

JOHN F. GRAYSON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
NEW YORK SHIPBUILDING)	DATE ISSUED:
CORPORATION)	
)	
and)	
)	
AETNA CASUALTY & SURETY)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of David W. DiNardi, Administrative Law Judge, United States Department of Labor.

Carolyn P. Kelly (O'Brien, Shafner, Stuart, Kelly & Morris, P.C.), Groton, Connecticut, for claimant.

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

PER CURIUM:

Claimant appeals the Decision and Order Awarding Benefits (95-LHC-1050, 95-LHC-1051, 95-LHC-1052) of Administrative Law Judge David W. DiNardi 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).

Over a period of approximately 21 years, until 1962, claimant worked as a machinist for several maritime employers, the last two years for New York Shipbuilding Corporation (employer). He was exposed to asbestos throughout his maritime employment and developed asbestosis. Subsequent to his maritime employment, claimant worked as a "real estate specialist for the government." CX 22 at 15. He retired from this position in April 1982, and sought medical benefits under the Act for his asbestosis.

The administrative law judge found that claimant's asbestosis is work-related and that the date of injury is October 17, 1977, stating that this is when claimant learned that his pulmonary disease resulted from asbestos exposure. The administrative law judge noted that a claim for medical benefits is never time-barred, and thus awarded medical benefits pursuant to Section 7, 33 U.S.C. §907, to be paid by the employer of last exposure, New York Shipbuilding Corporation.

On appeal, claimant contends that the administrative law judge erred in finding that October 17, 1977, is the date of injury. Employer has not responded to this appeal.

The "time of injury" in an occupational disease cases does not occur until the employee is aware of the relationship between his occupational disease, his disability and his employment. See 33 U.S.C. §§910(i), 912, 913; see generally *Adams v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 78 (1989). In order to be "aware" of his disability, the employee must be aware that his work-related disease has caused a loss in wage-earning capacity, see generally *Love v. Owens-Corning Fiberglas Co.*, 27 BRBS 148 (1993), or, if he is a voluntary retiree, a permanent physical impairment. See 33 U.S.C. §902(10); see *Harris v. Todd Pacific Shipyards Corp.*, 28 BRBS 254 (1994), *aff'd and modified on recon. en banc*, 30 BRBS 5 (1996)(Brown and McGranery, JJ., concurring in part and dissenting in part). This "date of injury," is the point at which claimant must file a claim, his compensation is calculated, coverage is determined and his rights attach. See *Harris*, 28 BRBS at 263. Section 7 does not require that an injury be economically disabling in order for claimant to be entitled to medical expenses; claimant need only have a work-related harm and credited evidence of the need for medical treatment. *Ingalls Shipbuilding, Inc. v. Director, OWCP*, 991 F.2d 163, 27 BRBS 14 (CRT)(5th Cir. 1993); *Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989). Therefore, claimant need not establish that he was aware of the relationship between his asbestos-related disease, his employment and a disability in order to be entitled to medical benefits under the Act.

In the present case, the administrative law judge found that claimant has established a work-related injury and thus is entitled to medical benefits pursuant to Section 7 of the Act. This finding is unchallenged. The administrative law judge also found that the "date of injury is October 17, 1977 because it was during this hospitalization that claimant learned that his pulmonary disease resulted from his asbestos exposure as a maritime employee." Decision and Order at 11. The administrative law judge did not make a finding as to when claimant became aware of a disability. We therefore cannot affirm the administrative law judge's finding that October 17, 1977 is the date of injury. Moreover, the record reveals that claimant was not diagnosed with asbestosis in October 1977.¹ Therefore, the

¹The discharge summary of claimant's hospitalization in January 1977 indicates that claimant was diagnosed with acute renal failure, pleural effusion, eczema of left wrist, history of ulcer disease, anemia, and allergies to sulfur and penicillin. Cl. Ex. 4. The records dated October 1977 are from the V.A. hospital chest clinic. It does not appear that claimant was hospitalized at this time. He was evaluated for "platelike atelectasis and raised lower hemidiaphragm." CX 5. He was assessed as having "bronchiectasis" which

administrative law judge's finding that the date of injury in the instant case is October 17, 1977 is vacated. Further, inasmuch as a finding of the date claimant became aware of the relationship between his disease, disability and employment is not necessary to an award of medical benefits, we need not remand the case for further consideration of this issue.² See *generally Romeike*, 22 BRBS at 59.

Accordingly, the administrative law judge's Decision and Order finding that claimant's date of injury is October 17, 1977, is vacated. The award of benefits is affirmed in all other respects.

SO ORDERED.

BETTY JEAN HALL
Chief Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

was asymptomatic and for which no diagnostic or therapeutic intervention was warranted. CX 5, 30A. The administrative law judge appears to have based his finding that claimant became aware of the relationship between his pulmonary disease and asbestos exposure as a maritime employee based on claimant's testimony that he learned he had an asbestos-related disease in 1977 or 1978. Decision and Order at 7; Cl. Ex. 22 at 17-21.

²Claimant correctly notes that a determination of the date of injury would be necessary should he seek disability compensation.