

ROBERT CORVASCE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED:_____
SEA-LAND SERVICE,	)	
INCORPORATED	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Edith Barnett, Administrative Law Judge, United States Department of Labor.

Robert D. Campbell, Colonia, New Jersey, for claimant.

Francis M. Womack (Lawrie, Cozier & Vivenzio), Mt. Arlington, New Jersey, for self-insured employer.

Before: BROWN, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (94-LHC-3069) of Administrative Law Judge Edith Barnett 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).

Claimant works as a mechanic for employer. On June 16, 1993, he slipped on a lift and then on oil and fell, injuring his back. Tr. at 9-10. He felt immediate pain and could not straighten his left leg, and he was taken by ambulance to the hospital. Claimant returned to his usual work in October 1993.<sup>1</sup> Tr. at 13, 20. Employer paid temporary total disability

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<sup>1</sup>Claimant testified that he does his job to the best of his ability. Although he is unable to do all of the lifting he could previously do, and often suffers pain, his co-workers

benefits from June 17 through October 3, 1993. Decision and Order at 2. Claimant filed a claim for permanent partial disability benefits under the schedule for injury to his legs.

The administrative law judge found that claimant suffered a back injury and not an injury to his legs; therefore, he found that claimant is not entitled to a scheduled award. The administrative law judge also found that claimant is not entitled to an award under Section 8(c)(21), 33 U.S.C. §908(c)(21), because claimant did not establish a loss of wage-earning capacity. Decision and Order at 9-10. Claimant appeals only the denial of scheduled benefits, and employer responds, urging affirmance.

Claimant contends the administrative law judge erred in denying benefits because the medical evidence establishes an injury to his legs. He also contends that *Long v. Director, OWCP*, 767 F.2d 1578, 17 BRBS 149 (CRT) (9th Cir. 1985), does not prevent him from obtaining benefits under the schedule for a separate injury to his legs. Employer disputes this argument, asserting that the administrative law judge's decision is supported by substantial evidence. Under the Act, if a claimant sustains an injury to an unscheduled member, which later results in an impairment to a scheduled member, he is entitled only to compensation under Section 8(c)(21). *Long*, 767 F.2d at 1583, 17 BRBS at 154 (CRT);<sup>2</sup> *Burkhardt v. Bethlehem Steel Corp.*, 23 BRBS 273 (1990); *Andrews v. Jeffboat, Inc.*, 23 BRBS 169 (1990); *Grimes v. Exxon Co., U.S.A.*, 14 BRBS 573 (1981).

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help him out, and employer has had no complaints about his performance. Tr. at 22, 25-26, 40-41, 44-45.

<sup>2</sup>The United States Court of Appeals for the Ninth Circuit reasoned that the New York workers' compensation statute, on which the Longshore Act is based, had been interpreted to preclude recovery under the schedule for an impairment to a scheduled member caused by an injury to a member not specified under the schedule. Thus, the court concluded that Congress is presumed to have enacted the same construction of the statute. *Long*, 767 F.2d at 1581-1582, 17 BRBS at 152 (CRT).

After reviewing the record, we conclude it contains substantial evidence supporting the administrative law judge's decision that claimant sustained an injury to his back and not to his legs. The opinions of Drs. Dennis, Gallick, Horwitz and Lospinuso on which the administrative law judge relied establish that claimant sustained an injury only to his back, although claimant experiences radiating pain in his legs.<sup>3</sup> Cl. Exs. 7, 12, 14-15; Emp. Ex. 8-9. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *Perini Corp. v. Heyde*, 306 F.Supp. 1321 (D.R.I. 1969). Benefits for back injuries are awarded under Section 8(c)(21) of the Act. As the administrative law judge found that claimant did not establish a loss of wage-earning capacity, and claimant has not appealed this finding, claimant is not entitled to benefits under Section 8(c)(21). Therefore, we affirm the denial of unscheduled benefits. Additionally, as claimant did not sustain an injury to his legs, he is not entitled to benefits under the schedule. Moreover, in accordance with *Long*, any impairment to claimant's legs resulting from his back injury is not separately compensable under the schedule. *Long*, 767 F.2d at 1582, 17 BRBS at 152 (CRT). Therefore, we also affirm the denial of scheduled benefits.

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

SO ORDERED.

JAMES F. BROWN  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge

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<sup>3</sup>The administrative law judge discredited Dr. Horwitz's findings that claimant has a ratable impairment in each leg in light of the contrary findings of Dr. Gallick.