

ANDREW MCKINLEY)
)
 Claimant-Petitioner)

v)

ST. JAMES STEVEDORING COMPANY,)
)
 INCORPORATED)

DATE ISSUED: May 30, 2003

and)

LOUISIANA WORKERS')
 COMPENSATION CORPORATION)
)
 Employer/Carrier-)
 Respondents)

DECISION and ORDER

Appeal of the Decision and Order and Decision on Motion for Reconsideration of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

E. Robert Sternfels, Napoleonville, Louisiana, for claimant.

Travis R. LeBleu (Johnson, Stiltner & Rahman), Baton Rouge, Louisiana for employer/carrier.

Before: SMITH, McGRANERY and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order and Decision on Motion for Reconsideration (2001-LHC-3247) of Administrative Law Judge C. Richard Avery 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. *O=Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359

(1965); 33 U.S.C. ' 921(b)(3).

Claimant sustained an injury to his back on March 27, 2001, while working for employer as a deckhand aboard the BULK III, an unmotorized rig (a barge with a crane), situated in the Mississippi River. Claimant's duties on the BULK III entailed facilitating the loading and unloading of ships' cargo onto cargo barges on the Mississippi River. Claimant stated that because of his back pain he was unable to return to full duty, or subsequently, to the sedentary/light duty job offered by employer.

In his decision, the administrative law judge determined that the BULK III is a vessel in navigation, and that claimant was, at the time of his injury, a member of its crew as he had a substantial connection to the vessel. He thus concluded that claimant is excluded from coverage pursuant to Section 2(3)(G) of the Act, 33 U.S.C. §902(3)(G), and he denied benefits. Claimant's motion for reconsideration was summarily denied.

On appeal, claimant challenges the administrative law judge's denial of his claim for lack of coverage. Employer responds, urging affirmance.

Claimant argues that the facts establish that he has satisfied both the status and situs requirements of the Act and is therefore covered. 33 U.S.C. §§902(3) and 903(a). In particular, claimant asserts that his job duties were an integral and essential part of the loading and unloading of the vessels. These arguments, however, fail to address the issue dispositive of coverage in this case, *i.e.*, whether claimant is excluded from coverage as a member of a crew. Section 2(3) provides, in pertinent part, that:

The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker, *but such term does not include* –

(G) a master or member of a crew of any vessel;

33 U.S.C. §902(3)(G)(emphasis added). “[S]ome maritime workers may be Jones Act seamen performing a job specifically enumerated under the LHWCA.” *Southwest Marine, Inc. v. Gizoni*, 502 U.S. 81, 88, 26 BRBS 44, 47(CRT) (1991).

Moreover, while a claimant's duties may arguably fall within the broad language of Section 2(3) as an employee engaged in "maritime employment," such a claimant may nonetheless be excluded from coverage by the specific exceptions contained in Section 2(3). See *Daul v. Petroleum Communications, Inc.*, 32 BRBS 47 (1998), *aff'd*, 196 F.3d 611, 33 BRBS 193(CRT) (5th Cir. 1999); *King v. City of Titusville*, 31 BRBS 187 (1997). Consequently, if claimant herein is a "member of a crew" then the specific exclusion of Section 2(3)(G) applies.

Although claimant acknowledges that one issue "presented to the Court was whether the claimant working as a lead deckhand on a vessel on the Mississippi River, was a seaman," Claimant's Appellate Brief at 2, his brief does not address Section 2(3)(G) of the Act or allege any error in the administrative law judge's specific findings with regard to that provision, *i.e.*, that the BULK III is a vessel in navigation, and that claimant is a member of its crew. Claimant's petition for review and accompanying brief are thus inadequate to invite review of the pivotal determination in this case, *i.e.*, that claimant is a member of a crew. *Collins v. Oceanic Butler, Inc.*, 23 BRBS 227, 229 (1990); *Carnegie v. C & P Telephone Co.*, 19 BRBS 57, 58-59 (1986). Although claimant provided the Board with a discussion of the issues of status and situs, by failing to assert specific error in the administrative law judge's member of the crew finding he has waived any allegation of error in that finding. As it is unchallenged, the administrative law judge's finding that claimant was a member of a crew must be affirmed. See *Collins*, 23 BRBS 227; *West v. Washington Metropolitan Area Transit Authority*, 21 BRBS 125 (1988); see also 20 C.F.R. §802.211(b). As a member of a crew, claimant is excluded from the Act's coverage; thus the administrative law judge's denial of the instant claim for lack of coverage is affirmed. 33 U.S.C. §902(3)(G).

Accordingly, the administrative law judge's Decision and Order and Decision on Motion for Reconsideration are affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY

Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge