UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-41221

(Summary Calendar)

Marathon LeTourneau Company and National Union Fire Insurance Company,

Petitioners,

versus

Director, Office of Workers' Compensation Programs, United States Department of Labor, and Robert V. Baker,

Respondents.

On Petition for Review of a Final Order of the Benefits Review Board (92-2554)

(July 25, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:[*]

Marathon LeTourneau Company ("Marathon") petitions for review of a final order of the Benefits Review Board ("BRB") reversing an administrative law judge's ("ALJ") denial of Robert Baker's claim for disability benefits under the Longshore and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. §§ 901-950 (1988). We affirm.

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[*] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Baker worked for Marathon for approximately twenty-seven years as a mechanic. For most of that time, Marathon was in the business of fabricating and constructing offshore oil rigs, and Baker's job duties included assembling and repairing gear boxes and other machinery on and for the rigs. In recent years, however, Marathon has shifted its operations from the construction of oil rigs to the fabrication of bridge beams. As part of this reorganization, Marathon transferred Baker to its "paint and clean" department. Although his primary job duties changed, Baker remained responsible for making service calls on the rigs when the need arose. Shortly after his transfer to the "paint and clean" department, Baker injured his leg while bolting a gusset to a bridge beam.

Baker's physician concluded that because Baker had suffered a thirty-percent loss of the use of his lower extremities, Baker would not be able to return to his job at Marathon. For approximately two years, Baker received temporary total disability benefits under the LHWCA. For approximately the next two years, Baker received permanent partial disability benefits under the LHWCA. When Baker later applied for permanent total disability benefits under the LHWCA, Marathon contested Baker's application, and an ALJ denied Baker's claim. Baker appealed to the BRB, which reversed the ALJ's decision. Marathon petitions this Court for review of the BRB's order, contending that substantial evidence supported the ALJ's findings.

"In reviewing the decisions of the BRB, the scope of this court's review is relatively narrow." *Boland Marine & Mfg. Co. v.*

Rihner, 41 F.3d 997, 1002 (5th Cir. 1995). "In examining the orders of the BRB our role is limited to `considering errors of law and making certain that the BRB adhered to its statutory standard of review of factual determinations, that is, whether the ALJ's findings of fact are supported by substantial evidence and consistent with the law.'" *Id.* (quoting *Miller v. Central Dispatch, Inc.*, 673 F.2d 773, 778 (5th Cir. Unit A 1982)).

Marathon argues that the BRB erroneously set aside the ALJ's determination that Baker was not "engaged in maritime employment." To be covered under the LHWCA, a claimant must satisfy two requirements. Under the first, referred to as the "status" requirement, a claimant must be an "employee," which the LHWCA defines as "any person engaged in maritime employment." 33 U.S.C. § 902(3) (1988); *accord Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 265, 97 S. Ct. 2348, 2358, 53 L. Ed. 2d 320 (1977).[1]

In this case, whether Baker held the status of a maritime employee depends on whether he spent a sufficient amount of time performing maritime work. In *Caputo*, the Supreme Court held that claimants who spend "at least some of their time" performing longshoring work are "employees" covered under the LHWCA. *Id.* at 273, 97 S. Ct. at 2362; *accord Boudloche v. Howard Trucking Co.*, 632 F.2d 1346, 1347-48 (5th Cir. 1980), *cert. denied*, 452 U.S. 915, 101 S. Ct. 3049, 69 L. Ed. 2d 418 (1981). In *Boudloche*, we held

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[1] Under the second, which is not disputed in this case, the claimant must have been injured "upon the navigable waters of the United States (including any . . . adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel)." 33 U.S.C. § 903(a) (1988); *accord Caputo*, 432 U.S. at 279, 97 S. Ct. at 2365.

that a claimant who spent between 2½% and 5% of his overall work time performing longshoring work held the status of "employee" under § 902(3). *Id.*

Marathon concedes that under *Boudloche*, an employee who spends between 2 1/2% and 5% of his time performing maritime work satisfies the LHWCA's "status" requirement. It contends, however, that "[t]he testimony of Charles Germany was to the effect that Claimant spent only .05% of his time in maritime work, that is, service trips to offshore drill rigs on location," and that "[t]his is far less than [the] 2 1/2% to 5% qualifier approved by Judge Clark in *Boudloche*." Marathon's argument fails because it depends on a simple error of arithmetic. Germany testified, and the ALJ found, that Baker performed maritime work twenty-one days in 1985 and seventeen days in 1986. Even assuming the relevant denominator is 365 days per year, he would have spent 5%, not .05%, of his time performing maritime work. Consequently, we reject Marathon's argument that the BRB erred in reversing the ALJ's determination that Baker was not "engaged in maritime employment."

Marathon further contends that the ALJ's decision regarding Baker's total disability was supported by substantial evidence. The BRB reversed the ALJ on this issue because the ALJ had misconstrued the relevant standard for proving "total disability" under the LHWCA, 33 U.S.C. § 908 (1988). The BRB adequately addressed this legal issue in its opinion, and we affirm the BRB's decision for the reasons stated therein.

For the foregoing reasons, we **AFFIRM** the BRB's decision.