BRB No. 00-0179

HUEY PERRIN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
H.P. CONSULTANTS, INCORPORATED	)	DATE ISSUED: Oct. 18, 2000
	)	
and	)	
	)	
LOUISIANA WORKERS' COMPENSATION CORPORATION	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

Warren A. Perrin (Perrin, Landry, deLaunay & Durand), Lafayette, Louisiana, for claimant.

Ted Williams (Egan, Johnson & Stiltner), Baton Rouge, Louisiana, for employer/carrier.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (99-LHC-400) of Administrative Law Judge Lee J. Romero, 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, who has a Bachelors Degree in Petroleum Engineering, incorporated an

oilfield consulting business in 1991. He was working under a master service subcontracting agreement with Rowan Petroleum when he was injured on November 7, 1996. Claimant alleged that he slipped and fell on his left shoulder while attempting to walk across the roof of a "shaker house" which was located on a "jack-up" rig. He was eventually diagnosed with a torn rotator cuff which was repaired by surgery on May 12, 1997. Claimant returned to his former work and sought temporary total disability benefits under the Act for the period from March to October 1997.

In reviewing whether claimant is covered under the Act, the administrative law judge found that the situs requirement is satisfied, 33 U.S.C. §903(a), as claimant was injured on the jack-up rig *Juneau*, which is a vessel. In addition, the administrative law judge reviewed the evidence to determine whether claimant is excluded from coverage as a member of a crew. *See* 33 U.S.C. §902(3)(G). He found that claimant's duties aboard the *Juneau* contributed to the function of the vessel. In addition, he found that claimant spent at least 30 percent of his time aboard the rigs owned by Rowan Companies, and thus had a substantial connection to a fleet of vessels, and that the nature of claimant's work is primarily sea-based. Thus, the administrative law judge concluded that claimant was a member of the *Juneau*'s crew and is excluded from coverage under the Act.

On appeal, claimant contends that the administrative law judge erred in finding him to be a member of a crew, and thus, that he is excluded from coverage under the Act. Employer responds, urging affirmance of the administrative law judge's decision.

The sole issue presented by the instant appeal is whether the administrative law judge erred in finding that claimant was a "member of a crew" of a vessel, and thus excluded from coverage under the Act. Section 2(3)(G) of the Act excludes from coverage "a master or member of a crew of any vessel." 33 U.S.C. §902(3)(G). The United States Supreme Court has held that a "seaman" under the Jones Act is the same as a "master or member of a crew of any vessel" under the Longshore Act. *See McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 26 BRBS 75 (CRT)(1991); *see also Chandris v. Latsis*, 515 U.S. 347 (1995). An employee is a member of a crew if: (1) he was permanently assigned to or performed a substantial part of his work on a vessel or fleet of vessels; and (2) his duties contributed to the vessel's function or operation. *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 31 BRBS 34 (CRT)(1997). Contrary to claimant's contention, he need not be aboard the vessel to aid in its navigation; rather, "the key to seaman status is an employment-related connection to a vessel in navigation .... It is not necessary that a seaman aid in navigation or contribute to the transportation of the vessel, but a seaman must be doing the ship's work." *Wilander*, 498 U.S. at 354, 26 BRBS at 83 (CRT). The employee must have a connection to a vessel that is substantial in terms of both its nature and duration in order to separate sea-based workers entitled to coverage under the Jones Act from land-based workers with only a transitory or sporadic connection to a vessel in navigation. *Chandris*, 515 U.S. at 368; *see also Smith v.*

Alter Barge Line, Inc., 30 BRBS 87 (1996).

In the instant case, the administrative law judge's finding that the jack-up rig, the *Juneau*, is a "vessel" is unchallenged on appeal. *See generally Offshore Co. v. Robison.*, 266 F.2d 769 (5th Cir. 1959). The administrative law judge further determined that claimant had a substantial connection to a vessel both in terms of duration and nature. In *Papai*, the Supreme Court stated:

> For the substantial connection requirement to serve its purpose, the inquiry into the nature of the employee's connection to the vessel must concentrate on whether the employee's duties take him to sea. This will give substance to the inquiry both as to the duration and nature of the employee's connection to the vessel and be helpful in distinguishing land-based from sea-based employees.

Papai, 520 U.S. at 555, 31 BRBS at 37 (CRT); *see also Chandris*, 515 U.S. at 368. In *Papai*, the Court ruled that a painter who was hired for one day to paint a tug boat was not a seaman, as his assignment on the day of the injury involved a transitory and sporadic connection to the vessel. *Papai*, 520 U.S. at 559-560, 31 BRBS at 39 (CRT); *see also Cabral v. Healy Tibbits Builders*, 128 F.3d 1289, 32 BRBS 41(CRT)(9th Cir. 1997), *cert. denied*, 118 S.Ct. 1827 (1998). In *Foulk v. Donjon Marine Co., Inc*., 144 F.3d 252 (3d Cir. 1998), a case which concerned a commercial diver hired for 10 days to work on a crane barge used for the construction of an artificial reef, the United States Court of Appeals for the Third Circuit held that the employee's connection to the vessel was substantial in nature. Recognizing that the employee's work was necessary for the successful completion of the vessel's mission, the court held that commercial divers are protected by the Jones Act as they are regularly exposed to the perils of the sea. *Id.*, 144 F.3d at 258-259. In *Hansen v. Caldwell Diving Co.*, 33 BRBS 129 (1999), the Board reviewed a case where the claimant's work as a commercial diver required him to work aboard a vessel for approximately four weeks for the purpose of installing underwater cable, which was the vessel's mission. The Board affirmed the administrative law judge's finding the claimant's connection to a vessel was substantial in nature and duration, and thus, affirmed the administrative law judge's conclusion that claimant was a "member of a crew" of a vessel under Section 2(3)(G), and excluded from coverage under the Act. *Hansen*, 33 BRBS at 132.

On appeal, claimant primarily contends that his connection to the *Juneau* was not substantial in nature, as his duties as a petroleum engineer contributed to the drilling for oil and gas and in no way contributed to the "traditional maritime work" of "members of a crew." However, as the above cases illustrate, in order to be considered a "member of a crew," a claimant's duties need only contribute to the vessel's mission, and the claimant need not be involved in the operation of the vessel itself. Claimant, as the company representative, was required by his employment contract to ensure that the drilling program was effectively

implemented, and he would report to the main office in Houston if proper implementation did not occur.[1] Thus, as claimant's duties as an oil drilling consultant directly contributed to the

[1]Specifically, claimant stated in an affidavit dated June 25, 1998, that the following were his exclusive job responsibilities:

1. Communicate the work plan of the customer to the on-site Contract

personnel;

2. Communicate operational results as compared to the work plan provided by your customer;

3. Communicate operation problems to the customer, make suggestion as to possible solution and make changes to the work plan as directed by customer to solve problems;

4. Monitor compliance of government rules and regulation by all contractors on site;

5. Evaluate the performance of on-site contractors against the customer's work plan and communicate results to customer;

mission and function of the jack-up rig, that is, oil drilling, we affirm the administrative law judge's finding that claimant's connection with the *Juneau* was substantial in nature.[2]

> 6. Coordinate the logistics of transporting personnel and equipment to the job site as needed for the day to day operation;
> 7. All contractors on location are independent contractors and are individually responsible for the ways and means of performing each of their assigned jobs;
> 8. The Company Representative is not an extension of any of the contractors on location and does not share in any of their assigned tasks, he merely communicates to each contractor their individual role in the customer's work plan. Specifically the Company Representative is not a part of the rig crew or any other crew on location. He is an extension of the customer's staff on site.

Cl. Ex. 1.

[2]The administrative law judge found that claimant's duties as an oil drilling consultant on an offshore rig were inherently maritime in nature, and thus claimant must be considered a member of a crew. However, the Supreme Court has held that there is nothing inherently maritime about offshore drilling. *Herb's Welding v. Gray*, 470 U.S. 414, 17 BRBS 78 (CRT)(1985); *see also Munguia v. Chevron U.S.A., Inc.*, 999 F.2d 808, 27 BRBS 103(CRT), *reh'g en banc denied*, 8 F.3d 24 (5th Cir. 1993), *cert. denied*, 511 U.S. 1086 (1994). Thus,

we affirm the administrative law judge's finding that claimant's connection to the *Juneau* was substantial in nature on other grounds.

Claimant also contends that his connection to the *Juneau* was not substantial in duration. The Supreme Court adopted the rule of thumb that a worker who spends less than about 30 percent of his time in the service of a vessel in navigation is not a seaman. *Chandris*, 515 U.S. at 349. Claimant concedes that his schedule was seven days on the *Juneau* and seven days on shore. As the administrative law judge found, this establishes that claimant worked more than 30 percent of his time aboard the vessel. Moreover, prior to his accident, claimant had been working onboard the *Juneau* for approximately ten months. Contrary to claimant's contention, the administrative law judge appropriately looked to claimant's basic job assignment as it existed at the time of injury, and found that the length of claimant's attachment to the *Juneau*, and to three other jack-up rigs owned by *Rowan*, totaling 1 1/2 years, established that claimant's connection to employer's vessels was substantial in duration. *See Papai*, 520 U.S. at 548, 31 BRBS at 34 (CRT); *Hufnagel v. Omega Serv. Indus.*, 182 F.3d 340, 33 BRBS 97 (CRT)(5th Cir. 1999); *Shade v. Great Lakes Dredge & Dock Co.*, 154 F.3d 143, 33 BRBS 31 (CRT)(3d Cir. 1998), *cert. denied*, 119 S.Ct. 1142 (1999). As claimant's basic job assignments required him to be aboard the *Juneau* for more than 30 percent of the time, we reject claimant's contention that his connection with the *Juneau* was not substantial in duration. Consequently, we affirm the administrative law judge's finding that claimant was a member of the *Juneau*'s crew, and thus is excluded from coverage under the Act pursuant to Section 2(3)(G).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge