

JAMES A. LADNER)		
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Claimant-Respondent)		
)		
v.)	DATE ISSUED:	
)		
TILLEY CONSTRUCTORS AND)		
ENGINEERS, INCORPORATED)		
)		
Employer-Petitioner))	DECISION and
ORDER			

Appeal of the Decision and Order of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Tommy Dulin (Dulin and Dulin, Ltd.), Gulfport, Mississippi, for claimant.

G. Martin Warren, Jr. (Eaton and Cottrell, P.A.), Gulfport, Mississippi, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (95-LHC-0678) of Administrative Law Judge Richard D. Mills finding coverage 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant worked for employer as an iron worker engaged in the renovation and conversion of a cruise ship into a dockside casino at Gulfport, Mississippi. Claimant testified that he was welding pad eyes onto the hull of this ship for permanent docking when a crescent wrench he was using to secure cable clamps slipped, causing him to fall forward, injuring his lower back. Claimant continued to work, informed his supervisor of

the injury the next day, and on June 6, 1994 notified the company safety director that he had hurt his back.¹

On July 8, 1994, claimant filed a claim for benefits under the Act, seeking compensation for disability resulting from a ruptured lower lumbar disk, left leg pain and loss of reflexes in his left ankle. CX-1. The parties stipulated that claimant was injured during the course of his employment, but the issue of coverage was unresolved. Jt.X-1. Employer, which did not have Longshore insurance coverage at the time claimant was injured, voluntarily paid claimant benefits based on the compensation rate set forth in the Mississippi workers' compensation statute, Tr. at 8, and took the position before the administrative law judge that this case involved a state claim because claimant was injured not over navigable waters but at its office complex on Creosote Road in Gulfport. See Tr. at 7-8. The administrative law judge credited the testimony of claimant and a co-worker that the injury occurred on the ship on navigable waters, and he thus concluded that claimant's injury is covered by the Act. 33 U.S.C. §§902(3), 903(a).

Employer appeals the administrative law judge's finding of coverage, asserting that the administrative law judge erred in crediting claimant's testimony over contrary evidence that claimant sustained an injury on land. Employer contends that the testimony, both of claimant and his corroborating co-worker, Lewis Allen, is simply incredible due to inconsistencies, and provides insufficient evidence to support the administrative law judge's finding of coverage.²

In order to be covered under the Act, claimant must meet both the "status" requirement of Section 2(3) and the situs requirement of Section 3(a). 33 U.S.C. §§902(3), 903(a). Section 2(3) provides that "maritime employees" are due covered by the Act, while Section 3(a) provides coverage for disability resulting from "an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an

¹The parties stipulated that the injury occurred either on May 25, 1994, as alleged by claimant, or on May 26, 1994, as alleged by employer.

²Employer raises no other issue pertaining to coverage. Nor does claimant assert that, in any event, his work at the Tilley yard on Creosote Road near the Industrial Seaway meets the Act's situs requirement as an "adjoining area" pursuant to Section 3(a), 33 U.S.C. §903(a).

employer in loading, unloading, repairing, dismantling, or building a vessel)." 33 U.S.C. §903(a) (1988). Coverage under Section 3(a) is determined by the nature of the place of work at the moment of injury. See *Melerine v. Harbor Construction Co.*, 26 BRBS 97 (1992); *Alford v. MP Industries of Florida*, 16 BRBS 261 (1984). Where the injury occurs on actual navigable waters, coverage under both Sections 2(3) and 3(a) is established. *Director, OWCP v. Perini North River Associates*, 459 U.S. 297, 323-324, 15 BRBS 62, 80-81 (CRT) (1983); see also *Crapanzano v. Rice Mohawk, U.S. Construction Co. Ltd.*, 30 BRBS 81, 82 (1996).

Claimant's testimony provides substantial evidence to support the administrative law judge's finding of coverage in this instance because it establishes that claimant was injured over navigable waters. See *Kennedy v. American Bridge Co.*, 30 BRBS 1, 3-4 (1996). Claimant testified that, in order to help secure the ship so that it could be converted into a dockside casino, he was required to attach pad eyes to the hull of the ship. Heavy steel cable was then threaded through the eyes and connected to a "mooring structure," which consisted of three 18-inch pipes capped off by a half-inch plate topped by a cleat. Tr. at 21. Claimant further testified that he was sitting on a "12-inch scaffold board [which was resting on the mooring structure and on two ropes that were tied to the ship]... hanging out over the water" using a wrench to tighten clamps on the cable which was attached to the pad eye when the wrench slipped. Claimant started to fall forward and he injured his back when he reached out to stop his fall. Tr. at 22-24. Claimant's co-worker, Mr. Allen, corroborated claimant's version of the injury. Employer proffered evidence contradicting claimant's testimony and supporting its contention that claimant's injury occurred in the yard.

We hold that the administrative law judge acted within his discretion in crediting claimant's testimony. "Weighing the relevant evidence and assessing witness credibility are classic functions of the fact finder." *ITO Corp. v. Director, OWCP*, 883 F.2d 422, 425, 22 BRBS 126, 128 (CRT)(5th Cir. 1989); see also *Zbosnik v. Badger Coal Co.*, 759 F.2d 1187, 1190 (4th Cir. 1985). The administrative law judge reviewed all of the record evidence and accounted for the inconsistencies between claimant's testimony and that of employer's witnesses, see Decision and Order at 5, and rationally credited claimant's testimony which outlined the facts of his injury. See *Simonds v. Pittman Mechanical Contractors, Inc.*, 27 BRBS 120, 126 (1993), *aff'd sub nom. Pittman Mechanical Contractors, Inc. v. Director, OWCP*, 35 F.3d 122, 28 BRBS 89 (CRT) (4th Cir. 1994). Because questions of witness credibility are for the administrative law judge as the trier-of-fact, *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), and as employer has raised no reversible error in the administrative law judge's assessment of the witnesses' credibility, we affirm the credibility determinations in this case as they are not inherently incredible or patently unreasonable. *Cordero v. Triple A Machine Shop*,

580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). We therefore affirm the administrative law judge's finding that claimant's injury occurred over navigable waters. Claimant is therefore covered by the Act. *Perini*, 459 U.S. at 323-324, 15 BRBS at 80-81 (CRT).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge