U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 21-0092

DONNA SANCHEZ (Widow of ALLEN D. SANCHEZ) Claimant-Respondent v. ISLAND OPERATING COMPANY, INCORPORATED and LOUISIANA WORKERS' COMPENSATION CORPORATION Employer/Carrier-Petitioners	)	DATE ISSUED: 01/27/2022 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Angela F. Donaldson, Administrative Law Judge, United States Department of Labor.

Arthur J. Brewster and Jeffrey P. Briscoe (Brewster Law Firm, L.L.C.), Metairie, Louisiana, for Claimant.

David K. Johnson (Johnson, Rahman & Thomas), Baton Rouge, Louisiana, for Employer/Carrier.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD, and GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Angela F. Donaldson's Decision and Order Awarding Benefits (2019-LHC-00330) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq*., as extended by the Outer Continental Shelf Lands Act, 43 U.S.C. §1331 *et seq*. (Act).[1] We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Allen D. Sanchez (Decedent) worked as an A Operator at an offshore oil platform, Ship Shoal 198,[2] located on the Outer Continental Shelf in the Gulf of Mexico. On May 31, 2018, he arrived at the oil platform via helicopter at 8 a.m. to begin another typical work schedule of fourteen days on and fourteen days off. CX 5, Dep. at 7, 9. Not long after arriving, he and another A Operator, Tommy Mire, as well as an unnamed government inspector, ran inspection tests at the H-Production facility for approximately three hours. CX 5, Dep. at 17-33. Decedent and Mr. Mire were about to go to lunch when a process alarm sounded at around 11 a.m. *Id.*, Dep. at 34, 43-44. In response to the alarm, Mr. Mire went to both the H-Production facility and to a pump at the I-Drill, while Decedent moved to the wells on the middle deck on H-Drill. *Id.*, Dep. at 45-46. Each man conducted testing from their respective locations, with Mr. Mire at one point radioing Decedent that he could reopen the three wells on H-Drill because I-Drill wells were online. *Id.*, Dep. at 46. Decedent responded "Okay" on the radio. *Id.* Meanwhile, Harold Martin, described as Employer's "Person in Charge," responded to the process alarm by traveling to Decedent's location on the middle deck of H-Drill, where he directed Decedent to reopen the H-10 well, while he reopened the H-3 well. EX 2 and/or CX 4, Dep. at 25-26. Decedent told Mr. Martin he could leave to finish up paperwork, while Decedent reopened the last well,

[1] The Benefits Review Board's processing of this case was substantially delayed due to the COVID-19 pandemic, which impacted the Board's ability to obtain records from the Office of Administrative Law Judges and the Office of Workers' Compensation Programs.

[2] Ship Shoal 198 has three facilities: H-Drill, H-Production, and I-Drill. CX 4, Dep. at 14-16; CX 5, Dep. at 21, 52. H-Production is located between I-Drill and H-Drill and is connected to the drilling facilities by a 400-foot-long bridge. *Id.* H-Drill has three levels, each accessed via a set of approximately 50 stairs: the top deck that houses living quarters and offices, the wellbay deck where the wells are located, and the casing deck. CX 4, Dep. at 33; CX 5, Dep. at 22.

H-12. *Id.* Decedent was then to return to the living quarters to rest before his next shift began at midnight. *Id.*, Dep. at 36.

A second process alarm sounded around 6 p.m., prompting Mr. Martin to head to the middle deck on H-Drill, where he found Decedent sitting upright leaning against a post, stiff and unresponsive. CX 4, Dep. at 35; *see also* CX 5, Dep. at 51. Mr. Martin radioed "everyone" for help. CX 4, Dep. at 44. Supervisor Donny Broussard found Decedent had no pulse. *Id.* Medics subsequently arrived to assess Decedent's condition and remove his body from the oil platform. *Id.*, Dep. at 45. Decedent's death certificate listed myocardial infarction as the "immediate cause" of death with coronary atherosclerosis as a contributing cause, CX 1 at 4; EX 3; these findings were confirmed via an autopsy performed on June 1, 2018. EX 4; CX 1 at 8.

Donna Sanchez (Claimant), Decedent's spouse of 37 years, sought benefits under the Act alleging his death was causally related to his work for Employer. Employer controverted, asserting Decedent's death due to a heart attack was not caused or aggravated by any work-related condition. Each party presented evidence from medical experts who are board-certified in cardiology and internal medicine. On behalf of Claimant, Dr. Siddharth K. Bhansali opined it is more likely than not Decedent's physical activities at work contributed to or hastened his death. CXs 3, 6. Employer countered with Dr. Kenneth Civello, Jr., who opined Decedent's working conditions neither caused nor contributed to his fatal cardiac arrest. EX 10.

The ALJ found Claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), that Decedent's death is related to his work, but Employer established rebuttal of the presumption. She then determined Claimant established, based on the record as a whole, Decedent's heart attack arose out of and in the course of his employment. Accordingly, she awarded Claimant benefits under Section 9 of the Act, 33 U.S.C. §909, based on Decedent's average weekly wage of $1,489.44, 33 U.S.C. §910(c).

On appeal, Employer challenges the ALJ's finding that Decedent's work activities contributed to his death. Alternatively, it challenges the ALJ's calculation of Decedent's average weekly wage. Claimant responds, urging affirmance of the ALJ's decision.

Section 20(a) – Causation

Employer contends the ALJ erred in invoking the Section 20(a) presumption because the evidence is insufficient to establish any of the Decedent's activities or circumstances at work could have caused the alleged harm. Employer also contends the ALJ erred in finding Claimant established causation based on the record as a whole. Citing *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert.*

denied, 540 U.S. 1056 (2003), Employer asserts Claimant has not established the conditions of Decedent's employment constituted the precipitating cause of his death. It maintains this case is "remarkably similar" to *Charpentier*, as both involved an employee who "brought an ongoing heart attack to work with him" which, according to the medical evidence of record, "would have escalated to a fatal cardiac arrest no matter where he was at the time with the possible exception of the hospital." *Id.*, 332 F.3d at 291, 37 BRBS at 39(CRT).

Employer avers the ALJ, in addressing causation based on the record as a whole, impermissibly required it to prove Decedent's heart attack more likely than not resulted from non-employment conditions. It argues the testimony of Decedent's co-workers establish his work duties on the date of his death involved only minimal, non-stressful, light-duty physical labor and nothing extraordinary happened on the platform, either physically or emotionally, including any significant stress or anxiety, which may have contributed to his heart attack. Employer thus maintains the evidence overwhelmingly establishes non-employment factors, such as Decedent's obesity and underlying coronary artery disease, high cholesterol, and blood pressure, and his taking Phentermine, constituted the precipitating causes of his heart attack.

Section 9 of the Act provides death benefits to certain survivors "if the injury causes death." 33 U.S.C. §909. In establishing entitlement to death benefits, a claimant is aided by Section 20(a) of the Act, which presumes, in the absence of substantial evidence to the contrary, the claim for death benefits comes within the provisions of the Act, *i.e.*, the death was work-related. *See, e.g., American Grain Trimmers v. Director, OWCP*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999), *cert. denied*, 528 U.S. 1187 (2000); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998). To establish a prima facie case and invoke the Section 20(a) presumption, a claimant must show the existence of working conditions which could have caused, contributed to, or hastened the decedent's death. *See, e.g., Fineman v. Newport News Shipbuilding & Dry Dock Co.*, 27 BRBS 104 (1993); *Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989); *see generally U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). Once the Section 20(a) presumption is invoked, the burden shifts to the employer to produce substantial evidence that the decedent's death was not caused by his employment. *Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). If the ALJ finds the Section 20(a) presumption rebutted, it drops from the case, and she must weigh all the evidence and resolve the issue based on the record as a whole with the claimant bearing the burden of persuasion. *Bis Salamis, Inc. v. Director, OWCP* [*Meeks*], 819 F.3d 116, 127, 50 BRBS 29, 35-36(CRT) (5th Cir. 2016); *Ceres Gulf, Inc. v. Director, OWCP* [*Plaisance*], 683 F.3d 225 46 BRBS 25(CRT) (5th Cir. 2012); *see generally Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

We reject Employer's argument that the ALJ erred in finding Claimant invoked the Section 20(a) presumption. The ALJ found Claimant established both elements necessary to invoke the presumption. She found it undisputed Decedent suffered a cardiac arrest at work on May 31, 2018, establishing the harm element. She also found Claimant satisfied the working conditions element through Decedent's co-workers' description "of the work activities performed on May 31, 2018," and Dr. Bhansali's opinion "that the work activities contributed to [Decedent's] cardiac arrest" and resulting death. Decision and Order at 41.

