

BRB No. 93-2004

WILLIAM V. ARRINGTON)
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 Claimant-Petitioner)
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 v.)
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 GENERAL DYNAMICS CORPORATION) DATE ISSUED:
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 Self-Insured)
 Employer-Respondent) DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits of Robert S. Amery, Administrative Law Judge, United States Department of Labor.

Stephen S. Embry (Embry & Neusner), Groton, Connecticut, for claimant.

Edward J. Murphy, Jr. (Murphy and Beane), Boston, Massachusetts, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Awarding Benefits (92-LHC-2797) of Administrative Law Judge Robert S. Amery 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 worked for employer as a pipe coverer from 1965 to 1966 and from 1976 until 1984, during which time he was exposed to asbestos and fiberglass. In 1984, claimant suffered a work-related injury to his back and has not returned to work due to this injury. Pursuant to an administrative law judge's decision issued in 1988, claimant was awarded permanent total disability compensation as a result of his 1984 work-related back injury. In 1992, claimant was diagnosed as suffering from restrictive lung disease as a result of his exposure to asbestos. Claimant thereafter filed a claim under the Act seeking permanent partial disability compensation based on the extent of his lung impairment, pursuant to the retiree provisions of the Act, despite the fact that he is currently receiving permanent total disability compensation for his back injury. 33 U.S.C. §§902(10), 908(c)(23), 910(d)(2), 910(i)(1988).

In his Decision and Order, the administrative law judge found that claimant suffers from a work-related occupational disease, but denied the claim for disability benefits, finding that claimant is not a "voluntary retiree" under the Act and that, because claimant is presently receiving total disability compensation benefits under the Act as a result of his work-related back condition, he is not entitled to receive additional permanent partial disability compensation pursuant to Section 8(c)(23). The administrative law judge did, however, award claimant medical benefits.

On appeal, claimant challenges the administrative law judge's denial of his claim for additional compensation benefits under Section 8(c)(23) of the Act. Employer responds, urging affirmance.

We hold that any error committed by the administrative law judge in finding that claimant is not a "voluntary retiree" is harmless, inasmuch as the administrative law judge properly concluded that claimant cannot receive benefits under Section 8(c)(23) in addition to total disability benefits. *See Carver v. Ingalls Shipbuilding, Inc.*, 24 BRBS 243 (1991). Section 8(c)(23), providing post-retirement benefits to voluntary retirees, was enacted in 1984 to provide relief for those claimants who otherwise would not be entitled to receive any compensation because their occupational disease became manifest after retirement. Thus where, as here, a claimant is already receiving total disability compensation under the Act, he cannot receive additional benefits. *See Hoey v. Owens-Corning Fiberglas Corp.*, 23 BRBS 71 (1989); *see also Korineck v. General Dynamics Corp.*, 835 F.2d 42, 20 BRBS 63 (CRT)(2d Cir. 1987). We therefore affirm the administrative law judge's conclusion that claimant is not entitled to additional benefits for his restrictive lung impairment.

Accordingly, the Decision and Order - Awarding Benefits of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge