U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 21-0444

BONNIE HOUSTON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SAN FRANCISCO LONGSHORE LABOR RELATIONS COMMITTEE	)	
	)	
	)	DATE ISSUED: 4/11/2022
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LIMITED	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Granting Motion for Summary Decision and Denying Benefits of Richard M. Clark, Administrative Law Judge, United States Department of Labor.

Bonnie Houston, Oakland, California, without representation.

Matthew S. Malouf (Bauer Moynihan & Johnson, LLP), Seattle, Washington, for Employer/Carrier.[1]

[1] San Francisco Longshore Labor Relations Committee (SFLLRC) notes Claimant previously has identified her Employer as the "Joint Labor Relations Committees of the International Longshore and Warehouse Union and Pacific Maritime Association," or other variations of names. While the International Longshore and Warehouse Union (ILWU), and the Pacific Maritime Association (PMA) are real entities, as is the Joint Port Labor Relations Committee (JPLRC), SFLLRC states, "in the context of this case, the [SFLLRC] is the appropriate name for the alleged Employer." SFLLRC Br. at 1, n.1; M/SD at 1, n.1.

Before: BOGGS, Chief Administrative Appeals Judge, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant, without representation, appeals Administrative Law Judge (ALJ) Richard M. Clark's Decision and Order Granting Motion for Summary Decision and Denying Benefits (2020-LHC-00800) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (Act). In an appeal by a claimant without legal representation, we will review the ALJ's decision to determine if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are in accordance with law. If they are, they must be affirmed. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, a San Francisco Bay area Class "A" longshore worker, filed a claim for an injury that occurred on April 4, 2019, at her local dispatch hall. She claimed she already had "secured a job" and was bumped or knocked down "while waiting in the dispatch line for prep call/dispatch of job call." Decision and Order at 2; EXs 2-3. Claimant went to the doctor, and he found she had right ankle swelling and pain. EX 1. In November 2019, Claimant filed a claim for benefits under the Act. EX 2. Following an informal conference and an unfavorable district director's recommendation, Claimant requested the case be referred to the ALJ for resolution. The ALJ set a date for a video hearing. Pre-Hearing Order (Nov. 3, 2020).

On January 29, 2021, the San Francisco Longshore Labor Relations Committee (SFLLRC) filed a Motion for Summary Decision (M/SD), submitting declarations and evidence that Claimant was not employed by any entity at the time of her injury.[2] A copy

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The ALJ captioned the case to reflect SFLLRC and Signal Mutual as the alleged Employer/Carrier, as do we.

[2] In footnote 1 of the M/SD, "Respondents" identified SFLLRC as the "appropriate name" of the alleged Employer. *See also* n.1, *supra*. SFLLRC filed the M/SD "on behalf" of the "Joint Port Labor Relations Committee of the ILWU-PMA and its longshore mutual group self-insurer, Signal Mutual Indemnity Association, Ltd." It stated, "[t]o avoid confusion," the ALJ's dismissal order should apply to the following: "Employer/Mutual, SFLLRC/Signal Mutual Indemnity Association, Ltd., and named as Joint Labor Relations Committees of the International Longshore and Warehouse Union and Pacific Maritime Association." M/SD at 1, n.1. Therefore, SFLLRC filed the M/SD as if on behalf of, and to include, the improperly-named entity Claimant identified as her Employer. The M/SD,

of the motion was sent to Claimant; however, she did not file a response.[3] Finding no evidence of an employer-employee relationship with any of the "respondents," the ALJ granted the motion and, consequently, denied the claim. Claimant, without representation, asks the Board to review the ALJ's decision, and SFLLRC and its carrier, Signal Mutual, respond, urging affirmance.

In ruling on a party's M/SD, the ALJ 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 (2d Cir. 2002); *Brockington v. Certified Elec., Inc.*, 903 F.2d 1523 (11th Cir. 1990), *cert. denied*, 498 U.S. 1026 (1991); *R.V. [Villaverde] v. J. D'Annunzio & Sons*, 42 BRBS 63 (2008), *aff'd sub nom. Villaverde v. Director, OWCP*, 335 F. App'x 79 (2d Cir. 2009); *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. To defeat a M/SD, the non-moving party must "come forward with specific facts" to show "there is a genuine issue for trial." *Matsushita Elec. Indus. Co., Ltd., v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). If the ALJ *could* find for the non-moving party, or if it is necessary to weigh evidence or make credibility determinations on the issue presented, summary decision is inappropriate. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986); *Walker v. Todd Pac. Shipyards*, 47 BRBS 11 (2013), *vacating in pert. part on recon.*, 46 BRBS 57 (2012).

For a claim to be covered by the Act, in addition to satisfying the status and situs criteria, 33 U.S.C. §§902(3), 903(a), and prior to determining whether an injury occurred during the course of employment, 33 U.S.C. §902(2), a claimant must establish she was in

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nevertheless, supported their similar positions, and contended Claimant was not an employee of the SFLLRC, the JPLRC, or the PMA at the time of her injury.

The M/SD explains the Pacific Coast Longshore Contract Document is the master agreement between the ILWU and the PMA (which consists of member companies who are longshore employers). The agreement requires the creation of JPLRCs at each port or complex. Each committee has equal numbers of union representatives and employer representatives to resolve disputes. The San Francisco Bay area JPLRC, the SFLLRC, also maintains the San Francisco dispatch hall.

[3] On March 1, 2021, the ALJ issued an order canceling the March 8, 2021, hearing and sent a copy of the order to Claimant. It informed her of her right to respond to the M/SD and the consequences of failing to do so.

an employment relationship with the alleged employer at the time of her injury. *R.M. [McKenzie] v. P & O Ports Baltimore, Inc.*, 43 BRBS 104 (2009); *see Herold v. Stevedoring Services of America*, 31 BRBS 127 (1987); *Holmes v. Seafood Specialist Boat Works*, 14 BRBS 141 (1981). The claimant must have been engaged in maritime employment with a maritime employer at the time of her injury for the injury to be covered by the Act. *See Flores v. MMR Constructors, Inc*., 50 BRBS 47 (2016), *aff'd sub nom*. *MMR Constructors, Inc. v. Director, OWCP [Flores]*, 954 F.3d 259 (5th Cir. 2020); *see also Sidwell v. Virginia Int'l Terminals, Inc.*, 372 F.3d 238 (4th Cir. 2004).

The ALJ found no employer-employee relationship existed, and Claimant was not employed by any employer at the time of her injury. The facts underlying the alleged employment relationship here are undisputed; therefore, we address whether the ALJ properly applied the law to reach his conclusion. *McKenzie*, 43 BRBS 104.

In *McKenzie*, the Board addressed the issue of whether the claimant was "employed" the day of his injury. Claimant McKenzie had been hired at the union hall but arrived late to the employer's facility and was not accepted because he had already been replaced by another worker. He nevertheless attempted to work and was injured during an altercation that took place while trying to remove him from the premises. The Board concluded when a worker is hired through a union hall, employment is not official until the employer accepts the worker at the job site. *McKenzie*, 43 BRBS at 106; *see State Comp. Ins. Fund v. Workers' Comp. App. Bd. [Bate]*, 59 Cal. App. 3d 647, 130 Cal. Rptr. 831 (1976) (claimant slipped and fell while leaving the labor office on the employer's premises; not entitled to compensation because she was a job applicant, not an employee); *Miller v. T.H. Browning Steamship Co.*, 73 F.Supp. 185 (W.D.N.Y.), *aff'd*, 165 F.2d 209 (2d Cir. 1947) (claimant, injured walking along the deck of the ship before he was hired, was not covered under the Jones Act). Therefore, injuries occurring prior to being accepted as an employee at the job site are not covered, and the Board affirmed the ALJ's denial of benefits.[4] *McKenzie*, 43 BRBS at 105-107.

[4] *See also Fluor Engineers & Contractors, Inc. v. Kessler*, 561 P.2d 72 (Okla. 1977) (claimant, a union worker who had received his assignment the night before he was to commence work, sustained injuries in an accident on the highway *en route* to the job site; the court held there was no employer-employee relationship at the time of the accident); *Posey v. Industrial Comm'n*, 87 Ariz. 245, 350 P.2d 659 (1960) (claimant, who was injured *en route* to the job site, had not been hired; injury not covered); *see also Huntley v. Howard Lisk Co., Inc.*, 154 N.C. App. 698, 573 S.E.2d 233 (2002) (injuries during road test for trucking job not compensable because no employment relationship, no promise of employment and claimant not paid for taking test). Further, if there is an employment relationship, when the relationship ceases, so too does coverage. *Carnes v. Transport. Ins.*

In this case, there is no doubt Claimant's alleged injury occurred at the hiring hall. As in *McKenzie*, Claimant had not been accepted at any employer's facility as a worker prior to her injury that day.[5] Instead, she filed a claim against the ILWU, the PMA, and the SFLLRC, claiming to have been in their employ at the time of her injury. However, none of those entities employs workers, like Claimant, who use the union hall to obtain longshore jobs. *Anderson v. Pacific Maritime Ass'n*, 336 F.3d 924 (9th Cir. 2003);[6] *Sidwell*, 372 F.3d 238 (union is not a maritime employer). The ILWU is the union that represents workers like Claimant, the PMA is the association of individual longshore employers who generally hire workers like Claimant, and the SFLLRC, which is comprised of union and PMA representatives, runs the hiring hall.

Although Claimant was injured in a place under SFLLRC's control, contrary to her contention, she was not its employee. SFLLRC denies hiring Claimant or any of the workers who use the hall to obtain San Francisco Bay area longshore jobs. M/SD at Kaney Decl. Claimant has not put forth evidence to the contrary. SFLLRC acknowledges employing dispatch hall personnel to run the hiring hall; therefore, while it is "an employer," it was not "Claimant's Employer." *Id.* Absent an employer-employee relationship, there can be no injury during the course of longshore employment. Consequently, Claimant is not entitled to benefits under the Act. *McKenzie*, 43 BRBS at 105-107. When viewing the appeal in the light most favorable to Claimant, there are no genuine issues of material fact. SFLLRC is entitled to summary decision as a matter of law.[7] *Villaverde*, 42 BRBS 63.

Co., 615 S.W.2d 909 (Tex. Civ. App. El Paso 1981), *writ refused* (Sept. 23, 1981); *Kinnard v. Gibson*, 172 S. 595 (La. Ct. App. 2d Cir. 1937).

[5] Although she claimed to have been selected for a job, she had neither received it from the dispatcher, nor had she been accepted by the longshore employer at its facility. Therefore, she was not working for a maritime employer at the time of her injury. Claimant does not, and has not, contended otherwise.

[6] The *Anderson* court was perplexed why the last remaining defendant "employer" in a Title VII discrimination case was the PMA – a "non-profit association of the stevedoring and shipping companies" who hire workers – and not any of the actual employers of any of the plaintiffs. *Anderson*, 336 F.3d at 925. The court clarified the PMA does not hire, fire, supervise, control, or monitor longshore workers. *Id.* at 927. Therefore, it is not an employer.

[7] This conclusion applies to the ILWU, the PMA, and the JPLRC, to the extent they are also "respondents" to this claim.

We affirm the ALJ's Decision and Order Granting Motion for Summary Decision and Denying Benefits.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge