

KEITH LABIT)	
)	
Claimant-Respondent)	
)	
v.)	
)	
BLUE MARINE SECURITY, LLC)	DATE ISSUED: 04/16/2010
)	
and)	
)	
LOUISIANA WORKERS')	
COMPENSATION CORPORATION)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

Appeal of the Decision and Order of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

Louis B. Koerner, Jr. (Koerner Law Firm), New Orleans, Louisiana, for claimant.

David K. Johnson (Johnson, Stiltner & Rahman), Baton Rouge, Louisiana, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order (2007-LHC-2186) of Administrative Law Judge Patrick M. Rosenow 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).

This case is before the Board for a second time. Claimant was working as a guard aboard a ship when he was exposed to a substance which caused him to have a seizure and lose consciousness. Employer provides security guards, at the request of a vessel or its shipping agent, to foreign vessels entering the Mississippi River. Guards are required on certain vessels pursuant to regulations issued by the Department of Homeland Security. Such guards must be aboard ships at all times during their anchorage in order to ensure compliance with requirements of the Customs Service, the Immigration and Naturalization Service, and the Coast Guard. Following his injury, claimant's attempts to return to work were unsuccessful and he sought benefits under the Act.

The parties agreed to bifurcate the issue of coverage and, as the pertinent facts were not in dispute, filed motions for summary decision. The administrative law judge found that, although claimant was a security guard at the time of the injury, he is not excluded from the Act's coverage pursuant to Section 2(3)(A), 33 U.S.C. §902(3)(A), because his work was performed aboard a vessel and he was subject to the hazards of the sea.

Employer appealed this decision. In its decision, the Board noted that claimant's duties did not confine him, physically and by function, to an office or other administrative area on land. Rather, his duties were performed on vessels on navigable waters. Thus, the Board held that claimant is not the type of security officer intended to be excluded pursuant to Section 2(3)(A) as he was exposed to traditional maritime hazards. *K.L. [Labit] v. Blue Marine Security, LLC*, 43 BRBS 45 (2009). The Board therefore affirmed the administrative law judge's finding that claimant is entitled to the Act's coverage pursuant to *Director, OWCP v. Perini North River Associates*, 459 U.S. 297, 15 BRBS 62(CRT) (1983). The Board remanded the case to the administrative law judge for findings regarding any remaining disputed issues and for the entry of a compensation order awarding or denying benefits.

On remand, the parties stipulated to all remaining issues. Decision and Order at 2. The administrative law judge accepted the stipulations, and thus awarded claimant ongoing temporary total disability benefits from December 8, 2005. Employer also accepted liability for medical benefits pursuant to Section 7, 33 U.S.C. §907, and is entitled to a credit for compensation previously paid, 33 U.S.C. §914(j).

On appeal, employer does not challenge the administrative law judge's award of benefits on remand. Rather, employer renews its contention that the administrative law judge erred in finding that claimant is not excluded from coverage under the Act pursuant

to Section 2(3)(A).¹ Employer raises no issues with regard to the administrative law judge's finding on remand that claimant is entitled to continuing temporary total disability benefits. The Board's previous decision on the issue raised constitutes the law of the case and employer has not contended that any exception to this doctrine applies in this case. *See, e.g., Boone v. Newport News Shipbuilding & Dry Dock Co.*, 37 BRBS 1 (2003); *Ravalli v. Pasha Maritime Services*, 36 BRBS 91 (2002), *denying recon. in* 36 BRBS 47 (2002). Therefore, we affirm the award of benefits.

Accordingly, the administrative law judge's Decision and Order on remand awarding temporary total disability benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

¹ As the Board remanded the case to the administrative law judge for resolution of any remaining issues, employer notes it was unable to appeal the Board's prior decision affirming the administrative law judge's finding on the issue of coverage to the United States Court of Appeals for the Fifth Circuit. *See* 33 U.S.C. §921(c); 20 C.F.R. §802.410.