U.S. Department of Labor

Office of Administrative Law Judges
John W. McCormack Post Office and Courthouse
Room 505
Boston, MA 02109

(617) 223-9355
(617) 223-4254 (FAX)

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CASE NOS.: 2003-LHC-00722
2003-LHC-00723
2003-LHC-02713

OWCP NOS.: 1-156018
1-156443
1-155485

In the Matter of

GARY PERKINS
Claimant

v.

ELECTRIC BOAT CORPORATION
Employer

Appearances

Scott N. Roberts, Esquire, Groton, Connecticut
for the Claimant

Peter D. Quay, Esquire, Murphy & Beane, New London, Connecticut
for the Employer

BEFORE: Colleen A. Geraghty
Administrative Law Judge

DECISION AND ORDER AWARDING BENEFITS

I. Statement of the Case

This proceeding arises from a claim for workers' compensation benefits filed by Gary Perkins, a longshoreman, against Electric Boat Corporation ("Electric Boat" or "Employer") under the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901, *et seq.* (the "Act"). After an informal conference before the District Director of the Department of Labor's Office of Workers' Compensation Programs ("OWCP"), the matter was referred to the Office of Administrative Law Judges ("OALJ") for a formal hearing. A hearing was conducted before me in New London, Connecticut on October 20, 2003, at which

time all parties were afforded the opportunity to present evidence and oral argument. The Claimant appeared at the hearing represented by counsel, and an appearance was made by counsel on behalf of the Employer. Testimony was heard from the Claimant, and documentary evidence was admitted without objection as Claimant's Exhibits ("CX") 1-19, Employer's Exhibits ("EX") 1-15, and administrative law judge exhibits ("ALJX")1-6. TR 9-14, 21-22. The parties submitted stipulations marked as Joint Exhibit ("JX") 1. TR 7-8. The hearing transcript is designated "TR". At the close of the hearing the record remained open for submission of additional medical evidence. The Employer submitted Dr. Daniel Gerardi's report on December 4, 2003 and it is marked EX 16. Thereafter, the parties filed post-hearing briefs and the record is now closed.

After careful analysis of the evidence contained in the record, the parties' stipulations and their briefs, I conclude that the Claimant has a compensable illness that arose, in part, out of his employment at Electric Boat and that he is, therefore, entitled to an award of permanent total disability compensation with interest on unpaid compensation, medical care and attorney's fees. My findings of fact and conclusions of law are set forth below.

II. Findings of Fact and Conclusions of Law

A. Background

The Claimant, Gary Perkins, is 58 years old. TR 24. After leaving high school he worked several unskilled jobs for a couple of years. He then worked at Pratt and Whitney as a machinist for approximately one to two years. It appears from the employment records that the Claimant began work at Electric Boat in September 1970 until October 1971 when he had an injury of some sort and was out of work for more than a year. EX 5. He returned to Electric Boat in January 1973 and worked until 2002 when he was forced to retire for medical conditions. EX 5; TR 16. When he returned in 1973, the Claimant worked in various departments as a department clerk. His first department clerk position was in the "mock up" for the Trident submarine. TR 28. He worked in the mock up area for approximately fifteen years. TR 29. His duties included maintaining absentee records, filing blueprints, and walking to pick up paychecks and material from various departments. TR 28-29, 36. The Claimant stated that he was exposed to noise and to wood dust from the carpenters' activity as the office was open to the construction area where a model of the submarine was being constructed. TR 30-31. The Claimant explained that the area could be very dusty, especially when the large doors were opened to bring in additional plywood. *Id.* Mr. Perkins reported that he began to experience difficulty breathing when walking up hills at the shipyard. In July 1975 he experienced severe chest pain and difficulty breathing near quitting time and he was taken to the medical center. TR 32, 37. He was diagnosed with occupational asthma and instructed to use inhalers. TR 33.

