

BRB No. 98-471

JONATHAN C. BURAS, Sr. )  
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 Claimant-Respondent ) DATE ISSUED:  
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 v. )  
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 NEWMAN CRANE SERVICE, )  
 INCORPORATED )  
 )  
 and )  
 )  
 LOUISIANA WORKERS' )  
 COMPENSATION CORPORATION )  
 )  
 Employer/Carrier- )  
 Petitioners ) DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of James W. Kerr, Jr.,  
Administrative Law Judge, United States Department of Labor.

J. Michael Stiltner, Baton Rouge, Louisiana, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BROWN and  
McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Granting Benefits (97-LHC-814) of  
Administrative Law Judge James W. Kerr, Jr., 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 findings of fact and conclusions of law of the  
administrative law judge which are rational, supported by substantial evidence, and in  
accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359  
(1965); 33 U.S.C. §921(b)(3).

Claimant, a heavy equipment mechanic and crane operator, was injured on November 19, 1993, while loading a portable crane on an offshore vessel. He was struck under his left arm by a piece of the boom and fell four or five feet to the ground, landing on his right side. After seeking medical treatment, claimant was returned to light duty, but continued to complain of back pain. He was given extra help with heavy lifting, but eventually had to quit because he alleged he could not perform his job. Claimant sought permanent total disability benefits under the Act.

In his Decision and Order, the administrative law judge found that claimant reached maximum medical improvement on November 2, 1995, and that surgery is not reasonable or necessary. In addition, the administrative law judge found that claimant established that he cannot return to his previous employment due to his work-related injury. The administrative law judge also found that claimant was totally disabled for the period of time he worked after his injury because he worked in spite of excruciating pain and diminished strength. Lastly, the administrative law judge found that employer failed to establish the availability of suitable alternate employment, and thus awarded claimant continuing permanent total disability benefits under the Act.

On appeal, employer contends that the administrative law judge erred in finding that suitable alternate employment is not established based on the dispatcher position identified in the labor market survey as it is within claimant's restrictions and employer established that there were a number of dispatcher positions generally available in the relevant community. Claimant did not respond to this appeal.

Employer contends that the administrative law judge erred in finding that suitable alternate employment is not established as it identified both a specific position as a dispatcher and a general range of dispatcher positions, which are within claimant's physical limitations. As the administrative law judge found that claimant established that he is unable to perform his usual work, the burden shifted to employer to demonstrate the availability of realistic job opportunities within the geographic areas where claimant resides, which the claimant, by virtue of his age, education, work experience, and physical restrictions, is capable of performing. *New Orleans (Gulfwide) Stevedores, Inc. v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981). The United States Court of Appeals for the Fifth Circuit has stated that an employer can meet its burden of establishing the availability of suitable alternate employment by demonstrating the existence of only one specific job opportunity, and the general availability of other suitable positions, where "an employee may have a reasonable likelihood of obtaining such a single employment opportunity under appropriate circumstances." *P & M Crane Co. v. Hayes*, 930 F.2d 424, 24 BRBS 116 (CRT), *reh'g denied*, 935 F.2d 1293 (5th Cir. 1991). Such circumstances could exist where the employee is highly skilled, the job relied upon by employer is specialized, and the number of workers with suitable qualifications is small. *Id.*, 930 F.2d at 431, 24 BRBS at 122 (CRT).

In the present case, the administrative law judge rejected six of the positions identified in the labor market survey, as they did not fall within the restrictions placed on claimant by Dr. Billings.<sup>1</sup> He then reviewed the remaining specific position identified in the labor market survey, that of dispatcher, which required the employee to maintain telephone and audio communications contact, dispatch vessels, cargo, and personnel, and maintain office files. The position included some clerical work. The administrative law judge found that this single position did not establish suitable alternate employment under the standard of *P & M Crane* as claimant is not especially skilled for the position. Decision and Order at 18. The administrative law judge noted that claimant can read and write at about the 7th grade level, but has trouble with his spelling and understanding certain words. Mr. Crane, the vocational counselor, noted in his testimony that claimant does not have any experience working in an office, maintaining office files or doing clerical work. Tr. at 125. As this finding is rational, we affirm the administrative law judge's finding that claimant is not "highly skilled" for the dispatcher position, and thus his finding that the single dispatcher position is insufficient to establish suitable alternate employment pursuant to *P & M Crane*. See generally *Holland v. Holt Cargo Systems, Inc.*, 32 BRBS 179 (1998).

Moreover, although Mr. Crane also testified to dispatcher positions which meet claimant's physical restrictions in the relevant geographic region and which have continued to remain available since he performed a labor market survey in May 1996, Tr. at 109-110, the administrative law judge found that the clerical requirements of the position of dispatcher, which is common to the job, renders this category of jobs unsuitable given claimant's education and work experience.<sup>2</sup> Therefore, we reject employer's contention that the administrative law judge erred in finding that employer did not establish the availability of suitable alternate employment, and we affirm the award of permanent total disability benefits.

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<sup>1</sup>This finding is not contested by employer on appeal.

<sup>2</sup>The administrative law judge's failure to specifically discuss the general availability of dispatcher positions is harmless given his finding that the one specific job is not especially suitable for claimant and Mr. Crane's testimony that dispatcher positions are generally similar to the specific opening. Tr. at 110.

Accordingly, the Decision and Order of the administrative law judge awarding benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge