

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

**Island Operating Company, Incorporated v. Director, Office of
Worker’s Compensation Programs, U.S. Department of Labor;
Martin B. Taylor, Jr.**

No. 12-60222 · No. No. 12-60222 · Decided December 20, 2013

SUMMARY

The United States Court of Appeals for the Fifth Circuit affirmed a Benefits Review Board decision modifying an award under the Longshore and Harbor Workers’ Compensation Act. The court held that a mistake in a determination of fact under section 22 is not limited to newly discovered or previously unattainable evidence. The court also concluded that substantial evidence supported the award of permanent partial disability benefits based on physicians’ impairment ratings.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Priscilla R. Owen; DeMOSS, Circuit Judge; OWEN, Circuit Judge; HAYNES, Circuit Judge
JURISDICTION	Federal
DECIDED	December 20, 2013
DOCKET	No. 12-60222
DISPOSITION	affirmed
PROCEDURAL POSTURE	Island Operating Company and its workers’ compensation carrier petitioned the Fifth Circuit for review of a Benefits Review Board decision affirming an administrative law judge’s modification of a Longshore and Harbor Workers’ Compensation Act benefits award.
STANDARD OF REVIEW	The court reviews Benefits Review Board decisions for errors of law and to determine whether the Board properly deferred to the ALJ’s factfinding. Legal conclusions concerning application of section 22 are reviewed de novo. Factual findings are reviewed for substantial evidence on the record as a whole, and the court may not substitute its judgment for that of the ALJ or reweigh the evidence.
PRECEDENTIAL VALUE	Published Fifth Circuit opinion; precedential value is not otherwise specified in the text.

PARTIES

Island Operating Company, Incorporated, Louisiana Workers' Compensation Corporation v. Director, Office of Worker's Compensation Programs, U.S. Department of Labor, Martin B. Taylor, Jr.

TOPICS

workers compensation

judicial review of agency action

agency adjudication

statutory interpretation

appellate procedure

PRACTICE AREAS

administrative law

workers compensation

employment law

appellate procedure

QUESTIONS PRESENTED

1. Whether section 22 of the Longshore and Harbor Workers' Compensation Act permits modification of a prior benefits award based on a mistake in a determination of fact when the evidence supporting modification was available at the time of the original hearing.
2. Whether substantial evidence supported the ALJ's modified award of permanent partial disability benefits based on the medical evidence of a 25-percent impairment in each knee.

HOLDINGS

1. A prior benefits award may be modified under section 22 for a mistake in a determination of fact even when the evidence supporting modification was available before the original hearing; the evidence need not be newly discovered or previously unattainable.
2. Substantial evidence supported the ALJ's modification of Taylor's award to include permanent partial disability benefits based on a 25-percent impairment rating in each knee.

KEY QUOTATIONS

"The Court, however, has expressly permitted modification under these circumstances." (5)

"In sum, both Banks and O'Keeffe clearly establish that contrary to Island's position, mistakes of fact are not limited to newly discovered and previously unattainable evidence." (7)

"Accordingly, there was evidence to support the ALJ's finding, and the BRB correctly affirmed the modification of Taylor's award to include permanent partial benefits." (8)

FACTUAL BACKGROUND

In January 2006, Martin B. Taylor injured or aggravated his knees while working offshore for Island Operating Company on an oil production platform. After continuing to experience bilateral knee pain and undergoing surgery, Taylor filed a claim under the Longshore and Harbor Workers' Compensation Act. The ALJ later determined that Taylor had reached maximum medical improvement on September 16, 2006, and, based on

reports from two physicians finding a 25-percent permanent impairment in each knee, modified the award to include permanent partial disability benefits.

PROCEDURAL HISTORY

Taylor filed a claim for benefits under the Longshore and Harbor Workers' Compensation Act after developing bilateral knee problems while working offshore for Island. The administrative law judge initially denied the claim, but the Benefits Review Board reversed and remanded; the ALJ then awarded temporary disability benefits. Taylor later sought modification under section 22 based on permanent impairment evidence, and the ALJ awarded permanent partial disability benefits. The Benefits Review Board affirmed, and Island petitioned the Fifth Circuit for review.

DISPOSITION

affirmed

CASES CITED

- Ceres Marine Terminal v. Hinton, 243 F.3d 222, 224 (5th Cir. 2001)
- Pool Co. v. Cooper, 274 F.3d 173, 177-78 (5th Cir. 2001)
- SGS Control Servs. v. Director, Office of Workers' Compensation Programs, U.S. Department of Labor, 86 F.3d 438, 440, 443-44 (5th Cir. 1996)
- Avondale Indus., Inc. v. Director, Office of Workers' Compensation Programs, 977 F.2d 186, 189 (5th Cir. 1992)
- Banks v. Chicago Grain Trimmers Ass'n, 390 U.S. 459, 460-65 (1968)
- O'Keeffe v. Aerojet-General Shipyards, Inc., 404 U.S. 254, 254-55 (1971) (per curiam)
- Metropolitan Stevedore Co. v. Rambo, 515 U.S. 291, 300 (1995)