



BRB No. 15-0436

GLENN A. STEWART)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: <u>June 6, 2016</u>
)	
RIVERSIDE TECHNOLOGY,)	
INCORPORATED)	
)	
and)	
)	
TRANSPORTATION INSURANCE)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Order Granting Employer's Motion for Summary Decision and Order of Dismissal of Alan L. Bergstrom, Administrative Law Judge, United States Department of Labor.

Andrew Hanley (Crossley, McIntosh, Collier, Hanley and Edes, PLLC), Wilmington, North Carolina, for claimant.

Robert L. Bamdas (Schouest, Bamdas, Soshea & BenMaier, PLLC), Boca Raton, Florida, for employer/carrier.

MacKenzie Fallow (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BUZZARD, GILLIGAN and ROLFE, Administrative Appeals
Judges.
PER CURIAM:

Claimant appeals the Order Granting Employer's Motion for Summary Decision and Order of Dismissal (2015-LHC-00719) of Administrative Law Judge Alan L. Bergstrom 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 if they are rational, supported by substantial evidence, and 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 broke his right ankle on October 12, 2014, while working for employer as a fishery observer aboard the fishing vessel (F/V) *Big Eye*.¹ Claimant filed separate claims for benefits under the Federal Employees' Compensation Act (FECA), 5 U.S.C. §8101 *et seq.*, on October 15, 2014, and the Act, on November 19, 2014. The Director, Office of Workers' Compensation Programs (the Director), on December 8, 2014, accepted claimant's FECA claim and advised him to submit additional information if his injury prevented him from returning to work for more than 45 days. Since that time, the Office of Workers' Compensation Programs (OWCP) has paid several medical bills related to the treatment of claimant's work injury.

Employer filed a motion for summary decision with the administrative law judge as to the longshore claim on the ground that claimant is excluded from coverage pursuant to Section 3(b) of the Act, 33 U.S.C. §903(b). Employer maintained that claimant's work

¹Claimant began his work for employer as a Fishery Observer II on October 10, 2013. Employer was subcontracted by the National Maritime Fisheries Service, a division of the National Oceanic and Atmospheric Administration (NOAA), to provide scientific, technical, and management expertise and other services in support of research, planning, assessment, development, management, support and execution of NOAA's missions and activities. Claimant's work on board the F/V *Big Eye* was pursuant to the Fisheries Conservation Management Act (FCMA), 16 U.S.C. §1801 *et seq.*, which was enacted to govern marine fisheries management in United States waters. In particular, the FCMA established fishery information monitoring systems which, among other things, provided that the Secretary of Commerce may require commercial fishing vessels to have observers on board to monitor compliance with fishing regulations and document the vessel's catch and by-catch.

for employer occurred under the Fisheries Conservation Management Act (FCMA), 16 U.S.C. §1801 *et seq.*, which states that fishery observers, like claimant, are “deemed” federal employees subject to the FECA. In his Order, the administrative law judge, finding that claimant’s observer work renders him a federal employee for purposes of workers’ compensation under the FECA, granted employer’s motion and dismissed claimant’s longshore claim.

On appeal, claimant challenges the administrative law judge’s grant of summary decision and dismissal of his longshore claim. Employer and the Director each respond urging affirmance of the administrative law judge’s dismissal of claimant’s longshore claim. After consideration of the administrative law judge’s findings, the arguments raised on appeal, and the evidence of record, we hold that the administrative law judge’s dismissal of claimant’s claim is in accordance with law.

In determining whether to grant summary decision, the administrative law judge must determine, after viewing the evidence in the light most favorable to the non-moving party, whether there are any genuine issues of material fact and whether the moving party is entitled to summary decision as a matter of law. *Morgan v. Cascade General, Inc.*, 40 BRBS 9 (2006); *see also O’Hara v. Weeks Marine, Inc.*, 294 F.3d 55 (2^d Cir. 2002); *Brockington v. Certified Electric, Inc.*, 903 F.2d 1523 (11th Cir. 1990), *cert. denied*, 498 U.S. 1026 (1991); *Buck v. General Dynamics Corp.*, 37 BRBS 53 (2003); *Hall v. Newport News Shipbuilding & Dry Dock Co.*, 24 BRBS 1 (1990); 29 C.F.R. §18.72(a) (2015).

We reject claimant’s assertion that the administrative law judge erred in finding that he is a federal employee for purposes of a claim for workers’ compensation benefits. Section 3(b) of the Act provides:

No compensation shall be payable in respect of the disability or death of an officer or employee of the United States, or any agency thereof, or of any State or foreign government, or any subdivision thereof.

33 U.S.C. §903(b); *see, e.g., Keating v. City of Titusville*, 31 BRBS 187 (1997). In this case, employer and the Director presented evidence that claimant is a federal employee for the purposes of workers’ compensation benefits under the FECA. Specifically, Section 1881b(c) of the FCMA, states, in pertinent part, “an observer on a vessel and under contract to carry out the responsibilities of this chapter . . . shall be deemed to be a federal employee for the purpose of compensation under the [FECA],” 16 U.S.C. §1881b(c), and establishes that claimant’s work, which arose pursuant to the FCMA, *see n. 1, supra*, is that of a “federal employee” under the FECA and thus, of “an employee of the United States” for purposes of the Act. 33 U.S.C. §903(b). Moreover, claimant’s

FECA claim was accepted as compensable by the OWCP.² See 20 C.F.R. §10.115. The administrative law judge thus properly found that claimant was a federal employee precluded from coverage under the Longshore Act. See 33 U.S.C. §903(b); 16 U.S.C. §1881b(c). As a specific exclusion of the Act applies in this case, it is irrelevant that claimant's injury occurred upon the navigable waters of the United States. *Director, OWCP v. Perini North River Associates*, 459 U.S. 297, 324 & n.22, 15 BRBS 62, 80 & n.22(CRT) (1983).

The administrative law judge properly found, viewing the evidence in the light most favorable to claimant, the non-moving party, that this case does not present any genuine issues of material fact and that employer is entitled to a decision in its favor as a matter of law. *Morgan*, 40 BRBS 9. As claimant failed to establish that his injuries occurred within the coverage of the Act, we affirm the administrative law judge's denial of his claim for benefits under the Act.

Accordingly, we affirm the administrative law judge's Order Granting Employer's Motion for Summary Decision and Order of Dismissal.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

²In this respect, we reject claimant's contention that his FECA "claim was denied by the United States." The November 4, 2014 document to which claimant refers merely requested additional information. The claim was accepted on December 8, 2014, and OWCP has paid several medical bills related to the injury.