

ELOAH EL-EMANU-EL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
BETHLEHEM STEEL CORPORATION	)	DATE ISSUED:
	)	
Self-Insured	)	
Employer-Petitioner	)	DECISION and ORDER

Appeal of the Order Awarding Interest on Benefits of George A. Fath, Administrative Law Judge, United States Department of Labor.

Bernard H. Link, Lutherville, Maryland, for claimant.

Richard W. Scheiner (Semmes, Bowen & Semmes), Baltimore, Maryland, for self-insured employer.

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

PER CURIAM:

Employer appeals the Order Awarding Interest on Benefits (90-LHC-3280) of Administrative Law Judge George A. Fath 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).

In his Decision and Order Granting Benefits, the administrative law judge awarded claimant benefits for a 47.82 percent binaural impairment pursuant to 33 U.S.C. §908(c)(13)(B). He affirmed this award on reconsideration. Thereafter, claimant moved for an order requiring that employer pay interest on the award, as the administrative law judge's prior decisions were silent as to its payment. Employer objected. In his Order Awarding Interest on Benefits, the administrative law judge ordered employer to pay interest on the award at the rate of 3.5 percent per annum from the stipulated date of injury, June 5, 1989, until the award is paid. The administrative law judge rejected employer's contentions that interest is not required under the Act, and is not mandatory in a hearing loss case, finding no basis on which to distinguish an award for this type of injury from awards for injuries other than hearing loss. Order at 2.

Employer appeals the administrative law judge's order awarding interest, contending that the Act itself contains no provision for interest and that judicial decisions allowing extra-statutory interest are therefore incorrect. Claimant responds in support of the administrative law judge's award of benefits.

Employer correctly states that the Act itself does not contain a provision allowing interest on compensation awards. *See Brown v. Alabama Dry Dock & Shipbuilding Corp.*, 28 BRBS 160 (1994) (Dolder, J., dissenting on other grounds). Nonetheless, as employer also notes, the courts and the Board have allowed interest awards in order to make claimant whole for his injury where employer has had the use of money due claimant. *See, e.g., Foundation Constructors, Inc. v. Director, OWCP*, 950 F.2d 621, 25 BRBS 71 (CRT)(9th Cir. 1991); *Strachan Shipping Co. v. Wedemeyer*, 452 F.2d 1225 (5th Cir. 1971), *cert. denied*, 406 U.S. 958 (1972); *Renfro v. Ingalls Shipbuilding, Inc.*, \_\_\_ BRBS \_\_\_, BRB Nos. 91-170/A (June 24, 1996) (Decision and Order on Recon. *en banc*); *Grant v. Portland Stevedoring Co.*, 16 BRBS 267 (1984), *on recon.*, 17 BRBS 20 (1985); *Ryan v. McKie Co.*, 1 BRBS 221 (1974). Significant to this case is that the United States Court of Appeals for the Fourth Circuit, the circuit in whose jurisdiction this case arises, has approved the imposition of an interest award in recognition of the fact that the employer had use of funds owed to the claimant. *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP [Watkins]*, 594 F.2d 986, 9 BRBS 1089 (4th Cir. 1979). Both the Ninth and Fifth Circuits specifically noted the absence of an express statutory provision allowing interest but determined that such awards comport with the intent of the Act and they deferred to the interpretation of the agency charged with administering the Act that interest is necessary to fully compensate claimant. *Foundation Constructors*, 950 F.2d at 625, 25 BRBS at 76 (CRT); *Strachen Shipping*, 452 F.2d at 1230.

Given that three United States Courts of Appeals have expressly approved the imposition of interest on compensation awards, the lack of any precedent to the contrary, and the Board's long line of cases requiring the imposition of interest on past-due compensation, we decline employer's invitation to overturn well-settled and uncontradicted precedent. We therefore affirm the administrative law judge's assessment of interest.

Accordingly, the administrative law judge's Order Awarding Interest on Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge