

IN THE COURT OF APPEALS OF IOWA

No. 9-659 / 09-0278
Filed September 2, 2009

ISLE OF CAPRI CASINO,
Petitioner-Appellee,

vs.

DIANE WILSON,
Respondent-Appellant.

Appeal from the Iowa District Court for Scott County, James E. Kelley,
Judge.

Claimant appeals from the district court's ruling dismissing her claim after finding the Iowa Workers' Compensation Commission did not have jurisdiction of the case. **AFFIRMED.**

Paul Salabert, Jr. of Hopkins & Huebner, P.C., Davenport, for appellant.
Cameron A. Davidson and Benjamin J. Patterson of Lane & Waterman,
L.L.P., Davenport, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

SACKETT, C.J.

Claimant, Diane Wilson, appeals the district court ruling dismissing her claim for workers' compensation benefits after finding the Iowa Workers' Compensation Commission did not have jurisdiction of the case. We affirm.

BACKGROUND. Wilson is employed as a housekeeper at the Isle of Capri Casino, a riverboat casino and hotel. On January 4, 2005, Wilson fell on ice and was injured when she was taking trash out to the casino's trash compactor. She sought workers' compensation benefits and the casino denied the claim alleging that the Iowa Workers' Compensation Commission lacked jurisdiction because the claim was governed by the federal Jones Act. Following an arbitration hearing, a deputy commissioner found that it had jurisdiction and awarded Wilson benefits. This decision was adopted and affirmed by the commission on appeal on March 20, 2008. The casino filed a petition for judicial review of the decision and a motion to stay enforcement of the decision pending judicial review. The district court heard oral arguments on the motion to stay and thereafter ruled that it was not warranted.¹ On October 22, 2008, the district court heard arguments on the petition for judicial review. In a ruling filed December 9, 2008, the district court determined the commission improperly found it had jurisdiction of the claim. Wilson appeals this decision.

STANDARD OF REVIEW. Review of workers' compensation commission decisions is governed by Iowa Code chapter 17A, the Iowa Administrative

¹ We reversed this decision and remanded for the district court to issue a stay of the award pending judicial review. See *Wilson v. Isle of Capri Casino*, No. 08-1264 (Iowa Ct. App. Mar. 26, 2009).

Procedure Act. Iowa Code § 86.26 (2005); *Clark v. Vicorp Rests., Inc.*, 696 N.W.2d 596, 603 (Iowa 2005). We may only interfere with the decision if it is erroneous under one of the grounds listed in Iowa Code section 17A.19(10) and a person's substantial rights have been prejudiced. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). We apply the standards of chapter 17A and in doing so, if we reach the same conclusions as the district court we affirm. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464 (Iowa 2004). We uphold the commissioner's findings of fact if supported by substantial evidence. *Meyer*, 710 N.W.2d at 218.

JURISDICTION. Iowa law provides that if an injured worker is covered by a federal compensation statute, Iowa's workers' compensation laws do not apply. Iowa Code § 85.1(6). Under the federal Jones Act,

A seaman injured in the course of employment . . . may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.

46 U.S.C. § 30104. If an employee is a "seaman" under the Jones Act, the workers' compensation commission lacks subject matter jurisdiction to award benefits. *Harvey's Casino v. Isehour*, 724 N.W.2d 705, 709 (Iowa 2006). Seaman status is acquired if (1) the employee's duties contribute to the vessel's function or mission, and (2) the employee has a substantial connection to a vessel in navigation, both in terms of its duration and nature. *Id.* at 707 (citing *Chandris, Inc. v. Latsis*, 515 U.S. 347, 368, 115 S. Ct. 2172, 2190, 132 L. Ed. 2d 314, 337 (1995)). Wilson concedes that her work contributed to the function and

mission of the casino and she had a substantial connection to the casino. The decisive issue in determining if Wilson is a seaman under the Jones act is whether the casino at the time of her injury was a “vessel in navigation.”

In analyzing whether a riverboat casino is a “vessel” our supreme court has determined that the federal statutory definition

“requires only that a watercraft be ‘used or *capable of being used*, as a means of transportation on water’ to qualify as a vessel. It does not require that a watercraft be used primarily for that purpose.”

Id. at 708 (quoting *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 495, 125 S. Ct. 1118, 1128, 160 L. Ed. 2d 932, 946 (2005)) (emphasis supplied). The riverboats at issue in *Harvey’s Casino*, 724 N.W.2d at 708, were held to be vessels because it was “not disputed that the riverboats were capable of, and did, ply the waters of the Missouri River approximately 200 hours per year as required by Iowa’s gaming laws.”

Wilson distinguishes the Isle of Capri from the riverboats involved in *Harvey’s Casino*. She asserts the Isle of Capri was not a “vessel in navigation” because unlike the boats in *Harvey’s Casino* that actually sailed, the Isle of Capri casino boat elected to no longer sail after June 30, 2004, when Iowa law was amended to no longer require casino riverboats to sail. At the time of the claimants’ injuries in *Harvey’s Casino*, Iowa law required riverboat casinos to sail two hundred hours per year. See Iowa Admin. Code r. 491-5.6 (2001); *Harvey’s Casino*, 724 N.W.2d at 708. At the time of Wilson’s injury, riverboat casinos were no longer required to sail at all. See 2004 Iowa Acts ch. 1136, §62 (allowing gambling boats to operate as “a moored barge, an excursion boat that will cruise,

or an excursion boat that will not cruise”); Iowa Code § 99F.7(2)(a) (2005); Iowa Admin. Code r. 491-5.6(1)(c) (2005) (authorizing gaming floors to be on “moored barges”).

The commissioner agreed that the Isle of Capri was distinguishable from the boats in *Harvey’s Casino* finding,

the casino boat that employed the claimant at the time she was injured was not a vessel in navigation under the federal Jones Act. The boat did not sail at all at the time she was injured. It was a permanently moored casino boat and thus was not a vessel in navigation.

On this basis, the agency determined the Iowa Workers’ Compensation Commission had jurisdiction over Wilson’s claim and the Jones Act did not apply. The district court reversed this finding, determining on judicial review there was no evidence the casino boat was permanently moored or incapable of cruising in January 2005. It found there was substantial evidence showing the boat “was capable of being used as a means of maritime transportation and had not lost its character as a vessel in navigation by any permanent mooring.”

We reach the same conclusion as the district court in our review of the agency’s findings. At the time of Wilson’s accident, in January 2005, the Isle of Capri was still fully capable of sailing. It had a captain and marine crew on staff, was still under the jurisdiction of the Coast Guard, and had insurance coverage certifying it to sail. It was undisputed that the boat was capable of sailing within ninety minutes at any given time. The casino did not become reclassified as a permanently moored vessel until November 2005.

The district court correctly determined there was not substantial evidence to support the agency's finding that the casino was permanently moored at the time of Wilson's accident. Its conclusion that the casino was fully capable of sailing, and therefore a "vessel in navigation" for purposes of the Jones Act is supported by the record as a whole. We therefore agree with the district court's ruling dismissing the claim on the ground that the workers' compensation commission lacked jurisdiction to award Wilson benefits.

AFFIRMED.