In January of 1980, Dr. Pembroke admitted the Claimant to the hospital for a lung biopsy. TR 33. The Claimant recalled that Dr. Pembroke indicated he had asbestosis fibers in his lungs and

chronic bronchitis. TR 34. The Claimant was out of work for approximately two years. TR 35.[1] He then returned to work at Electric Boat as a department clerk in the lagging department. The Claimant testified that he maintained this position for six to eight years until 1991 or 1992. TR 38, 41. The lagging department was responsible for covering pipes that would be installed in submarines. The Claimant's duties as a clerk included entering time records on a computer and walking to pick up or deliver supplies and materials to several areas of the shipyard. TR 38, 40. The claimant stated he continued to have breathing difficulties and rhinitis. TR 38-39. He testified that he was exposed to airborne contaminants in the lagging department. TR 40.

Sometime in 1991 or 1992, the Claimant was transferred to the machinists department as a clerk for a short period. TR 41-42. He stated he was exposed to oil from the machinery in this position. *Id.* He stated he continued to use medication to assist his breathing during this period. *Id.* The Claimant was then transferred to the plan file department where he remained until he left Electric Boat in August 2002. TR 43. His position in the plan file department was initially as a clerk, but in 1997 or 1998 he became an expeditor which required him to walk to various locations to obtain parts and push carts with heavy material. TR 43-45, 47. The Claimant stated that walking through the yard created fatigue, shortness of breath and chest pain. TR 47-48. His job required extensive walking sometimes up to 11 miles per day. TR 57. He stated that he was exposed to dust and other airborne materials during the time he worked as an expeditor. TR 61. Sometime in 1999, the Claimant's cardiologist Dr. Fiengo restricted the Claimant from climbing hills and he was given a hill pass which allowed him to ride up the yard hill. TR 47-48. The Claimant eventually required surgery for installation of a stent in June 2002. TR 49. The Claimant stated he also has several other medical conditions, including insulin-dependent diabetes, hypertension, gastroesophageal reflux disease and sleep apnea. TR 50-53. Since last year the Claimant has used supplemental oxygen on a daily basis. TR 53.

The Claimant had surgery for hernia repair in June 2002. Upon his release to return to work in late summer he was given work restrictions limiting lifting to 20 pounds. Electric Boat was unable to accommodate the Claimant's work restrictions and he was forced to retire. TR 55-56.

B. Stipulations and Issues Presented

The parties have stipulated that: (1) the Act applies to the claim; (2) the injuries occurred on March 4, 2002, February 5, 2002, and June 6, 2000; (3) the injuries occurred at the Employer's facility; (4) an employer/employee relationship exited at all relevant times; (5) the Employer had notice of the injuries; (6) the claim was timely filed and timely controverted; (7) an informal conference was held on October 30, 2002; (8) the Claimant's average weekly wage was $628.09; (8) the Claimant reached maximum medical improvement on August 26, 2002; and (9) the Claimant has not returned to work. JX 1.

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[1] The Claimant eventually received payments under the State of Connecticut Workers' Compensation Program for a 10% permanent impairment of the lungs. TR 58; CX 19.

The issue in dispute is whether the Claimant's injuries are related to his work at Electric Boat Corporation.[2]

C. Causation

There is no dispute in this case that the Claimant suffers from multiple medical conditions which in combination render him totally disabled and unable to perform his job at Electric Boat. Cl. Br. at 1-2; Emp. Br. at 4. The issue is whether one of those medical conditions, the lung disease, was caused by, contributed to, or aggravated by his employment at Electric Boat. The Claimant appears to assert that his lung condition was caused by, contributed to, or aggravated by his shipyard employment under two theories. First, the Claimant contends that exposure to asbestos at the shipyard caused or contributed to his lung disease. Cl. Br. at 6-7, 9-10. Second, the Claimant seems to contend that exposure to dust and other airborne contaminants at Electric Boat contributed to or aggravated his bronchial asthma which contributes to his lung disease. *Id.* at 3-4, 9-10. The Employer concedes that the Claimant is totally disabled as a result of several medical conditions, including a pulmonary impairment. Emp. Br. at 4-6. The Employer acknowledges the Claimant's pulmonary condition, but alleges that there is no evidence showing that the lung condition is caused by, contributed to or aggravated by his employment with Electric Boat. *Id.* at 6-10.

In establishing causation, the claimant is aided by the presumption found in Section 20(a) of the Act. Section 20(a) of the Act provides the Claimant with a presumption that his condition is causally related to his employment if he shows that he suffered harm and that employment conditions existed or a work accident occurred which could have caused, aggravated, or accelerated the condition. *See Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991); *Gencarelle v. General Dynamics Corp.*, 22 BRBS 170 (1989), *aff'd*, 892 F.2d 173, 23 BRBS 13 (CRT) (2d Cir. 1989). If a Claimant's employment aggravates a non-work related underlying condition or disease so that it produces incapacitating symptoms, the resulting disability is compensable. *Gardener v. Bath Iron Works Corporation,* 11 BRBS 556 (1979), 640 F.2d 1385 (1st Cir. 1981). Once this prima facie case is established, the Claimant has invoked the presumption, and the burden of proof shifts to the employer to rebut it with substantial countervailing evidence. *Merrill*, 25 BRBS at 144. If the presumption is rebutted, the administrative law judge must weigh all of the evidence and render a decision supported by substantial evidence. *See Del Vecchio v. Bowers*, 196 U.S. 280 (1935).

The Claimant contends his chest pain upon exertion is caused by an underlying lung disease which is caused or aggravated by his employment at the shipyard and that the pulmonary impairment along with the non-work related medical conditions including coronary artery disease prevent him from performing his job at Electric Boat. Cl. Br. at 6-7. The Claimant asserts that his chest pain is due to several factors including his respiratory condition. Cl. Br. at 2-3. With regard to the lung disease, the Claimant points to the reports by Dr. Jeanette Park who

[2] The Claimant filed three injury claims. The claims involve injuries to the head, heart and lungs. At hearing Counsel for the Claimant stated that the Claimant was no longer asserting that the head injury or the cardiac condition prevented the Claimant from working. TR 14-15. Therefore, the injury in dispute is the lung injury or the pulmonary condition.

treated the Claimant in the mid-1970s for occupational asthma caused by his exposures to dust and other airborne contaminants at Electric Boat. CX 19. Dr. Richard Pembroke, a cardiologist, treated the Claimant in the early 1980's initially for heart palpitations. CX 19. Dr. Pembroke issued a report on August 2, 1983 indicating that as early as 1980 the Claimant had "an important degree of chronic lung disease." *Id.* Dr. Pembroke noted that the Claimant's work environment was very dusty. Dr. Pembroke reported that the Claimant had chronic bronchitis. He concluded that the "cumulative evidence of chronic lung disease was sufficient to explain the Claimant's occasional episodes of chest discomfort." *Id.* Dr. Pembroke also concluded that the Claimant had suffered a permanent impairment to his lungs as a result of exposure to lung irritants at the shipyard. *Id.* As a result, the Claimant was compensated under the Connecticut State Workers' Compensation System for a 10% permanent impairment of the lungs in February 1988.

The Claimant also suffers from coronary artery disease and has been treated since 1997 by Dr. Mark Fiengo, who is board certified in cardiology and internal medicine. CX 8; CX 17 at 4, 12. Dr. Fiengo's report notes that the Claimant continues to have pulmonary difficulties demonstrated by his treatment for pneumonia in March 2000 and acute bronchitis in March 2001. CX 8 at 22, 30. At his deposition, Dr. Fiengo testified that Claimant has multiple medical issues including significant coronary disease although he stated the Claimant has not experienced any permanent damage and from a cardiac standpoint his prognosis is good. CX 17 at 5. Dr. Fiengo noted that the Claimant has also developed oxygen-dependent chronic obstructive pulmonary disease and sleep apnea, in addition to diabetes, hypertension, gastrointestinal reflux disease, and hiatal hernia with diverticulitis. *Id.* at 6. Dr. Fiengo testified that the Claimant's pulmonary insufficiency plays a role in his angina or chest pain. *Id.* at 9. Dr. Fiengo explained that the Claimant's oxygen deficiency places a load on his heart and the oxygen deficiency is a result of his lung disease and sleep apnea. *Id.* at 12. Dr. Fiengo acknowledged that he has given the Claimant several hill passes so that he is not required to walk up the hill at Electric Boat. CX 8 at 19; CX 17 at 15-16, 20-21.

On these facts, I find that the Claimant has established a prima facie case of a compensable injury and thereby successfully invoked the Section 20(a) presumption that his pulmonary disease is a condition which resulted from a work-related injury. The evidence establishes that the Claimant's pulmonary disease was caused by, contributed to, or aggravated by his work at Electric Boat and that the lung disease contributes to his coronary disease, chest pain and his overall poor current physical condition.

Once a claimant establishes a prima facie case, the Claimant has invoked the Section 20(a) presumption, and the burden of proof shifts to the employer to rebut it with substantial evidence proving the absence of, or severing the connection between, such harm and employment or working conditions. *Merrill*, 25 BRBS at 144; *Parsons Corp. of Californis v. Director, OWCP,* 619 F.2d 38 (9th Cir. 1980); *Butler v. District Parking Manage* 363 F.2d 682 (D.C. Cir. 1966); *Kier v. Bethlehem Steel Corp.,* 16 BRBS 128 (1984). Since the Claimant has invoked the presumption of causation in the present matter, the burden now shifts to the Employer to produce substantial evidence proving the absence of, or severing the presumed connection between, his injury and his illness. *DelVecchio,* 296 U.S. at 286-287; *Volpe v. Northeast Marine Terminals,* 671 F.2d. 697, 701 (2nd Cir. 1981). Evidence is "substantial" if it is the kind that a reasonable mind might accept as adequate to support a conclusion. *Richardson*

v. Pearles, 402 U.S. 389, 401 (1971). Under the substantial evidence standard, an employer does not have to exclude any possibility of a causal connection to employment, for this would be an impossible burden; it is enough that it produce medical evidence of "reasonable probabilities" of non-causation. *Bath Iron Works Corp. v. Director, OWCP,* 137 F.3d 673, 675 (1st Cir. 1998); s*ee also O'Kelley v. Dept. of the Army/NAF,* 34 BRBS 39, 41-42 (2000) (an employer need not establish another agency of causation to rebut the presumption; it is sufficient if a physician unequivocally states to a reasonable degree of medical certainty that the harm suffered by the worker is not related to employment).

The Employer relies upon the report of Dr. Daniel Gerardi, a pulmonary specialist, to rebut the presumption. Dr. Gerardi finds the Claimant suffers from bronchial asthma, allergic rhinitis, and obstructive sleep apnea, among other illnesses. EX 16 at 8-9. Dr. Gerardi's report opines that sleep apnea is the "most prominent respiratory illness that [the Claimant] is facing." *Id.* at 9. Dr. Gerardi further reports that sleep apnea is related primarily to obesity and he concludes it is "not related to [the Claimant's] employment but it does contribute to a degree of respiratory impairment." *Id.* Dr. Gerardi also concludes that the Claimant's bronchial asthma was likely to have been aggravated by his employment with Electric Boat. *Id.* at 9-10. While acknowledging that the Claimant's bronchial asthma was aggravated by employment, Dr. Gerardi's report states that the exposure to dust was largely in the early portion of the Claimant's work for Electric Boat. *Id.* at 9-10. Dr. Gerardi opines that the aggravation caused by the occupational exposures would have been temporary and removal from the workplace would resolve the irritants. *Id.* at 10. Dr. Gerardi also states that obesity and gastroesophageal reflux disease can also aggravate asthma and notes both of these factors are present for the Claimant. *Id.* Therefore, he concludes that the previous aggravating factors associated with the workplace were "probably minor and temporary and do not contribute to the patient's current level of respiratory impairment." *Id.* Finally, Dr. Gerardi concludes based upon a review of the Claimant's recent chest x-ray and CT scan that there is nothing on radiology showing "pulmonary parechymal fibrosis that is consistent with asbestosis, idiopathic pulmonary fibrosis, or other fibrotic lung illnesses." *Id.* at 8.