Mr. Mire and Mr. Martin each testified to the work activities Decedent engaged in on the date of his death, including assisting Mr. Mire with pressure safety valve testing at "fifteen to twenty" locations, pressure level testing at "between five and ten" locations, CX 5, Dep. at 17-25, 32, 34, and then responding to the process alarm, CX 4, Dep. at 19-27, 29-30; all performed at various sites on the upper and middle deck platforms, CX 4, Dep. at 14-15; CX 5, Dep. at 20-22. Mr. Mire and Mr. Martin described this work as involving walking along the platform, climbing stairs, carrying between 5 to 10 pounds of equipment, at times also carrying two gallon jugs of water and a bottle of water, and turning valves either by hand or by wrench in "extremely hot" weather, causing Decedent to sweat profusely.[3] CX 5, Dep. at 18, 20, 23, 29, 30-31, 33, 36, 39, 63, 68; CX 4, Dep. at 33, 57, 71, 73. Dr. Bhansali replied "yes" when asked whether Decedent's physical activities and possible dehydration at work on May 31, 2018, could "more likely than not have contributed to or hastened his death." CX 6; CX 3, Dep. at 11-12, 13-14, 15, 17, 18.[4]

Contrary to Employer's contentions, this evidence, in conjunction with the physical lay-out of Ship Shoal 198 as described above, constitutes substantial evidence supporting the ALJ's finding that Claimant established working conditions that could have caused Decedent's harm, thus satisfying her prima facie case. *Ramsay Scarlett & Co. v. Director,*

[3] Mr. Mire testified Decedent was wearing heavy fire-retardant pants and a long-sleeved shirt. CX 5, Dep. at 13. He also stated they were working in direct sunlight around heat-emitting machinery, so everyone, including Decedent, was "soaked with sweat." *Id.* at 36, 39.

[4] Dr. Bhansali similarly answered "[t]hat's correct" when asked whether Decedent's work activities on May 31, 2018, contributed to the plaque rupture that caused his heart attack and death. CX 3, Dep. at 18. He explained Decedent's turning of valves and use of a wrench to open valves is "isometric stress" which "could theoretically lead to a plaque rupture and cause a heart attack." CX 3, Dep. at 11-12. He further stated Decedent's dehydration "theoretically" could have been an exacerbating factor in his heart attack. *Id.*, Dep. at 15.

OWCP, 806 F.3d 327, 49 BRBS 87(CRT) (5th Cir. 2015) (the low burden required to establish a prima facie case may be satisfied with evidence that is "more than a scintilla" and "might cause a reasonable person to accept the ALJ's fact finding."); *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5 (2013); *Burley v. Tidewater Temps, Inc.*, 35 BRBS 185 (2002). We therefore affirm the ALJ's finding that Claimant invoked the Section 20(a) presumption linking Decedent's death to his work. *Id.*

After finding that Dr. Civello's opinion constitutes evidence rebutting the Section 20(a) presumption, the ALJ weighed the evidence as a whole, with the burden of persuasion on Claimant. She concluded "the opinion of Dr. Bhansali, that Decedent's death was hastened due to work activity, is entitled to greater weight than Dr. Civello," because it is "more well-reasoned and supported by the evidence." Decision and Order at 43; *see also id.* at 36-38. In reaching this conclusion, she found Dr. Bhansali reasonably and "repeatedly testified that the physical activities that [Decedent] engaged in at work on May 31, 2018, more likely than not led to his plaque rupture and 100 percent occlusion of an important coronary artery, which caused ventricular fibrillation and thus sudden death due to a heart attack." *Id.* at 36. She found Dr. Bhansali: considered Decedent put forth effort in his work activities consistent with those described by Mr. Mire and Mr. Martin, *id.* at 37; "plausibly explained that such effort . . . was known to lead to plaque ruptures and heart attacks," *id.* at 36; and provided a "reasonable and plausible" explanation that "even nominally strenuous work activity" likely "tipped [Decedent] over the balance and caused the heart attack," *id.* She also found Dr. Bhansali "provided a reasonable explanation of the various stages of the causative chain[,]" explaining that physical activity at work caused sudden changes in the stress on Decedent's heart and his blood pressure, which meant Decedent "was more likely to have a heart attack."[5] *Id.*

In contrast, the ALJ found Dr. Civello's opinion was, at times, insufficiently explained and internally inconsistent. Decision and Order at 38-40. Specifically, she noted Dr. Civello "tended to avoid directly answering whether [Decedent's] physical activities on May 31, 2018, contributed in any way to his heart attack[.]" *Id.* at 39. Instead of answering the question directly, he "continually referred to his own standard of care when treating cardiac patients, in that he would not advise them to avoid exercise to prevent a

[5] The ALJ found Dr. Bhansali acknowledged Decedent had non-work-related factors that likely caused the formation of plaque in his coronary artery and did not state Decedent's work activities were the sole cause of his heart attack. Rather, he explained the Decedent's work activity alone, or in combination with a possible "pre-existing, non-significant degree blockage already occurring in his coronary artery" due to those non-work-related factors, "contributed to the likelihood of his heart attack." Decision and Order at 36-37.

heart attack but would instead recommend engaging in physical activity, particularly for patients without evidence of significant coronary artery disease like [Decedent]." *Id.* (citing EX 10, Dep. at 22-23, 24-25, 40, 50-51, 56-57). In addition, Dr. Civello did not adequately explain how Decedent's physical activity at work, which the ALJ found "was strenuous enough and performed in high enough temperatures to cause significant perspiration," played "no aggravating or exacerbating role whatsoever in his death." *Id.* The ALJ found Dr. Civello's lack of an explanation inconsistent with his statement that physical activity, if causing a high enough blood pressure, can contribute to a plaque rupture and his admission that he was not stating there was no possible connection between Decedent's work activities and the plaque rupture he sustained while at work. *Id.* She concluded Dr. Civello's opinion, in its entirety, admitted a number of factors, including a high enough blood pressure and heart rate from physical activity, could "come together" to result in a plaque rupture. *Id.* at 40. The ALJ therefore accorded less weight to Dr. Civello's opinions because she found them less consistent, less well-reasoned, and less supported by the evidence, than Dr. Bhansali's. *Id.* at 38.

In adjudicating a claim, the ALJ, as the fact-finder, has the authority to weigh the evidence and is not required to accept the opinion of any particular medical examiner. *See Meeks*, 819 F.3d at 127, 50 BRBS at 35-36(CRT); *see also Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 500-501, 29 BRBS 79, 80-81(CRT) (5th Cir. 1995) ("The ALJ determines the weight to be accorded to evidence and makes credibility determinations. Moreover, where the testimony of medical experts is at issue, the ALJ is entitled to accept any part of an expert's testimony or reject it completely." (internal citations omitted)). The ALJ is entitled to draw her own inferences from the evidence, and her selection from among competing inferences must be affirmed if supported by substantial evidence and in accordance with law. *See Mendoza*, 46 F.3d 498, 29 BRBS 79(CRT); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741. 742 (5th Cir. 1962).

In addressing causation on the record as a whole, the ALJ thoroughly and accurately reviewed all the evidence, Decision and Order at 16-28, and made rational credibility determinations, *id.* at 36-40. Her findings and inferences as to Decedent's work activities on May 31, 2018, and her determination that Decedent's death was hastened due to those work activities are supported by substantial evidence. The law is clear that "to hasten death is to cause it." *See Brown & Root, Inc. v. Sain*, 162 F.3d 813, 32 BRBS 205(CRT) (4th Cir. 1998); *Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966); *Friend v. Britton*, 220 F.2d 820 (D.C. Cir.), *cert. denied*, 350 U.S. 836 (1955); *Southern Stevedoring Co. v. Henderson*, 175 F.2d 863 (5th Cir. 1949); *Fineman*, 27 BRBS 104. Based on her credibility determinations, the ALJ concluded Claimant proved by a preponderance of evidence that Decedent's work activities aggravated, contributed to, or hastened his death from heart attack. Therefore, she rationally found Claimant established a compensable injury entitling her to benefits under the Act. Decision and Order at 43, 45; *Meeks*, 819

F.3d at 127, 50 BRBS at 35-36(CRT); *Cooper/T. Smith Stevedoring Co., Inc. v. Liuzza*, 293 F.3d 741, 36 BRBS 18(CRT) (5th Cir. 2002); *James J. Flanagan Stevedores, Inc. v. Gallagher*, 219 F.3d 426, 34 BRBS 35(CRT) (5th Cir. 2000); *Mendoza*, 46 F.3d at 500-501, 29 BRBS at 80-81(CRT).

Employer's contention that this case is indistinguishable from *Charpentier* also lacks merit. As the ALJ found, unlike *Charpentier* the record is devoid of evidence Decedent was experiencing any symptoms or that his heart attack began at any time prior to, or outside of, his work shift on May 31, 2018.[6] Claimant, Mr. Martin, and Mr. Mire all testified Decedent appeared normal without any health complaints. HT at 12-14; CX 4, Dep. at 42-43; CX 5, Dep. at 66.[7] Moreover, although Dr. Bhansali stated Decedent could have had a heart attack anywhere, including in his sleep, CX 3, Dep. at 35-36, his overall opinion that Decedent's work activities on May 31, 2018, more likely than not provoked his heart attack, sufficiently links Decedent's death to his work.[8]

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[6] In *Charpentier*, the decedent's heart attack indisputably began in the evening while he was at home, continued there throughout the night and early morning, and concluded in the decedent's fatal cardiac arrest 15 minutes into his morning's work. In declining to mandate an application of the aggravation rule to the claim for death benefits, the court deferred to the ALJ's findings of fact, stating "if an employee's pre-existing injury would *necessarily* be exacerbated by *any* activity regardless of where or when this activity takes place, and an employee happens to go to work, it is an impermissible leap of logic to say that there must be a causal connection between the worsening of the employee's injury and his work." *Id.*, 332 F.3d at 292, 37 BRBS at 40(CRT) (emphasis in original).

[7] Claimant stated she was unaware of Decedent having any heart condition, and testified he engaged in his "normal routine" without any complaints of chest pain, shortness of breath, and/or dizziness before he left for work on May 31, 2018. HT at 12-14. Mr. Martin similarly stated Decedent did not have any problems performing his work and never complained of any kind of health problems "other than normal everyday kind of stuff." CX 4, Dep. at 42-43. Mr. Mire stated Decedent "looked normal to me as he always did" and made no complaints about having any physical pain. CX 5, Dep. at 66.

[8] The ALJ properly noted Claimant "bears the ultimate burden of proving by a preponderance of the evidence that her husband's death was caused by his employment," Decision and Order at 42, and correctly stated Claimant, in order to meet that burden, "need not prove that [Decedent's] work activities alone caused his death, only that the activities aggravated, contributed to, or hastened in some way his heart attack," *id.* at 45. This, in conjunction with her statement that "the inquiry here is not if [Decedent's pre-existing] risk factors would have caused his death independent of work activities on May 31, 2018," *id.* at 43, and her rational conclusion Claimant met her causation burden through Dr.

Consequently, we affirm the ALJ's conclusion that Decedent's death was work-related as her decision to credit Dr. Bhansali's opinion over Dr. Civello's opinion is within her discretion as the fact-finder. *Gooden,* 135 F.3d at 1069, 32 BRBS at 61(CRT); *Henderson,* 175 F.2d 863; *Flanagan v. McAllister Brothers, Inc.*, 33 BRBS 209 (1999).

Section 10 – Average Weekly Wage

Employer next contends the ALJ erred in calculating Decedent's average weekly wage under Section 10(c), rather than 33 U.S.C. §910(a). It asserts the two checks it sent to Claimant in June 2018 represent payment for Decedent's full work period, despite only having worked 5 hours of that pay period, and an "additional check" for the family following the incident. Emp. Br. at 25. Consequently, Employer contends the two checks it sent to Claimant after Decedent's death "cannot appropriately" be included as part of Decedent's average weekly wage under Section 10(a).[9]

The goal of Section 10 of the Act, 33 U.S.C. §910, is to arrive at a dollar figure that reasonably represents the amount the employee was earning at the time of his injury. Sections 10(a) and 10(b) are the statutory provisions applicable in determining an employee's average annual earnings where the injured employee's work is regular and continuous. They apply to calculate the average daily wages and average annual earnings of five- or six-day per week workers. The computation of average annual earnings is made pursuant to subsection (c) if subsection (a) or (b) cannot be reasonably and fairly applied. 33 U.S.C. §910(a)-(c); *Louisiana Ins. Guar. Ass'n v. Bunol*, 211 F.3d 294, 34 BRBS 29(CRT) (5th Cir. 2000); *LeBlanc v. Cooper/T. Smith Stevedoring, Inc.*, 130 F.3d 157, 31 BRBS 195(CRT) (5th Cir. 1997).

Employer does not challenge the ALJ's finding that Decedent "was not a five- or six-day" per week worker and therefore Sections 10(a) and (b) cannot "apply reasonably or fairly" in this case.[10] Decision and Order at 46. Based on this, we reject Employer's contention that Section 10(a) is applicable and affirm the ALJ's use of Section 10(c) to calculate Decedent's average weekly wage. *See generally SGS Control Serv. v. Director,*

Bhansali's opinion, contradicts Employer's contention that the ALJ required it to prove Decedent's heart attack was the result of non-work-related conditions.

[9] Claimant stated she received two payments from Employer on June 8, 2018; the first totaled $2,714, and the second totaled $2,507. HT at 15.

[10] The record establishes Decedent worked fourteen days and then was off fourteen days. CX 5, Dep. at 7, 9.

OWCP, 86 F.3d 438, 30 BRBS 57(CRT) (5th Cir. 1996); *Empire United Stevedores v. Gatlin*, 936 F.2d 819, 25 BRBS 26(CRT) (5th Cir. 1991); *Story v. Navy Exch. Serv. Ctr.*, 33 BRBS 111 (1999).

An ALJ has broad discretion when applying Section 10(c) to calculate an employee's average weekly wage. *James J. Flanagan Stevedores, Inc. v. Gallagher*, 219 F.3d 426, 34 BRBS 35(CRT) (5th Cir. 2000); *Hall v. Consolidated Employment Systems, Inc.*, 139 F.3d 1025, 32 BRBS 91(CRT) (5th Cir. 1998); *Gilliam v. Addison Crane Co.*, 21 BRBS 91 (1987). The ALJ found "the evidence does not reflect the purpose" of the two checks Employer sent to Claimant after Decedent's death, but concluded they constituted "wages" as defined in Section 2(13) of the Act, 33 U.S.C. §902(13), because they represent "either monetary compensation or a taxable advantage" to Decedent or his estate in exchange for work he performed. Decision and Order at 47. In reaching this conclusion, she relied on Employer's statement in its Post-Hearing Brief that the checks "represented additional wages paid by the employer"[11] and her finding that the corresponding pay entries for the June 8 payments are "very similar to all the other pay entries, in that they reflect standard and overtime hours were worked and routine tax and other deductions were made." *Id.* Incorporating the June payments into Decedent's gross annual earnings, EX 9, for a total of $77,450.67, the ALJ divided that amount by 52 to calculate Decedent's average weekly wage as $1,489.44. 33 U.S.C. §910(d)(1); *see Staftex Staffing v. Director, OWCP*, 237 F.3d 404, 34 BRBS 44(CRT), *modified on other grounds on reh'g*, 237 F.3d 409, 35 BRBS 26(CRT) (5th Cir. 2000). We affirm the ALJ's inclusion of the two June 2018 checks, as well as her calculation of Decedent's average weekly wage of $1,489.44, as it is rational and supported by substantial evidence. *Id.*, 237 F.3d at 407, 34 BRBS at 46(CRT); *Gallagher*, 219 F.3d 426, 34 BRBS 35(CRT).

[11] Employer reiterates this point on appeal, stating these checks represent "hourly payments for straight time and overtime" and are not "payment of any accrued vacation or other benefits." Emp. Br. at 25.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge