U.S. Department of Labor

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

BRB No. 20-0470

TYSON A. TILLAR	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: 12/28/2020
HUNTINGTON INGALLS INCORPORATED	)	
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Granting Employer's Motion for Summary Decision of Larry W. Price, Administrative Law Judge, United States Department of Labor.

David J. Kapson (ChasenBoscolo Injury Lawyers), Greenbelt, Maryland, for Claimant.

Benjamin M. Mason (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for Self-insured Employer.

Before: BUZZARD, GRESH and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge Larry W. Price's Decision and Order Granting Employer's Motion for Summary Decision (2020-LHC-00377) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq*. (Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The facts of this case are not in dispute. On July 13, 2015, Claimant was hired as an apprentice and assigned to Employer's electrical department. As an apprentice, Claimant attended Employer's Apprentice School in Newport News, Virginia, where he was taught shipbuilding skills. Outside of the classroom, the Apprentice School offered apprentices the opportunity to join sports teams, which competed against small colleges. Claimant joined the Apprentice School's football team. On November 11, 2017, the football team played a game in Albany, New York. During this game, Claimant sustained an injury to his left shoulder. Claimant received treatment at a New York medical facility, and returned to Virginia the following day. He suffered a severe brachial plexus injury to his left arm, which left him unable to return to work. Employer voluntarily paid Claimant compensation until March 2019, at which time it controverted Claimant's right to benefits under the Act.

Before the administrative law judge, Employer moved for summary decision, arguing Claimant does not satisfy the Act's situs and status requirements, 33 U.S.C. §§903(a), 902(3). Claimant responded in opposition to Employer's motion. In his decision, the administrative law judge found Claimant did not satisfy the situs requirement of Section 3(a), 33 U.S.C. §903(a), because his injury occurred on a football field that was not contiguous with navigable waters or customarily used by an employer for maritime activities. Decision and Order at 3. The administrative law judge further found Claimant did not satisfy the status requirement of Section 2(3), 33 U.S.C. §902(3), since no evidence was presented that Claimant's activities were in any way directly related to maritime employment or the shipbuilding, ship repairing or longshoring process. *Id.* Therefore, the administrative law judge found Claimant was not a covered employee, granted Employer's motion for summary decision, and denied the claim. *Id.* at 4.

Claimant appeals, arguing the administrative law judge's decision is not in accordance with law. Employer responds, asserting the administrative law judge properly granted summary decision.

In determining whether to grant a party's motion for summary decision, the administrative law judge 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 matter of law. *Morgan v. Cascade Gen., 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); *Buck v. Gen. Dynamics Corp.*, 37 BRBS 53 (2003); *Hall v. Newport News Shipbuilding & Dry Dock Co.*, 24 BRBS 1 (1990); 29 C.F.R. §18.72. As the facts pertaining to Claimant's employment and the site of his injury are undisputed, there are no genuine issues of material fact in dispute. Therefore, the issue before the Board is whether the administrative law judge properly applied the law to the established facts.

For a claim to be covered by the Act, a claimant must establish his injury occurred upon the navigable waters of the United States, including any dry dock, or that his injury occurred on a landward area covered by Section 3(a), and that his work is maritime in nature pursuant to Section 2(3) and is not specifically excluded by any provision in the Act. *Director, OWCP v. Perini North River Associates*, 459 U.S. 297, 15 BRBS 62(CRT) (1983); *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 6 BRBS 150 (1977). We affirm the administrative law judge's finding that Claimant's injury did not occur on a covered situs under Section 3(a) as it comports with law.

Section 3(a) of the Act states:

> Except as otherwise provided in this section, compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel).

33 U.S.C. §903(a). Coverage under Section 3(a) is determined by the nature of the place at the moment of injury. *Stratton v. Weedon Eng'g Co.*, 35 BRBS 1, 5 (2001) (en banc). "The breadth of the requirements of claimant's employment does not enlarge situs under the Act; an employee injured while working off a covered situs is not covered by Section 3(a) even if within the course of his employment." *Beachler v. Nat'l Line Bureau, Inc.*, 23 BRBS 438, 440 (1990); *see also Alford v. MP Indus. of Florida, Inc.*, 16 BRBS 261 (1984).

It is clear from the facts that the football field where Claimant was injured is neither an enumerated situs nor an adjoining area "customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel." *Triguero v. Consol. Rail Corp.*, 932 F.2d 95 (2d Cir. 1991). Thus, the administrative law judge properly found the situs requirement is not satisfied in this case. *See, e.g., C.C. v. Tecnico Corp.*, 41 BRBS 129 (2007), *aff'd*, 294 F. App'x 58 (4th Cir. 2008) (claimant not on a covered situs when injured on an airplane during a work trip); *Mellin v. Marine World-Wide Services*, 32 BRBS 271 (1998), *aff'd*, 15 F. App'x 169 (4th Cir. 2001) (claimant not on a covered situs when injured in a motor vehicle accident while traveling on a public highway from a motel to a harbor where he was to work on a vessel); *Cabaleiro v. Bay Refractory Co., Inc.*, 27 BRBS 72 (1993) (injury on public road not covered); *Beachler*, 23 BRBS 438 (same).

Claimant argues "[a] brief trip outside of the regular place of employment does not automatically deny a longshore worker coverage." Claimant's Brief at 8. In support, he cites *Cove Tankers Corp. v. United Ship Repair*, 683 F.2d 38, 14 BRBS 916 (2d Cir. 1982). In that case, the United States Court of Appeals for the Second Circuit found Longshore

Act coverage for employees injured on a vessel on the high seas, as otherwise a vessel could sail out of state coverage (three miles offshore) merely to avoid all state and federal workers' compensation liability. Unlike the injured employees in *Cove Tankers*, however, Claimant in this case was not "walking in and out of coverage" in the course of a day's employment. *See P.C. Pfeiffer Co. v. Ford*, 444 U.S. 69, 11 BRBS 320 (1979); *Caputo*, 432 U.S. 249, 6 BRBS 150. We therefore reject Claimant's contention.

As Claimant failed to establish an essential element of a claim for benefits under the Act, we affirm the administrative law judge's grant of Employer's motion for summary decision.[1] *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).

Accordingly, we affirm the administrative law judge's Decision and Order Granting Employer's Motion for Summary Decision.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[1]In light of our decision, we need not address the administrative law judge's findings regarding whether Claimant satisfied the Section 2(3) status requirement.