The Claimant was examined by Dr. Thomas Godar in an independent evaluation on November 17, 1983 and again on June 16, 1987. CX 15; EX 15. Dr. Godar found the Claimant has hyper-reactive airway disease that is periodically made worse by exposure to wood dust. CX 15 at 8. His opinion in this regard is consistent with Dr. Park's description of the Claimant's occupational asthma. Although Dr. Godar states the Claimant's condition was at times made worse by exposure to wood dust he believes most of the Claimant's difficulty is a result of obesity. In his 1983 report he concludes he saw no sign of pulmonary disease associated with work except for the hyper-reactive pulmonary disease associated with exposure to wood dust. *Id.* In his 1987 report he again indicates the Claimant has hyper-reactive airway disease that is periodically exacerbated by exposure to dust in the shipyard. EX 15.

Dr. Paul Licata has treated the Claimant since July 18, 2002 for severe obstructive sleep apnea. CX 18 at 6-7. Dr. Licata explained that sleep apnea can be caused by weight gain, by facial structure or by chronic obstructive pulmonary disease. *Id.* at 9-12. Dr. Licata stated that the Claimant's sleep apnea is a contributing factor in his overall current condition. The question becomes whether there is a relationship between the sleep apnea and the Claimant's employment

at Electric Boat. Dr. Licata provided a helpful explanation of sleep apnea, its effect on blood oxygen levels, and the use of the Continuous Positive Airway Pressure (CPAP) machine in treating severe cases of apnea. *Id.* at 6-7. Dr. Licata explained that sleep apnea leads to low blood oxygen levels. *Id.* at 12. With regard to the Claimant, Dr. Licata stated the studies showed he had significantly low blood oxygen levels and he has prescribed use of the CPAP machine. In addition, the Claimant uses oxygen during waking hours. His pulmonary function tests showed some obstructive pattern, but the majority of his findings showed a restrictive pattern. *Id.* at 13-15. Dr. Licata explained that when lung volumes are down it suggests more of a restrictive pattern, but the fact that the Claimant's gas volume is down indicates the lung is not functioning at the level it should. *Id.* When asked whether this was weight-related or asbestosis related, Dr. Licata responded that it was "multifactorial." *Id.* at 15. Dr. Licata continued, stating that the gas exchange impairment is going to be lung parenchyma related which comes down to chronic obstructive pulmonary disease and/or asbestos or a combination of both. *Id.* He later stated the low gas exchange could also be contributed to by sleep apnea. *Id.* at 15.

In response to a question from the Claimant's counsel, Dr Licata indicated that individuals with underlying lung disease can experience chest pains. *Id.* at 19. He explained that the pleural surface is very irritable and if irritated is very sensitive. Dr. Licata stated that is what asbestos-related lung disease is. Dr. Licata noted that COPD can also result in chest tightness and discomfort on breathing. *Id.*at 20. Thus, he concluded that it was "hard" in retrospect to say what caused the chest pain but in his opinion it "could have represented some type of pleural pain and or some type of airway discomfort that's related to underlying COPD." *Id*. Dr. Licata indicated that a CT scan on January 18, 2003 shows minor scarring which he stated was evidence of asbestos related lung disease with scarring. Finally, he stated that medical records from the early 1980's showed the Claimant had lung disease which was affected by his work at Electric Boat both acutely and "probably now a cumulative chronic component." *Id.* at 32, 34.

The Claimant relies heavily on Dr. Licata's testimony to rebut Dr. Gerardi's report and to support his contention that the work-related pulmonary condition prevented the Claimant from exercising, leading to the weight gain, which caused the sleep apnea. Cl. Br. at 7-8.[3] However, Dr. Licata's testimony is less certain and convincing than the Claimant asserts in terms of establishing a causal relationship between the sleep apnea and the work environment at Electric Boat. Dr. Licata indicates at several points that sleep apnea is most often caused by weight gain. CX 18 at 9, 12, 15, 21. A close reading of Dr. Licata's testimony shows that the most likely factor contributing to the Claimant's sleep apnea is weight gain. *Id.* at 12. He states a weight gain of as little as10-20 pounds can cause sleep apnea. *Id.* The Claimant gained significantly more than 10-20 pounds. Dr. Licata acknowledged that the inability to keep up with exercise because of poor lung function can contribute to weight gain. He continued stating the Claimant's "COPD… as well as some of his restrictive lung disease, which is said to be due to his prior exposure asbestoswise, could be enough when put together to limit his exertional ability and now go on to cause him to gain weight to acquire something like sleep apnea, which he may have avoided if he was able to stay more functional and not have the situation of weight gain." *Id.* at 9.

[3] The Claimant's brief refers repeatedly to a report by Dr. Teiger of Hartford. Cl. Br. at 7-9. No report from a Dr. Teiger is in evidence. There is a report from Dr. Gerardi of Hartford in the record as Employer's Exhibit 16. It appears the references to Dr. Teiger in the Claimant's brief were actually intended to reference the report by Dr. Gerardi.

However, Dr. Licata later testified that the Claimant's restrictive lung disease itself is caused, in part, by his weight. *CX 18* at 15. Medical records reflect that the Claimant has been significantly overweight since at least the early 1980s as reflected in Dr. Pembroke's records, and yet his sleep apnea is a relatively recent development. CX 19; CX 18 at 10. Medical records also show that in 1985 the obstructive component to his lung condition was mild, suggesting that the asthma would not have precluded exercise. CX 19. Moreover, the Claimant was able to diet and reduce his weight to 155 pounds in 1986 before he regained the weight. EX 15 (Dr. Godar's 1987 report). This undermines the claimant's contention that his weight gain is caused by an inability to exercise because of asthma as opposed to a failure to watch his diet. In addition, the Claimant's cardiac condition also contributes to his exercise difficulty. Accordingly, the Claimant's effort to show that his sleep apnea is related to his work at the shipyard on the theory that his weight gain, which presumably caused or contributed to the sleep apnea, is a result of an inability to exercise because of a work-related pulmonary condition is too speculative and tenuous on the record presented.

On balance, the testimony of Dr. Gerardi that the Claimant's current lung disease was not caused by occupational factors is the kind of evidence a reasonable mind might accept as adequate to rebut the presumption of causation. Therefore, the presumption falls out of the case and the records must be considered as a whole to determine whether the Claimant has established by a preponderance of the evidence that his lung impairment was caused by, contributed to, or aggravated by his work at the shipyard. *Glover v. Aerojet-General Shipyard,* 6 BRBS 559 (1977); *Bath Iron Works v. Brown,* 194 F.3d 1, 5 (1st Cir. 1999).

