

PAUL WILLIS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
KAISER ALUMINUM & CHEMICAL	)	
CORPORATION	)	DATE ISSUED:
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION AND ORDER

Appeal of the Decision and Order Denying Benefits of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Mitchell G. Lattof, Sr. (Lattof & Lattof), Mobile, Alabama, for claimant.

Gregory C. Buffalow and C. William Rasure, Jr. (Johnstone, Adams, Bailey, Gordon & Harris), Mobile, Alabama, for employer.

Before: SMITH, DOLDER, and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (91-LHC-571) of Administrative Law Judge C. Richard Avery 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant underwent an audiometric evaluation on January 17, 1987, that revealed a 25 percent binaural hearing impairment. Cl. Ex. 7. Dr. Holston opined that the loss could have been caused in part by workplace noise. Claimant filed a claim against employer in August 1988, alleging that he worked for employer for a few months sometime in the 1970's, but he was not exactly sure when this work occurred. He alleged he was exposed to loud noise levels at employer's facility. Claimant testified at the hearing that prior to his employment with employer, he had worked for Ingalls Shipbuilding, Incorporated, where he also was exposed to workplace noise. H. Tr. at 33.

The administrative law judge found that claimant failed to establish that he was exposed to injurious stimuli while working for employer, assuming he did work for employer. Thus, the administrative law judge denied claimant's claim for benefits against this employer.

On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to invoke the Section 20(a) presumption as it is undisputed that claimant was exposed to harmful noise levels while he worked at employer's facility. Employer responds, urging affirmance of the administrative law judge's finding that it is not the responsible employer in this case.

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we hold that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error. Under the Act, the employer responsible for a claimant's disability benefits is the last employer to expose the claimant to injurious stimuli prior to the date on which the claimant became aware of the fact that he was suffering from an occupational disease. *See Travelers Insurance Co. v. Cardillo*, 225 F.2d 137 (2d Cir. 1955), *cert. denied* 350 U.S. 913 (1955); *Lins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 62 (1992); *see also Susoeff v. San Francisco Stevedoring Co.*, 19 BRBS 149 (1986). Although a claimant's testimony may be sufficient to establish that he was exposed to injurious levels of noise, the administrative law judge found that claimant's testimony was not persuasive inasmuch as claimant was vague and general about working conditions at employer's plant, the equipment he used there, and even his work history, including when he worked for employer. In addition, claimant relies heavily on a report regarding the harmful decibel levels at Ingalls Shipbuilding and his testimony that the conditions at the two facilities were the same. However, the administrative law judge was not convinced that claimant's memory of his employment was reliable enough to establish that the conditions were the same at the two employers. It is the function of the administrative law judge to make credibility determinations, which may not be disturbed unless they are inherently incredible or patently unreasonable. *See, e.g., Rivera v. United Masonry, Inc.*, 948 F.2d 774, 25 BRBS 51 (CRT)(D.C. Cir. 1991). As the administrative law judge's finding that the evidence is insufficient to establish that claimant was exposed to injurious noise levels at employer's facility is rational based on his credibility determinations, we affirm his finding that claimant is not entitled to benefits from this employer.

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge