BRB No. 91-1739

ELMER WINSTON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED:_____
INGALLS SHIPBUILDING, INCORPORATED	)	
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

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

Elmer Winston, St. Elmo, Alabama, *pro se*.

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

Before: DOLDER, Acting Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and SHEA, Administrative Law Judge.*

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (89-LHC-1999) of Administrative Law Judge A.A. Simpson, 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).[1] As claimant appeals without representation by counsel, we will review the administrative law judge's findings of fact and conclusions of law to determine whether they are supported by

[1]Claimant's attorney filed a notice of appeal with the Board on July 18, 1991. Subsequently, on October 10, 1991, he filed a motion to withdraw as counsel. In an Order dated July 20, 1992, the Board granted the motion and acknowledged claimant as a *pro se* appellant.

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (1988).

substantial evidence, are rational, and are in accordance with law.[2] *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3); 20 C.F.R. §§802.211(e), 802.220. If so, they must be affirmed.

During the course of claimant's employment with employer, he was exposed to injurious noise stimuli. Subsequent to his lay off in 1980, due to a work-related back injury not at issue here, claimant underwent an audiometric evaluation conducted by Dr. Wold on December 12, 1986. Cl. Ex. 2; Emp. Ex. 14 at 8-9. Based on the results of this examination, which revealed a mild bilateral sensori-neural hearing loss of 9.3 percent in claimant's right ear and zero percent in his left ear, claimant filed a claim for benefits under the Act. Cl. Exs. 2-4. He underwent another examination on December 18, 1989, administered by Dr. Lamppin, the results of which revealed that claimant's hearing was in the normal range to 4000Hz and demonstrated only a nerve-type loss in the higher frequencies in both ears. Dr. Lamppin then concluded that claimant has "no calculated hearing impairment." Emp. Ex. 5. In his Decision and Order, the administrative law judge credited the findings of Dr. Lamppin, a Board-certified otolaryngologist, over those of Dr. Wold, an audiologist. Consequently, the administrative law judge determined that claimant has no compensable hearing loss, and he denied benefits. Decision and Order at 2.

On appeal, claimant, representing himself, challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance.

As the administrative law judge found claimant has no compensable hearing loss and denied all benefits, including medical benefits, we will initially address whether claimant has any work-related impairment. In determining whether an injury is work-related, a claimant is aided by the Section 20(a) presumption, 33 U.S.C. §920(a), which may be invoked only after the claimant establishes a *prima facie* case. *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981). In the instant case, the administrative law judge accepted the parties' stipulation that claimant was exposed to injurious noise at employer's facility which could have caused his hearing loss, but denied the claim after crediting Dr. Lamppin's opinion that claimant has no measurable impairment. Nonetheless, it is clear that claimant had a work-related hearing impairment, as even Dr. Lamppin found a high frequency loss. Pursuant to the parties' stipulation, and the fact that both physicians of record opined that claimant sustained some degree of hearing loss, claimant established his *prima facie* case and is entitled to the Section 20(a) presumption. *See Peterson v. General Dynamics Corp.*, 25 BRBS 71 (1991), *aff'd sub nom. Insurance Company of North America v. U.S. Dep't of Labor*, 969 F.2d 1400, 26 BRBS 14 (CRT) (2d Cir. 1992), *cert. denied*, U.S. , 113 S.Ct. 1253 (1993). Furthermore, because neither Dr. Lamppin nor Dr. Wold opined that claimant's employment did not aggravate or contribute to his hearing loss, their opinions are insufficient to sever the connection between claimant's hearing loss and his employment. As employer did not rebut the Section 20(a) presumption, we hold that claimant's hearing loss is work-related as a matter of law. *Caudill v. Sea Tac Alaska Shipbuilding*, 25 BRBS 92 (1991), *aff'd mem. sub nom. Sea Tac Alaska Shipbuilding v. Director, OWCP*, No. 91-70743 (9th Cir. 1993); *Cairns v. Matson Terminals, Inc.*, 20 BRBS 252 (1988).

[2]We reject employer's request to dismiss claimant's appeal for failure to file a Petition for Review and Brief. As he is appealing *pro se*, claimant need not make such a filing. 20 C.F.R. §802.211.

Claimant may receive disability benefits only if his hearing loss is measurable under the American Medical Association *Guides to the Evaluation of Permanent Impairment* (3d ed. 1988). In the instant case, the administrative law judge credited the opinion of Dr. Lamppin, a Board-certified otolaryngologist, who concluded that claimant sustained no measurable impairment, over that of Dr. Wold, who calculated a measurable monaural impairment. As the administrative law judge's credibility determination is rational and within his authority as factfinder, and as this credited opinion constitutes substantial evidence to support his findings, we affirm the administrative law judge's determination that claimant suffered no disability under Section 8(c)(13) of the Act, 33 U.S.C. §908(c)(13). *See Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). Since claimant is not entitled to disability benefits, employer cannot be held liable for a penalty under Section 14(e) of the Act, 33 U.S.C. §914(e).

Additionally, claimant sought an award of medical benefits before the administrative law judge. Claimant is entitled to medical benefits under Section 7, 33 U.S.C. §907, if he has a work-related hearing loss, regardless of whether it results in a measurable impairment. In order to receive such an award, claimant must establish evidence of past medical expenses incurred for necessary treatment or the need for future medical treatment. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14 (CRT) (5th Cir. 1993). Although we have held that claimant sustained a work-related injury, Dr. Lamppin, whom the administrative law judge credited, did not indicate a need for hearing aids or for future medical treatment. Therefore, claimant is not entitled to future medical benefits. *See id.*, 991 F.2d at 166, 27 BRBS at 16 (CRT). We note, however, that because a claim for medical benefits is not subject to the statute of limitations set forth in Section 13 of the Act, 33 U.S.C. §913, claimant may file a claim for benefits under Section 7 if and when medical treatment for his work-related hearing loss becomes necessary. *See id.*, 991 F.2d at 166, 27 BRBS at 16 (CRT); *Siler v. Dillingham Ship Repair*, 28 BRBS 38 (1994). With regard to expenses incurred, claimant filed a request for reimbursement of the cost of the initial evaluation administered by Dr. Wold, which provided the basis for this claim. We hereby hold employer liable for the cost of that evaluation.[3] *See* 33 U.S.C. §§907, 928(d); *Baker*, 991 F.2d at 166, 27 BRBS at 16 (CRT).

Accordingly, the administrative law judge's Decision and Order is modified to reflect employer's liability for the costs of the audiometric evaluation performed by Dr. Wold. In all other respects, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

[3]Claimant sought employer's prior authorization for this medical examination in compliance with 33 U.S.C. §907(d). Cl. Ex. 1.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge