santos v. General Dynamics Corp.*, 22 BRBS 226 (1989), the Board noted that the general American rule is that interest, when allowable, should be calculated on a simple rather than compound basis. *Id.* at 228. Further, the Board noted that 28 U.S.C. §1961, which provides guidance for interest rate determinations under the Act, does not expressly authorize compounding interest in cases arising under the Act. *Id.* Finally, the Board stated that although some Federal courts have determined that compounding an award of pre-judgment interest was appropriate in a particular case, such a result was not warranted in *Santos*. *Id.* Similarly, we find no reason to award interest on a compound basis here to augment a statutorily mandated, albeit low, average weekly wage in this case. *See Renfroe*, slip op. at 10.

Accordingly, the administrative law judge's Decision and Order and Decision on Motion for Reconsideration are affirmed.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

[2]The parties stipulated that claimant's average weekly wage is $63.12. Decision and Order at 2.