With regard to the Claimant's assertion that asbestosis exposure is a contributing source of the Claimant's current lung condition, the Employer contends that the evidence does not support such a finding. Emp. Br. at 8-9. The evidence on this point includes Dr. Pembroke's report, which, in reciting the Claimant's work history, indicates that the Claimant worked with asbestos at Electric Boat. CX 19. However, the Claimant did not testify that he worked with or was exposed to asbestos at Electric Boat. Rather, the Claimant testified that when working in the mockup area he was exposed to significant wood dust, while working in the lagging area he was exposed to airborne dust and particles generated by shaving or sanding fiberglass, and that while working in the machine department he was exposed to oil fumes. TR 30-31, 36, 38-42. In his deposition, Dr. Licata assumes some exposure to asbestos, but he never states that the Claimant actually informed him that he was exposed to asbestos. Dr. Licata indicates that the Claimant has "some restrictive lung disease, which is said to be due to his prior exposure asbestos wise." CX 18 at 9. Later, Dr. Licata's testimony provides a helpful explanation of interstitial lung disease, but he does not connect the Claimant's condition to employment at the shipyard. *Id.* at 14. The only concrete link of the Claimant's lung condition to asbestos exposure by Dr. Licata is based upon scarring seen on a January 18, 2002 CT scan. However, Dr. Gerardi stated that in a more recent CT scan in August 2003, the findings from January are not well seen. Dr. Gerardi concludes that there is nothing on radiology showing "pulmonary parechymal fibrosis that is consistent with asbestosis, idiopathic pulmonary fibrosis, or other fibrotic lung illnesses." EX 16 at 8. Dr. Licata did not have the benefit of the later CT scan. On balance, in light of the absence of testimony from the Claimant reporting exposure to asbestos at Electric Boat, and the inconsistent radiographic evidence of asbestos-related lung disease, I find that the Claimant's

contention that his lung condition was causally related to asbestos exposure is not supported and must fail.

However, this does not end the inquiry as the Claimant has also contended that his exposure to wood dust, fiberglass dust, particles and other airborne contaminants at the shipyard contributed to and aggravated his bronchial asthma and chronic bronchitis, components of his current lung disease which operate to complicate his non-work related cardiac condition. Cl. Br. at 3-4, 7, 9-10. The records from Dr. Park and Dr. Pembroke dating back to the mid 1970s to the early 1980s reflect that the claimant has occupational asthma, bronchial asthma and chronic bronchitis, all forms of chronic obstructive pulmonary disease. Dr. Fiengo, the Claimant's cardiologist, notes that the Claimant had bouts of pneumonia and acute bronchitis in 2000 and 2001. CX 8 at 22, 30. Dr. Godar's independent medical evaluations completed at the request of Electric Boat in 1983 and 1987 carry a diagnosis of bronchial asthma among other conditions. Dr. Gerardi, the Employer's most recent independent medical examiner, also acknowledges that the Claimant has bronchial asthma. Dr. Gerardi discounts a causal relationship between the Claimant's bronchial asthma and chronic bronchitis and his work on the basis that the Claimant's exposures to pulmonary irritants were limited to his early period of employment and any effect on the lung condition would have resolved by now. Dr. Gerardi's understanding of the Claimant's work exposures is not entirely supported by the evidence. The Claimant testified he worked in the mock up area for approximately fifteen years, which coincides roughly with the period from 1973 through 1988. During this period, the Claimant testified that he was exposed to significant wood dust. Subsequent to working in the mock up area, the Claimant worked in the lagging department and was exposed to dust from fiberglass as well as other airborne contaminants. The Claimant also testified that even as an expediter, the job he held from approximately 1996 until his retirement in 2002, he was exposed to dust and airborne contaminants as he traveled delivering parts and supplies to various parts of the operation. Therefore, the evidence of record establishes that the Claimant had a long history of significant exposure to pulmonary irritants including wood dust and particles, fiberglass dust and other airborne contaminants. Thus, Dr. Gerardi's conclusion that the occupational exposures aggravating the bronchial asthma were temporary and do not contribute to the Claimant's current level of respiratory impairment is not supported by the evidence of his work history.

In addition, although Dr. Gerardi states he does not believe the Claimant's exposure to wood and fiberglass dust and particles is contributing to bronchial asthma and his current level of respiratory impairment, he acknowledges that "bronchial asthma does tend to worsen over time as does allergic rhinitis and we are predominantly witnessing some natural progression of this disease." EX 16 at 10. Dr. Gerardi then assessed a 25% impairment of the whole person as a result of the claimant's lung disease and he attributed 10% of that impairment to bronchial asthma, 5% to obstructive sleep apnea and 10% to obesity. *Id.* The Claimant's pulmonary function tests in 1985 and 1986 reflect both an obstructive and a restrictive component to his lung impairment. CX 13. Later tests show an increase in the Claimant's lung impairment. CX 13; Ex 16. Asthma and COPD are reflected as obstructive lung components. In light of the acknowledgement that bronchial asthma was aggravated by exposures at the shipyard, the fact that bronchial asthma is a chronic condition which gets progressively worse, and the fact that the Claimant continued to be exposed to lung irritants at the shipyard, I find the Claimant has established by a preponderance of the evidence that at least the bronchial asthma and chronic

bronchitis portions of his lung disease were contributed to or aggravated by his work at Electric Boat. Thus, the Claimant has established that his lung disease was contributed to or aggravated, at least in part, by his occupational exposure to wood dust, fiberglass dust, oil fumes and other airborne contaminants at the Electric Boat shipyard.

D. Entitlement to Medical Care Entitlement to Medical Care

Based on my findings that the Claimant's lung disease is causally related to his employment with Electric Boat, he is entitled to reasonable and necessary medical care pursuant to Section 7 of the Act. 33 U.S.C. § 907; *Colburn v. General Dynamics Corp*., 21 BRBS 219, 222 (1988). A Claimant establishes a prima facie case for compensable medical treatment where a qualified physician indicates that treatment was necessary for a work-related condition. The Claimant is currently receiving treatment for his pulmonary impairment. On these facts, I find that the Claimant has established that he is entitled to medical care. Accordingly, I will order the Respondents to provide medical care pursuant to section 7.

E. Compensation Due and Interest

Based on the foregoing findings, the Claimant is owed permanent total disability compensation pursuant to Section 8(a) of the Act from August 26, 2002 to the present and continuing at a rate of 66 2/3 percent of the average weekly wage of $628.09. Since the Claimant's compensation payments are overdue, interest shall be added to all unpaid amounts. The appropriate interest rate is the rate employed by the United States District Courts under 28 U.S.C. §1961 (1982) which is periodically changed to reflect the yield on United States Treasury Bills. *Grant v. Portland Stevedoring Company*, 16 BRBS 267, 270 (1984) *modified on reconsideration*, 17 BRBS 20 (1985). My order incorporates 28 U.S.C. §1961 (1982) by reference and provides for its specific administrative application by the District Director. The appropriate rate shall be determined as of the filing date of this Decision and Order with the District Director.

F. Attorney Fees

Having successfully established his right to compensation, the Claimant is entitled to an award of attorney fees under section 28 of the Act. *American Stevedores v. Salzano* 538 F. 2d 933, 937 (2nd Cir. 1976). In my order, I will allow the Claimant's attorney 30 days from the date of this Decision and Order is filed with the District Director to file a fully supported and fully itemized fee petition as required by 20 C.F.R. § 702.132, and the Respondents will be granted 15 days from the filing of the fee petition to file any objection.

III. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the entire record, including the parties' stipulations, the following order is entered:

1. The Employer, Electric Boat, shall pay to the Claimant, Gary Perkins, permanent total disability compensation pursuant to 33 U.S.C.§ 908(a) for the period August 26, 2002 to the

present and continuing in an amount equal to 66 2/3 percent of his average weekly wage of $628.09, plus interest computed at the Treasury Bill rate applicable under 28 U.S.C.§1961 (1982) computed from the date each payment was originally due until paid;

2. The Employer shall provide the Claimant with all reasonable, appropriate and necessary medical care and treatment as the Claimant's work-related pulmonary condition may require pursuant to 33 U.S.C.§ 907.

3. The Claimant's attorney shall file, within thirty days of receipt of this Decision and Order, a fully supported and fully itemized fee petition pursuant to 20 C.F.R. 702.132(a), sending a copy thereof to counsel for the Employer who shall then have fifteen days to file any objections; and

4. All computations of benefits and other calculations which may be provided for in this Order are subject to verification and adjustment by the District Director.

SO ORDERED.

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COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts