

ALLEN K. REED)
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 Claimant-Petitioner)
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 v.)
)
 FALCON DRILLING COMPANY,) DATE ISSUED: 12/22/2005
 INCORPORATED)
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 and)
)
 THE OFFSHORE DRILLING COMPANY)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

Allen K. Reed, Carthage, Mississippi, *pro se*.

Frank A. Piccolo and Jack C. Benjamin, Jr. New Orleans, Louisiana, for employer/carrier.

Before: SMITH, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Benefits (2004-LHC-1129) of Administrative Law Judge Clement J. Kennington 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). In an appeal by a *pro se* claimant, we will review the administrative law judge's decision to determine if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are in accordance with law. If they are, they must be affirmed. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant began working for employer in 1995 when employer purchased drilling rigs from claimant's previous employer. Tr. at 26-27. Claimant filed an accident report stating that while he was scrubbing a deck on March 24, 1996,¹ he turned to dip the scrub brush into the bucket, and he hurt his back. Emp. Exs. 6-7. Employer voluntarily paid "maintenance and cure" benefits under the Jones Act, 46 App. U.S.C. §688, from April 1996 through July 1997. Emp. Ex. 8. On May 20, 2003, claimant filed a claim for benefits under the Longshore Act. The administrative law judge held a hearing on the sole issue of whether jurisdiction attached under the Jones Act or the Longshore Act. Decision and Order at 2. After discussing the evidence of record, the administrative law judge found that FALRIG 77, the rig upon which claimant was injured, is a "vessel in navigation." Decision and Order at 4. He then found that claimant satisfied the two-pronged test for determining whether an employee is a "member of a crew," as claimant's work contributed to the function of the vessel, and he had a substantial connection to FALRIG 77. Decision and Order at 4-5.

Claimant, without the assistance of an attorney, appeals. Employer responds, urging affirmance. Based on the undisputed evidence, in conjunction with the legal precedent, we affirm the administrative law judge's finding that claimant is a seaman under the Jones Act and is not covered by the Longshore Act. Therefore, we affirm his denial of benefits under the Longshore Act.

Section 2(3)(G) of the Act, 33 U.S.C. §902(3)(G), excludes from coverage "a master or member of a crew of any vessel." The term "member of a crew" is synonymous with the term "seaman" under the Jones Act. *Southwest Marine, Inc. v. Gizoni*, 502 U.S. 81, 26 BRBS 44(CRT) (1991). An employee is a "member of a crew" if: (1) his duties contributed to the vessel's function or to the accomplishment of its mission, *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 26 BRBS 75(CRT) (1991), and (2) he had a connection to a vessel in navigation that is substantial in terms of both its duration and its nature. *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995); *see also Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 31 BRBS 34(CRT) (1997). A worker has a substantial connection to a vessel when he spends at least 30 percent of his time in the vessel's service. *Chandris*, 515 U.S. at 371.

Initially, in order to determine whether claimant is a seaman, we must determine whether the administrative law judge properly found FALRIG 77 to be a "vessel" within

¹Although claimant notes a discrepancy among the daily drilling reports, the morning reports, and the accident report, as to the date of the injury, this discrepancy is irrelevant for purposes of determining whether claimant is a seaman under the Jones Act or a maritime employee under the Longshore Act, and it does not affect the outcome of this case. *See* Emp. Exs. 5-7, 9; Tr. at 59-60.

the meaning of the acts. The term “vessel,” for purposes of both the Jones Act and the Longshore Act, is defined in Section 3 of the Rules of Construction Act, 1 U.S.C. §3 (previously codified at the Revised Statutes of 1873, 18 Stat. pt.1, p.1). *Stewart v. Dutra Constr. Co., Inc.*, 543 U.S. ___, 125 S.Ct. 1118, 1124, 39 BRBS 5, 8(CRT) (2005). This section states:

The word ‘vessel’ includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

1 U.S.C. §3; *see Stewart*, 125 S.Ct. at 1124, 39 BRBS at 8(CRT). In *Stewart*, where the issue was whether the *Super Scoop*, a massive floating platform with a suspended clamshell bucket used to dredge silt from the floor of the Boston Harbor, was a “vessel,” the Supreme Court explained that the Section 3 definition merely codified the meaning the term acquired in general maritime law. The Court stated that, prior to the passage of the Jones and Longshore Acts, a dredge was considered a “vessel.” *Stewart*, 125 S.Ct. at 1124-1126, 39 BRBS at 8-10(CRT). Moreover, it acknowledged that, while the definition “sweeps broadly,” there is a limit to what is considered a “vessel” because:

a watercraft is not “capable of being used” for maritime transport in any meaningful sense if it has been permanently moored or otherwise rendered practically incapable of transportation or movement.

Stewart, 125 S.Ct. at 1127, 39 BRBS at 10-11(CRT). Accordingly, as a dredge serves “a waterborne transportation function” because in performing its work it carries machinery, equipment and crew over water, the Court held that the *Super Scoop* is a “vessel” within the purview of the Jones and Longshore Acts. *Id.*, 125 S.Ct. at 1126, 1129, 39 BRBS at 9, 12(CRT). The dredge’s limited power of self-propulsion, or lack thereof, is not determinative in ascertaining whether it is a “vessel.” *Stewart*, 125 S.Ct. 1118, 39 BRBS 5(CRT); *see also Ellis v. U.S.*, 206 U.S. 246 (1907); *Holmes v. Atlantic Sounding Co., Inc.*, 429 F.3d 174 (5th Cir. 2005); *Offshore Co. v. Robison*, 266 F.2d 769 (5th Cir. 1959); *Perrin v. C.R.C. Wireline, Inc.*, 26 BRBS 76, 78 n.1 (1992); *McCullough v. Marathon Letourneau Co.*, 22 BRBS 359, 363 (1989).

Although the administrative law judge did not have the benefit of the Supreme Court’s decision in *Stewart* when rendering his decision in this case, his finding that FALRIG 77 is a vessel in navigation comports with this law. The administrative law judge stated that FALRIG 77 is a floating structure with “the ability to be moved or towed from place to place on a regular basis.” Decision and Order at 4. That is, it is capable of being used as transportation on water. Mr. Pellegrin, the Vice President for Human Resources, testified on employer’s behalf about the company, the rig and

claimant's job duties.² Tr. at 18-42. Claimant did not dispute any of this testimony. Tr. at 59-61. Mr. Pellegrin explained that employer is a marine drilling contractor hired by operators to drill oil and gas wells. Employer owns submersible rigs, offshore jack-ups and in-land barge rigs. Claimant was assigned to FALRIG 77, a submersible rig, with legs and pontoons, used to drill wells off the coast of Texas and Louisiana in the Gulf of Mexico. Mr. Pellegrin stated that FALRIG 77 is towed to the drilling location by tugboat, carrying equipment, supplies and personnel, and that crew members eat and sleep on the rig, working 14-day or 7-day shifts. Emp. Exs. 2-4; Tr. at 21-25. Based on the undisputed facts of this case, we hold that the administrative law judge properly concluded that FALRIG 77 is used as a means of transportation over water and, thus, is a "vessel in navigation." *Stewart*, 125 S.Ct. at 1127, 39 BRBS at 10(CRT).³

Having determined that FALRIG 77 is a vessel, we next address whether the administrative law judge properly found that claimant had a substantial relationship to FALRIG 77 and whether his duties on board contributed to the function of the vessel. *See Papai*, 520 U.S. at 555, 31 BRBS at 37(CRT); *Chandris*, 515 U.S. at 368; *Lacy v. Southern California Ship Services*, 38 BRBS 12 (2004). Claimant worked for employer as a floorhand and a crane operator. Mr. Pellegrin explained that the tasks of a floorhand included performing essential tasks of the rig by making the pipe connections during drilling operations, and a crane operator uses a crane to move heavy equipment and supervises the roustabouts who hook the pipes to the crane. Mr. Pellegrin testified that all personnel on the rig worked together to further the mission of the rig to drill wells. He stated that claimant worked on the offshore rig 100 percent of his time, and he performed no land-based duties. Tr. at 24, 29-36. Moreover, he testified that at the time of claimant's injury, FALRIG 77 was contracted to drill a well, and the contract between the operator and employer required a specific number of employees to form the crew complement. Claimant filled one of those contract positions. Emp. Ex. 2; Tr. at 37-38. The administrative law judge found that claimant performed the vessel's work of drilling wells, and he found that claimant had a substantial connection with FALRIG 77, as he worked 100 percent of the time on that rig. Thus, the administrative law judge concluded that claimant satisfied the two-prong *Chandris* test and is a member of a crew excluded from the Act's coverage. Decision and Order at 4-5.

²Although the administrative law judge did not attribute the testimony to Mr. Pellegrin, it is clear he cited to Mr. Pellegrin's testimony in setting forth the facts. Decision and Order at 2-3.

³The Supreme Court held that a watercraft need not be in motion to qualify as a vessel "in navigation." *Stewart*, 125 S.Ct. at 1128, 39 BRBS at 11(CRT); *Chandris*, 515 U.S. at 363, 373-374. Therefore, it is irrelevant whether FALRIG 77 was anchored for drilling or was being towed at the time of claimant's injury.

The administrative law judge's finding is supported by substantial evidence, and the evidence on which he relied is uncontradicted. Because claimant's duties as a crane operator and a floorhand furthered the mission of the rig to drill wells in the Gulf of Mexico, and because claimant worked 100 percent of his time on FALRIG 77, giving him a substantial connection to the rig in both duration and nature, we affirm the administrative law judge's finding that claimant, as a "member of a crew," is excluded from coverage under the Longshore Act pursuant to Section 2(3)(G). *Uzdavines v. Weeks Marine, Inc.*, 37 BRBS 45 (2003), *aff'd*, 418 F.3d 138, 39 BRBS 47(CRT) (2^d Cir. 2005); *Perrin*, 26 BRBS 76.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge