

LARRY WEIKERT	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
UNIVERSAL MARITIME	)	
SERVICE CORPORATION	)	DATE ISSUED: <u>March 21, 2002</u>
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY	)	
ASSOCIATION	)	
	)	
Employer/Carrier-	)	
Petitioners	)	DECISION and ORDER

Appeal of the Decision and Order of Richard E. Huddleston, Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Montagna, Breit, Klein & Camden, L.L.P.), Norfolk, Virginia, for claimant.

R. John Barrett and Kelly O. Stokes (Vandeventer Black, L.L.P.), Norfolk, Virginia, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order (2000-LHC-2038) of Administrative Law Judge Richard E. Huddleston 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 administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant worked for employer repairing containers and chassis during the month of

October 1996. He underwent an audiogram on October 31, 1996, which revealed a 2.2 percent binaural sensorineural hearing impairment. Tr. at 21-22; Cl. Ex. 2; Jt. Ex. 1. Claimant filed a claim for benefits in October 1999. In November 1999, claimant underwent two audiograms both of which revealed improved hearing. Cl. Exs. 2, 8. At the hearing, claimant stated that he was no longer claiming disability benefits, but was seeking only medical benefits. Tr. at 8, 19. Employer stipulated that claimant has a noise-induced hearing loss caused by his employment but disputed its liability and the need for medical treatment.

The administrative law judge determined that claimant has a work-related hearing loss. Decision and Order at 3. Further, the administrative law judge found that the requirements of Section 8, 33 U.S.C. §908, do not apply to the claim for medical benefits under Section 7, 33 U.S.C. §907; therefore, claimant need not have a minimum level of hearing loss to be entitled to medical benefits. *Id.* The administrative law judge also rejected employer's assertion that this case is similar to *Metro-North Commuter Railroad v. Buckley*, 521 U.S. 424 (1997), and he found claimant entitled to medical benefits. *Id.* at 3-4. With regard to claimant's request for hearing aids, the administrative law judge found that the district director is to supervise claimant's medical care, and he remanded the case to the district director to determine whether claimant needs hearing aids. *Id.* at 4. Employer appeals, and claimant responds, urging affirmance.

Employer first challenges the award of medical benefits in light of claimant's agreement that he has no ratable hearing loss under Section 8. Specifically, employer asserts that, because claimant has no ratable loss pursuant to the American Medical Association *Guides to the Evaluation of Permanent Impairment* (AMA *Guides*), see 33 U.S.C. §908(c)(13)(E), claimant has no injury within the meaning of the Act. Section 8(c)(13)(E) of the Act provides for compensation to an injured employee for a hearing loss as rated by the AMA *Guides*. Claimant, however, is not seeking disability benefits for his work-related hearing loss. Decision and Order at 3. Rather, he is seeking only medical benefits. Contrary to employer's argument, nothing in Section 7 of the Act requires a claimant to sustain a ratable impairment before he is entitled to medical benefits. Claimant only need sustain a work-related injury.<sup>1</sup> *Crawford v. Director, OWCP*, 932 F.2d 152, 24 BRBS 123(CRT) (2<sup>d</sup> Cir. 1991); *Romeike v. Kaiser Shipyard*, 22 BRBS 57 (1989). Moreover, the United States Court of Appeals for the Fifth Circuit has held that a claimant need not have a ratable impairment under the AMA *Guides* in order to be entitled to medical benefits, as application

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<sup>1</sup>Section 7(a) of the Act, 33 U.S.C. §907(a), states:

The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require.

of the *AMA Guides* is limited to Section 8 claims for disability benefits. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14(CRT) (5<sup>th</sup> Cir. 1993). In this case, the parties stipulated that claimant has indeed suffered a work-related hearing loss. Consequently, claimant is eligible for medical benefits. *Davison v. Bender Shipbuilding & Repair Co., Inc.*, 30 BRBS 45 (1996). Therefore, we reject employer's contention that claimant is not eligible for medical benefits because his work-related hearing loss did not result in an impairment ratable by the *AMA Guides*. *Id.*

We also reject employer's assertion that this case is controlled by the Supreme Court's decision in *Buckley*. In *Buckley*, a railroad employee who had been exposed to asbestos sought to recover, under the Federal Employers' Liability Act, 45 U.S.C. §51 *et seq.* (FELA), medical monitoring costs he may incur as a result of his exposure. Because he had not been diagnosed with any asbestos-related disease and was not experiencing any symptoms, the Supreme Court held that he was not entitled to medical monitoring. *Buckley*, 521 U.S. at 427, 444. First, as the administrative law judge stated, *Buckley* arose under FELA and not under the Longshore Act. Moreover, crediting claimant's testimony, the administrative law judge specifically found that claimant herein has trouble hearing and distinguishing sounds and, thus, has symptoms of hearing loss. Decision and Order at 4. As the facts and law in *Buckley* are distinguishable from those in the instant case, *Buckley* is inapposite.

Next, employer contends claimant is not entitled to hearing aids because there is no medical evidence that hearing aids are necessary and reasonable for his condition and because there has been no evaluation by a medical doctor as required by Virginia law. Claimant argues that the administrative law judge's reliance on the audiologist's opinion was sufficient. The administrative law judge, however, did not make a finding with regard to the necessity of hearing aids. Rather, he delegated that decision to the district director. Decision and Order at 5.

A claimant's entitlement to medical benefits is governed by Section 7 of the Act. 33 U.S.C. §907. Active supervision of a claimant's medical care is performed by the Secretary of Labor and her delegates, the district directors. 33 U.S.C. §907(b), (c); 20 C.F.R. §702.401 *et seq.*<sup>2</sup> There are, however, issues with regard to medical benefits which remain in the

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<sup>2</sup>For example, under Section 7(b), the district director has the authority to change a claimant's physician at the claimant's request, or at the employer's request if the change is in the interest of the employee, *Jackson v. Universal Maritime Service Corp.*, 31 BRBS 103 (1997) (Brown, J., concurring); 20 C.F.R. 702.406, and under Section 7(d)(2), 33 U.S.C. §907(d)(2), only the district director may excuse a doctor's failure to file a timely first report of treatment if it is in the interest of justice to do so. *Toyer v. Bethlehem Steel Corp.*, 28 BRBS 347 (1994) (McGranery, J., dissenting).

domain of the administrative law judge. Disputes over whether authorization for treatment was requested by the claimant, whether the employer refused the request for treatment, whether the treatment obtained was reasonable and necessary, or whether a physician's report was filed in a timely manner, are all factual matters within the administrative law judge's authority to resolve. *See Sanders v. Marine Terminals Corp.*, 31 BRBS 19 (1997); *Toyer v. Bethlehem Steel Corp.*, 28 BRBS 347 (1994) (McGranery, J., dissenting). Consequently, despite the authority the district director has over certain medical matters, the Board has declined to interpret the provisions of Section 7(b) of the Act, or Section 702.407 of the regulations, 20 C.F.R. §702.407, in such a manner as to exclude the administrative law judge from the administrative process when questions of fact are raised. *Sanders*, 31 BRBS at 21, 23; *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989).

In this case, the parties disputed claimant's entitlement to hearing aids. As stated above, the issue of whether treatment is necessary and reasonable, where the parties disagree, is a question of fact for the administrative law judge. Therefore, the administrative law judge should have addressed the issue of whether hearing aids are reasonable and necessary for claimant's hearing loss. *Sanders*, 31 BRBS at 23. Because he did not, we vacate the administrative law judge's order remanding the case to the district director for resolution of this issue, and we remand the case to the administrative law judge for him to determine whether hearing aids are necessary and reasonable for claimant's work-related hearing loss.<sup>3</sup> *Baker*, 991 F.2d at 166, 27 BRBS at 16(CRT) (claimant must present evidence of medical expenses incurred in the past or of medical treatment necessary in the future).

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<sup>3</sup>Contrary to employer's contention, the absence of a prescription for hearing aids from a medical doctor, as required by Virginia law, does not make claimant ineligible for hearing aids, or medical benefits, under the Act. While claimant must comply with specific provisions under Virginia law before he is able to obtain hearing aids, claimant's compliance or non-compliance with state requirements does not affect the authority of the administrative law judge to adjudicate claimant's entitlement to medical benefits under the Act.

Accordingly, the administrative law judge's Decision and Order is vacated, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge