BRB Nos. 98-0591
and 98-0591A

ESTEL L. NORFLEET	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
Cross-Respondent	)	
	)	
v.	)	
	)	
AMERICAN BUREAU OF SHIPPING	)	
	)	
and	)	
	)	
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH	)	
	)	
	)	
Employer/Carrier-Respondents	)	
Cross-Petitioners	)	DECISION and ORDER

Appeals of the Decision and Order On Remand of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Ed W. Barton, Orange, Texas, for claimant.

Charles F. Herd (Rice Fowler, L.L.P.), Houston, Texas, for employer/carrier.

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

PER CURIAM:

Claimant appeals and employer cross-appeals the Decision and Order on Remand (90-LHC-2614) of Administrative Law Judge Rudolf L. Jansen 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). The amount of an attorney's

fee award is discretionary and may be set aside only if the challenging party shows it to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

This case is on appeal to the Board for the third time. Claimant, a marine surveyor, injured his hip after he fell from a scaffold on February 5, 1986; he subsequently underwent hip replacement surgery on June 17, 1987, and retired on June 1, 1988. In his initial Decision and Order dated October 22, 1991, the administrative law judge found that claimant's hip condition was work-related but that claimant did not give employer timely notice of his injury pursuant to Section 12 of the Act, 33 U.S.C. §912. Accordingly, the administrative law judge found that while claimant is entitled to past and future medical expenses, he was not entitled to disability compensation. Subsequently, the administrative law judge issued a Supplemental Decision and Order Granting Attorney Fees and a Decision on Motion for Reconsideration which awarded claimant's counsel an attorney's fee of $12,333.75, representing 74.75 hours of legal services at an hourly rate of $165 and $1,983.12 in expenses.

In *Norfleet v. American Bureau of Shipping*, BRB Nos. 92-1161/A (June 22, 1994)(unpublished), the Board vacated the administrative law judge's Section 12 findings and remanded the case to the administrative law judge to determine claimant's date of awareness and whether claimant's notice of injury to employer was timely. If, on remand, the administrative law judge again found that claimant's notice of injury was untimely, the administrative law judge was to determine whether the untimely notice was excused either because employer had knowledge of the work-related injury or was not prejudiced by claimant's failure to give timely notice. *See* 33 U.S.C. §912(d)(1994). With regard to the attorney's fee issue, the Board vacated the administrative law judge's fee award and instructed the administrative law judge on remand to award a fee commensurate with the degree of claimant's limited success and the other relevant factors set forth in 20 C.F.R. §702.132(a) if the administrative law judge again found the claim barred by Section 12.

In a Decision and Order on Remand - Awarding Benefits dated March 21, 1995, the administrative law judge, after initially finding that claimant's date of awareness was January 23, 1987, the date claimant first sought chiropractic help for his left hip pain, held that claimant's notice was untimely pursuant to Section 12 of the Act. Next, pursuant to Section 12(d)(1) and (2), 33 U.S.C. §912(d)(1), (2), the administrative law judge found that claimant's failure to give timely notice of his injury was not excused as employer did not have knowledge that the injury was work-related and was prejudiced by the lack of timely notice. Lastly, based upon an awareness date of January 23, 1987, the administrative law judge determined that claimant's claim for benefits filed on July 27, 1988, was untimely filed pursuant to Section 13, 33 U.S.C. §913. In his Supplemental Decision and Order Granting Attorney Fees, the administrative law judge awarded $3,000 in legal services and $1,983.13

in expenses to claimant's counsel. Because employer had paid the previously awarded amount of $14,316.87 to claimant's counsel, claimant's counsel was ordered to repay employer the difference of $9,333.74. The administrative law judge denied claimant's Motion for Reconsideration of the attorney's fee award in a Decision on Motion for Reconsideration.

In *Norfleet v. American Bureau of Shipping*, BRB No. 95-1401 (January 21, 1997)(unpublished), the Board affirmed the administrative law judge's finding, pursuant to Section 12(d)(1), that claimant was not excused from his failure to give employer timely notice of his injury, vacated both the administrative law judge's finding regarding claimant's date of awareness and his determination that employer was prejudiced, pursuant to Section 12(d)(2), by claimant's failure to provide timely notice of his injury and remanded the case for further findings. Lastly, the Board affirmed the administrative law judge's attorney's fee award if the administrative law judge were to again find the claim barred.

In his Decision and Order on Remand dated December 22, 1997, the administrative law judge determined that claimant reached the requisite awareness on June 17, 1987, the date of his hip surgery, and that claimant's failure to give timely notice was not excused under Section 12(d)(1). Next, the administrative law judge found that employer failed to produce any evidence demonstrating that it was prejudiced by claimant's untimely filing of his notice of injury. Accordingly, the administrative law judge determined that claimant's untimely notice was excused pursuant to Section 12(d)(2). The administrative law judge then concluded that claimant's filing of a claim on July 27, 1988, more than one year after his date of awareness, barred his right to disability compensation under Section 13(a), 33 U.S.C. §913(a). Although he found the instant claim for disability compensation barred under Section 13, the administrative law judge subsequently addressed the nature and extent of claimant's work-related disability. The administrative law judge found that employer established the availability of suitable alternate employment within its own facility with no economic loss to claimant from the date of claimant's return to light-duty work on September 8, 1987, until the date of his retirement on May 31, 1988, which the administrative law judge found unrelated to claimant's work-injury; thus, the administrative law judge concluded that claimant could have continued working in his light-duty position with employer when his retirement began and that claimant therefore would be entitled to no disability compensation under the Act. Accordingly, the administrative law judge again denied disability compensation. Lastly, the administrative law judge reinstated his previous attorney's fee award.

On appeal, claimant challenges the administrative law judge's findings that his claim was untimely filed, that employer provided suitable alternate employment within its own facility, and that claimant retired for reasons unrelated to his work-related disability. Claimant additionally argues that the administrative law judge erred in reinstating his prior

attorney's fee award of $4,983.13, and in ordering repayment of the excess fee paid by employer. Employer, in its cross-appeal, contends that the administrative law judge erred in finding that it was not prejudiced by claimant's failure to give it timely notice; employer also seeks an award of interest on its overpayment of counsel's attorney fee.

SECTION 12(d)(2)

We will first address employer's assertion, raised in its cross-appeal, that the administrative law judge erred in finding that it was not prejudiced by claimant's failure to give it timely notice of his alleged work injury pursuant to Section 12 of the Act, 33 U.S.C. §912. For the reasons that follow, we reject employer's allegation of error and we affirm the administrative law judge's decision on this issue.

Claimant's failure to give employer timely notice of his injury pursuant to Section 12 of the Act is excused if employer had knowledge of the injury or employer was not prejudiced by the failure to give proper notice. 33 U.S.C. §912(d)(1), (2). Prejudice under Section 12(d)(2) is established where employer demonstrates that due to claimant's failure to provide timely written notice, it was unable to effectively investigate to determine the nature and extent of the alleged illness or to provide medical services. *See Addison v. Ryan-Walsh Stevedoring Co.*, 22 BRBS 32 (1989). A conclusory allegation of an inability to investigate the claim when it was fresh is insufficient to establish prejudice. *I.T.O. Corp. v. Director, OWCP [Aples]*, 883 F.2d 422, 22 BRBS 126 (CRT)(5th Cir. 1989).

In its second decision, the Board declined to affirm the administrative law judge's finding of prejudice based on both employer's problems locating witnesses and employer's inability to examine claimant prior to his June 17, 1987, surgery. Thus, the Board vacated the administrative law judge's finding that employer was prejudiced by the lack of timely notice; on remand, the administrative law judge was instructed to determine claimant's date of awareness and to reconsider whether employer was prejudiced by claimant's failure to provide timely notice of his injury.

On remand, the administrative law judge concluded that employer was not prejudiced by an inability to investigate this claim or to have any input regarding claimant's June 1987 surgery. Specifically, as claimant became aware of his injury on the date of his hip replacement surgery, the administrative law judge found that his subsequent untimely notice did not cause employer's inability to administer a pre-surgical examination. Moreover, the administrative law judge determined that the record contains no evidence establishing that employer was unable to question potential witnesses when investigating this claim. Accordingly, the administrative law judge found claimant's untimely notice to be excused pursuant to Section 12(d)(2) of the Act. After a thorough review of the record, we hold that the administrative law judge rationally concluded that employer has not shown that it was

unable to effectively investigate claimant's injury; we therefore affirm the administrative law judge's finding that employer was not prejudiced by claimant's failure to file a timely notice of injury pursuant to Section 12. *See Sheek v. General Dynamics Corp.*, 18 BRBS 151 (1986), *modifying on recon.* 18 BRBS 1 (1985). Consequently, we affirm the administrative law judge's conclusion that Section 12 does not bar claimant's claim.

SECTIONS 13 and 30

We will now address the issues raised by claimant on appeal. Claimant initially challenges the administrative law judge's finding that his claim was untimely filed; specifically, claimant contends that employer's failure to file a report of injury, LS-202, until August 1988, despite his informing employer of the accident and its contribution to his hip replacement surgery in January 1988, tolled the statute of limitations pursuant to Section 30(a) of the Act, 33 U.S.C. §930(a). Claimant's contention of error is meritorious and, for the reasons that follow, we reverse the administrative law judge's finding on this issue.

Section 13(a) of the Act, 33 U.S.C. §913(a), applies in traumatic injury cases and provides that the right to compensation for disability shall be barred unless the claim is filed within one year from the time claimant is aware or in the exercise of reasonable diligence should have been aware of the relationship between the injury and the employment. *See generally Ceres Gulf, Inc. v. Director, OWCP*, 111 F.3d 17, 31 BRBS 21 (CRT)(5th Cir. 1997); *Marathon Oil Co. v. Lunsford*, 733 F.2d 1139, 16 BRBS 100 (CRT)(5th Cir. 1984). In addition, Section 20(b) of the Act, 33 U.S.C. §920(b), provides a presumption that a claim has been timely filed. *Fortier v. General Dynamics Corp.*, 15 BRBS 4 (1982), *aff'd mem.*, 729 F.2d 1441 (2d Cir. 1983). As part of its burden to rebut Section 20(b), employer must preliminarily establish that it complied with the requirements of Section 30(a). Section 30(a), as amended, provides in pertinent part:

> Within ten days from the date of any injury which causes loss of one or more shifts of work, or death or **from the date that the employer has knowledge of a disease or infection in respect of such injury,** the employer shall send to the Secretary a report setting forth (1) the name, address, and business of the employer; (2) the name, address, and occupation of the employee; (3) the cause and nature of the injury or death; (4) the year, month, day, and hour when and the particular locality where the injury or death occurred; and (5) such other information as the Secretary may require.

33 U.S.C. §930(a)(emphasis added); *see also* 20 C.F.R. §§702.201-205. Section 30(f), 33 U.S.C. §930(f), provides that where employer has been given notice or has knowledge of any

injury and fails to file the Section 30(a) report, the statute of limitations provided in Section 13(a) does not begin to run until such report has been filed. *Nelson v. Stevens Shipping & Terminal Co.*, 25 BRBS 277 (1992). In order to overcome the Section 20(b) presumption with regard to Section 13, employer must prove that it filed a first report of injury as required by Section 30(a), or else the running of the statute of limitations is tolled pursuant to Section 30(f). *See Ryan v. Alaska Constructors, Inc.*, 24 BRBS 65 (1990). Thus, for Section 30(a) to apply, the employer or its agent must have notice of the injury or knowledge of the injury and its work-relatedness; the employer may overcome the Section 20(b) presumption by proving it never gained knowledge or received notice of the injury for Section 30 purposes. *See Stark v. Washington Star Co.*, 833 F.2d 1025 (D.C. Cir. 1987). Knowledge of the work-relatedness of an injury may be imputed where employer knows of the injury and the facts that would lead a reasonable person to conclude that compensation liability is possible so that further investigation is warranted. *Kulick v. Continental Baking Corp.*, 19 BRBS 115 (1986).

In the instant case, employer does not dispute claimant's assertion that, on January 5, 1988, he informed Mr. Norman Wallace, employer's manager of human resources, by written correspondence of his surgery, the accident, and its contributing factor to his condition, *see* CX-3, and that Mr. Wallace replied that he had been informed by employer's insurance department that the time limit for filing a claim had expired. *Id*. Rather, employer contends that the "knowledge" of Mr. Wallace may not be imputed to employer or its carrier.

Section 12(d)(3)(1) of the Act provides, in pertinent part:

> ...notice, while not given to a responsible official of the employer designated by employer pursuant to subsection (c) of this section, was given to an official of the employer or the employer's insurance carrier... .

33 U.S.C. §912(d)(3)(1). Thus, notice may be given to a first line supervisor, local plant manager, or personnel office official. *See* 20 C.F.R. §702.211(b)(1). Mr. Wallace, as manager of employer's human resources department, qualifies as a "personnel office official;" moreover, Mr. Wallace's letter of April 22, 1988, states that employer's "Insurance Coordinating Department" had been informed of claimant's notification. *See* CX-3. This notification prevents claimant's claim from being time-barred. *See Derocher v. Crescent Wharf & Warehouse*, 17 BRBS 249 (1985). Specifically, claimant's contacts with Mr. Wallace, and through him employer's insurer, are sufficient to apprise employer that compensation liability was possible against it; thus, employer had knowledge that claimant sustained a work-related injury with possible compensation liability as of January 5, 1988. Employer's knowledge as of that date, combined with employer's failure to file the required Section 30(a) report of injury, therefore tolls the Section 13 statute of limitations. *See Shaller v. Cramp Shipbuilding & Dry Dock Co.*, 23 BRBS 140 (1989).

As there is no dispute that such correspondence took place between claimant and Mr. Wallace, we conclude that, in the instant case, claimant provided notice to employer as of January 5, 1988; as employer failed to comply with Section 30(a) until it filed its LS-202 report on August 4, 1988, the Section 13(a) filing period was tolled, pursuant to Section 30(f), until that time. *Ryan*, 24 BRBS at 65. Claimant's July 22, 1988, claim is thus timely as a matter of law. We therefore reverse the administrative law judge's finding that the instant claim is barred pursuant to Section 13.

SUITABLE ALTERNATE EMPLOYMENT

Claimant next contends that the administrative law judge erred in finding that employer established the availability of suitable alternate employment and his consequent conclusion that claimant is not entitled to disability compensation subsequent to his last day of work with employer, June 1, 1988. Specifically, claimant avers that the light-duty work which he performed post-injury for employer cannot constitute suitable alternate employment since it was tailored to his physical restrictions and was available only through employer's beneficence; moreover, claimant asserts that his retirement was due, at least in part, to his work-related disability.

It is well-established that claimant bears the burden of establishing the nature and extent of any disability sustained as a result of a work-related injury. *See Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989); *Trask v. Lockheed Shipbuilding & Const. Co.*, 17 BRBS 56 (1985). Where, as in the instant case, claimant is unable to perform his usual employment, claimant has established a *prima facie* case of total disability, thus shifting the burden to employer to establish the existence of realistically available job opportunities within the geographical area where claimant resides which claimant, by virtue of his age, education, work experience, and physical restrictions, is realistically able to secure and perform. *See New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1991); *see also Avondale Shipyards, Inc. v. Guidry*, 967 F.2d 1039, 26 BRBS 30 (CRT)(5th Cir. 1992). An employer can establish suitable alternate employment by offering an injured employee a light duty job at its facility which is tailored to the employee's physical limitations, so long as the job is necessary and claimant is capable of performing it. *Darby v. Ingalls Shipbuilding, Inc.*, 99 F.3d 685, 30 BRBS 93 (CRT)(5th Cir. 1996); *Larsen v. Golten Marine Co.*, 19 BRBS 54 (1986).

In the instant case, the administrative law judge found that employer established the availability of suitable alternate employment within its own facility based upon the testimony of claimant and the medical evidence of record; specifically, the administrative law judge found that the evidence of record establishes that claimant, contrary to his subjective opinion, could have continued working for employer in the light-duty surveyor position he was

performing post-surgery when he decided to retire on June 1, 1988.[1] In arriving at this determination, the administrative law judge noted that the record contains no evidence that claimant was unable to perform his post-injury employment duties. Rather, Dr. Weiner testified that, based upon claimant's nine-months of post-surgical employment, he believed that claimant did not retire as a result of his hip condition and that claimant probably could have continued to work. *See* EX-15. Similarly, Dr. Wallace reported that claimant was active with no impairment of mobility and no restriction regarding his hip that would keep him from performing any activity he desired. *See* EX-19. Lastly, the administrative law judge noted claimant's testimony that he did in fact work for nine months pre-retirement and that he would have continued this light-duty work as a surveyor if his retirement benefits had not commenced on June 1, 1988. *See* EX-17. It is well-established that the administrative law judge is entitled to weigh the credibility of all witnesses and to draw his own inferences from the evidence. *John W. McGrath Corp. v. Hughes,* 289 F.2d 403 (2d Cir. 1961); *Wheeler v. Interocean Stevedoring, Inc.,* 21 BRBS 33 (1988). Inasmuch as the administrative law judge's findings are rational and constitute substantial evidence in support of his ultimate findings regarding the availability of suitable alternate employment at employer's facility as of June 1, 1988, we affirm the administrative law judge's determinations that claimant was capable of light duty work as of June 1, 1988, and that employer, as of that date, established the availability of regular and continuous work as a surveyor within claimant's restrictions, and his consequent finding that claimant is not totally disabled. *See Peele v. Newport News Shipbuilding & Dry Dock Co.,* 20 BRBS 133 (1987).

SECTION 8(c)(21), (h)

Claimant next argues that the administrative law judge erred by failing to address his potential entitlement to permanent partial disability compensation based on the difference between his average weekly wage at the time of the injury and his post-injury wage-earning capacity adjusted for inflation. We agree.

Initially, we note that a claim for total disability benefits includes any lesser

[1]Contrary to claimant's assertion, there is no conflict in the administrative law judge's findings that claimant could not perform his pre-injury work as a surveyor but could have continued his post-injury surveyor work, since the administrative law judge clearly found that claimant's duties were limited following his surgery.

degree of disability. *See Young v. Todd Pacific Shipyards, Inc.*, 17 BRBS 201 (1985). Under Section 8(c)(21) of the Act, 33 U.S.C. §908(c)(21), an award for permanent partial disability is based on the difference between claimant's pre-injury weekly wage and his post-injury wage-earning capacity. Section 8(h), 33 U.S.C. §908(h), provides that claimant's wage-earning capacity shall be his actual post-injury earnings if those earnings fairly and reasonably represent his wage-earning capacity. If such earnings do not represent claimant's wage-earning capacity, the administrative law judge must calculate a dollar amount which reasonably represents claimant's wage-earning capacity. The objective of the inquiry concerning claimant's wage-earning capacity is to determine the post-injury wages to be paid under normal employment conditions to claimant as injured. *See Long v. Director, OWCP*, 767 F.2d 1578, 17 BRBS 149 (CRT)(9th Cir. 1985). Among the factors to be considered in determining whether claimant's post-injury wages fairly and reasonably represent his post-injury wage-earning capacity are claimant's physical condition, age, education, industrial history, the beneficence of a sympathetic employer, claimant's earning power on the open market, and any other reasonable variables that could form a factual basis for the decision. *See Abbott v. Louisiana Ins. Guaranty Ass'n*, 27 BRBS 192 (1993), *aff'd*, 40 F.3d 122, 29 BRBS 22 (CRT)(5th Cir. 1994); *Devillier v. National Steel & Shipbuilding Co.*, 10 BRBS 649 (1979). Additionally, in calculating claimant's post-injury wage-earning capacity, the administrative law judge must adjust post-injury wage levels to the levels paid pre-injury in order to neutralize the effects of inflation. *See Richardson v. General Dynamics Corp*., 23 BRBS 327 (1990).

In the case at bar, the administrative law judge did not address claimant's assertions regarding the applicability of Section 8(c)(21) and (h) of the Act; specifically, the administrative law judge summarily stated that as claimant was paid his usual wages, he suffered no loss in wage-earning capacity and thus did not properly analyze whether claimant's actual post-injury wages fairly and reasonably represent his post-injury wage-earning capacity. *See Randall v. Comfort Control, Inc.*, 725 F.2d 791, 16 BRBS 56 (CRT)(D.C. Cir. 1984). Although the parties are in agreement that claimant returned to work at his pre-injury wages, this fact is not dispositive, as consideration of the Section 8(h) factors may result in a finding that claimant's actual post-injury wages did not reasonably represent his wage-earning capacity.[2] *See, e.g., Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 31 BRBS 54 (CRT)(1997); *Container Stevedoring Co. v. Director, OWCP*, 935

[2]The party seeking to prove that actual wages do not fairly and reasonably represent wage-earning capacity bears the burden of proof. *See, e.g., Avondale Shipyards, Inc. v. Guidry*, 967 F.2d 1039, 26 BRBS 30 (CRT)(5th Cir. 1992).

F.2d 1544, 24 BRBS 213 (CRT)(9th Cir. 1991). Claimant, therefore, may be entitled to partial disability compensation based on the difference between his average weekly wage at the time of his injury and his post-injury wage-earning capacity adjusted for inflation. Based upon the foregoing, we remand the case for the administrative law judge to consider all of the relevant evidence of record pursuant to Sections 8(c)(21) and (h) of the Act.

SECTION 28

Lastly, claimant challenges the administrative law judge's award of $3,000 in legal services[3] and his order directing claimant to repay employer $9,333.74, which the administrative law judge reaffirmed in his Decision on Remand. In its previous decision, the Board fully addressed claimant's contention that the administrative law judge failed to recognize the substantial benefits to which claimant was found to be entitled and found that in awarding the fee in his second decision, the administrative law judge considered the factors enumerated in 20 C.F.R. §702.132, as well as claimant's success, as instructed by the Board in its first decision in this case. Contrary to claimant's contentions, the administrative law judge acknowledged that the right to medical benefits was a substantial right and acted in accordance with *Hensley v. Eckerhart*, 461 U.S. 424 (1983), and *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14 (CRT)(5th Cir. 1993), in rendering a fee award to claimant. As the Board affirmed this fee award, dependent upon claimant's improved success on remand, which at this time has not occurred, it remains the law of the case in this instance.[4] *See Jones v. U.S. Steel Corp.*, 25 BRBS 355, 359 (1992).

Claimant further argues that the administrative law judge erred in ordering him to repay the overpayment rendered to him by employer. Employer is not required to pay a fee until the order becomes final and all appeals are exhausted, *Spinner v. Safeway Stores, Inc.*, 18 BRBS 155 (1986), *aff'd mem. sub nom. Safeway Stores, Inc.*, 811 F.2d 676 (D.C. Cir. 1987); however, in the instant case, employer rendered payment to claimant subsequent to the administrative law judge's initial award of $12,333.75. Despite the administrative law judge's order of repayment of fee monies paid in excess of the current award, neither the Act nor its implementing regulations address the procedure by which an employer may recoup the overpayment of an attorney's fee. Thus, as there is no statutory authorization for the

[3]Claimant does not challenge the administrative law judge's award of expenses in the amount of $1,983.13.

[4]In light of the Board's decision to remand this case for a determination of claimant's possible entitlement to permanent partial disability compensation, and in light of the Supreme Court's decision in *Hensley v. Eckerhart*, 461 U.S. 424 (1983), the administrative law judge may reconsider his attorney's fee award should he find claimant to be entitled to additional benefits on remand.

recoupment of the overpayment of a fee, such recovery must be sought through the courts; accordingly, the administrative law judge's order in this regard is reversed.[5]

Accordingly, the administrative law judge's determination that the instant claim was untimely filed, and his order directing claimant to repay the excess amount of the attorney's fee paid by employer are reversed, and the case is remanded for consideration of claimant's entitlement to an award of permanent partial disability compensation. In all other respects, the administrative law judge's Decision and Order on Remand is affirmed.

SO ORDERED.

BETTY JEAN HALL
Chief Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

[5]We reject employer's assertion, in its cross-appeal, that it is entitled to interest on its overpayment of attorney fees. As set forth, *supra*, such recoupment is not authorized by the Act; moreover, there is no statutory authorization for the assessment of interest on an attorney's fee award. *See Boland Marine & Manufacturing Co. v. Rihner*, 41 F.3d 997, 29 BRBS 43 (CRT)(5th Cir. 1995), *aff'g* 24 BRBS 84 (1990); *Hobbs v. Director, OWCP*, 820 F.2d 1528 (9th Cir. 1987), *aff'g Hobbs v. Stan Flowers Co., Inc.*, 18 BRBS 65 (1986).

JAMES F. BROWN
Administrative Appeals Judge