

BRB No. 90-2049

TIMOTHY BUCKLEY)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING, INCORPORATED)	Date issued:
)	
Self-Insured)	
Employer-Petitioner)	DECISION AND ORDER

Appeal of the Decision and Order of A. A. Simpson, Jr., Administrative Law Judge, United States Department of Labor.

Paul M. Franke, Jr. (Franke, Rainey & Salloum), Gulfport, Mississippi, for employer.

Before: Administrative Appeals Judges, and Administrative Law Judge.*

PER CURIAM:

Employer appeals the Decision and Order (89-LHC-387) of Administrative Law Judge A. A. Simpson 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 findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

* Sitting as a temporary Board member by designation pursuant to the Longshore

and Harbor Worker's Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(Supp. V 1987).

On April 15, 1987, claimant filed a claim under the Act for a noise-induced work-related hearing loss. Based on the results of an audiometric examination performed by Drs. Lingo and McDill on November 15, 1987, the administrative law judge found that although claimant had suffered a binaural hearing loss due to prolonged job-related noise exposure, claimant had sustained a zero percent binaural hearing impairment. Accordingly, the administrative law judge denied compensation for claimant's injury, and also denied penalties pursuant to Section 14(e) of the Act, 33 U.S.C. §914(e). The administrative law judge further found, however, that claimant was entitled to medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907, and thus employer was additionally liable for claimant's attorney's fee pursuant to Section 28(a) of the Act, 33 U.S.C. §928(a).

On appeal, employer contends that the administrative law judge erred in awarding future medical benefits pursuant to Section 7, as such an award is both premature and speculative. Employer maintains that any future medical benefits could not be causally related to claimant's employment, inasmuch as noise-induced hearing loss is not progressive, and Drs. Lingo and McDill did not indicate any current need for medical treatment. Employer further contends that it should not be held liable for an attorney's fee pursuant to Section 28(a), as the award of future

medical benefits cannot be upheld, and claimant did not achieve a successful prosecution on any other issue.