



Issue Date: 21 November 2011

CASE NO. : 2010-LHC-793

OWCP NO. : 07-185664

IN THE MATTER OF:

MARSHALL JACKSON

Claimant

v.

CERES GULF, INC.

Self-Insured Employer

APPEARANCES:

EDWARD S. RAPIER, JR.

ARTHUR J. BREWSTER

For The Claimant

LARRY P. POSTAL

For The Employer

Before: LEE J. ROMERO, JR.

Administrative Law Judge

ORDER DENYING EMPLOYER'S MOTION FOR RECONSIDERATION

On November 15, 2011, the undersigned issued a Decision and Order awarding benefits to Claimant. On November 17, 2011, Counsel for Employer submitted a Motion for Expedited Reconsideration, and on November 18, 2011, Claimant filed his Opposition to the Motion for Reconsideration. For the following reasons, Employer's Motion for Reconsideration is hereby **DENIED**.

DISCUSSION

A motion for reconsideration is designed to correct factual errors. It is not a tool to be employed to induce a fact-finder to change his mind, and it is not a means of correcting an error of law. Errors of law are corrected through the normal and prescribed appeal process. Alerted v. Monsanto, Co., 671 F.2d 908, 912 (5th Cir. 1982). A motion for reconsideration serves a limited purpose. On reconsideration, a party may not introduce new evidence or legal theories which could have been presented earlier. Reconsideration is appropriate when a fact-finder misunderstood a party or has made an error, not of reasoning, but of apprehension. Flowers v. Goldman, Sachs, & Co., 865 F.Supp 453 (N.D. Ill. 1994).

In its Motion for Reconsideration, Employer avers the undersigned should reconsider the prior Decision and Order. Essentially, Employer argues that Claimant did not meet his burden of proof regarding Dr. Marks's first audiogram. As a result, Employer argues the undersigned should not have averaged the results of Dr. Mark's two (2) audiograms. Although Employer disputes the findings and conclusions, Employer offers no logical or rational explanation for alternative findings.

In the Decision and Order, the undersigned specifically found both audiograms performed by Dr. Marks's credible. In light of this simple fact, Employer's argument is meritless. As previously stated, it is within the administrative law judge's authority to determine the amount of hearing loss by averaging the results of the audiograms if there is more than one credible audiogram. Steevens v. Umpqua River Navigation, 35 BRBS 129, 133 (2001). The Fourth Circuit case upon which Employer relies does not disturb the administrative law judge's authority to average the results of credible audiograms in order to determine the **extent** of a claimant's disability. Ceres Marine Terminals, Inc. v. Director, OWCP, 656 F.3d 235 (4th Cir. 2011). In Ceres Marine Terminals, the Fourth Circuit held an ALJ cannot average the results of two audiograms "to find that a disability **exists**," where one audiogram yielded a "zero" result. Ceres Marine Terminals, 656 F.3d at 241 n. 2 (4th Cir. 2011) (emphasis added); See Decision and Order, pp. 26-27.

I find Employer's Motion for Reconsideration fails to establish the undersigned has made an error, not of reasoning, but of apprehension. The issue Employer addresses in its Motion for Reconsideration was carefully, thoughtfully, and cautiously considered in the Decision and Order. Employer has presented no

new evidence or legal theory which was not, nor could not, have been advanced earlier. Employer simply re-argues the contentions previously made and considered in the Decision and Order. Accordingly, I find no reason to depart from the findings and conclusions issued in the Decision and Order.

ORDERED this 21st day of November, 2011, at Covington, Louisiana.

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LEE J. ROMERO, JR.
Administrative Law Judge