U.S. Department of Labor

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

BRB No. 22-0077

HERBERT CHAPLIN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MOUNT & DISMOUNT, LLC, d/b/a	)	
SULLIVAN'S ADMINISTRATIVE	)	DATE ISSUED: 03/14/2023
MANAGERS	)	
	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Order Granting Employer's Motion for Summary Decision and Dismissing Claim of Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

Ralph R. Lorberbaum and Eric R. Gotwalt (Zipperer, Lorberbaum & Beauvais), Savannah, Georgia, for Claimant.

Christopher P. Boyd (Taylor, Day, Grimm & Boyd), Jacksonville, Florida, for Employer.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Jonathan C. Calianos' Order Granting Employer's Motion for Summary Decision and Dismissing Claim (2021-LHC-00441, 00644, 00666) rendered on claims filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (Act). We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by

substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Claimant worked as a commercial tire technician for Employer at its Louisville Road facility in Savannah, Georgia, from April 2010 through June 2013. Ex. B. Employer operates a tire company that specializes in mounting and dismounting tires for container chassis to be used in the truck transportation industry. *Id.* Its Louisville Road facility is surrounded by a mix of commercial and residential properties and is located approximately 2.1 miles from the nearest navigable water, the Savannah River, and from the Georgia Ports Authority Ocean Terminal (the Port of Savannah).[1] *Id.*; *see also* Ex. A, Dep. at 59-60. Between the facility and the Savannah River is a major highway, Interstate 516, several residential neighborhoods, numerous non-maritime businesses, including grocery stores and restaurants, churches, and a community park and neighborhood community center. Ex. B; Ex. A, Dep. at 60-61.

Claimant allegedly sustained two injuries to his right knee as a result of successive accidents which occurred at Employer's Louisville facility on August 3, 2011, and April 19, 2013. Ex. A, Dep. at 57-58, 62-63, 75-78. He also alleged his job required repetitive bending and squatting from repairing tires for Employer at the Louisville facility, as well as his job assignments within the Port of Savannah,[2] and he aggravated his right knee condition up through his final day of work for Employer on June 19, 2013. Further, he alleged Employer "said I couldn't do my job" "because of my knee" and fired him. *Id.*, Dep. at 78. He has not worked since then. *Id.*, Dep. at 56. On June 20, 2018, Claimant filed a claim seeking benefits relating to his three alleged work accidents. Employer controverted the claim on the grounds that Claimant's accidents do not fall within the jurisdiction of the Longshore Act. The case was transferred to the Office of Administrative Law Judges (OALJ) for a formal hearing.

Before the OALJ, Employer moved for summary decision (M/SD), arguing Claimant does not satisfy the Act's covered situs and status requirements, 33 U.S.C. §§903(a), 902(3). Claimant responded in opposition to Employer's motion. He admitted

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[1] This case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit because Claimant's injury occurred in Savannah, Georgia. 33 U.S.C. §921(c); *Hon v. Director, OWCP*, 699 F.2d 441 (8th Cir. 1983).

[2] Claimant stated there was a four-month period sometime between his 2011 and 2013 work accidents where he was required to work two times per week within the Port of Savannah, specifically at the Garden City Terminal, which adjoins the Savannah River. Ex. A, Dep. at 65-67, 71, 83; Ex. B; Ex. C.

Employer's Louisville Road facility is not a covered situs but maintained that the aggravation to his right knee occurred while he was performing work for Employer at the Port of Savannah and is therefore covered under the Act. Both parties submitted exhibits with their respective filings pertaining to Employer's M/SD.

The ALJ held a telephonic conference on September 9, 2021, during which he issued a bench decision granting Employer's M/SD, dismissing Claimant's claim with prejudice and cancelling the hearing scheduled for November 1, 2021. Tr. at 15, 19-20, 22. Specifically, the ALJ found Claimant is not covered by the Act, because his job did not satisfy the covered status requirement as he was not a "maritime employee," 33 U.S.C. §902(3), and his injuries did not occur on a covered situs, 33 U.S.C. §903(a). He issued a short, written order on October 26, 2021, incorporating his bench decision. Order at 1.

On appeal, Claimant contends the ALJ erroneously found he did not satisfy the situs and status requirements of the Act. Employer responds, asserting the ALJ properly granted summary decision.

In determining whether to grant a party's motion for summary decision, 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 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.

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 Assocs.*, 459 U.S. 297, 15 BRBS 62(CRT) (1983); *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 6 BRBS 150 (1977). Thus, in order to demonstrate that coverage exists, a claimant must separately satisfy both the "situs" and the "status" requirements of the Act. *Atl. Container Serv., Inc. v. Coleman*, 904 F.2d 611, 23 BRBS 101(CRT) (11th Cir. 1990); *Ramos v. Container Maint. of Fla.*, 45 BRBS 61 (2011), *aff'd mem.*, 486 F. App'x 775 (11th Cir. 2012); *S.W. [Wallace] v. Atl. Container Serv.*, 43 BRBS 118 (2009); *Stratton v. Weedon Eng'g Co*, 35 BRBS 1 (2001) (*en banc*).

Situs

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*, 35 BRBS at 5. In this case, Claimant alleges he sustained right knee injuries as a result of specific accidents occurring at Employer's Louisville Road facility in August 2011 and April 2013, as well as an aggravating right knee injury due to the repetitive nature of his usual job duties following his initial work accidents. Claimant also alleges he aggravated his knee while working in the Port of Savannah.[3]

With respect to the alleged aggravation of his knee injury at the port,[4] the ALJ's analysis is vague but it appears he found Claimant did not satisfy the situs requirement of

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[3] Claimant concedes Employer's Louisville Road facility is not a covered situs as his argument both before the ALJ and now on appeal centers on his work for Employer at the Port of Savannah and that it meets the situs (and status) requirements of the Act. *See* Cl. Br. on M/SD at 12; Cl. Br. at 5, 7. We affirm the ALJ's finding that Claimant's August 2011 and April 2013 right knee injuries did not occur on a covered situs. Employer's Louisville Road facility, where those specific alleged injuries occurred, is neither an enumerated situs nor an "adjoining area." 33 U.S.C. §903(a); *Bianco v. Georgia Pac. Corp.*, 304 F.3d 1053, 36 BRBS 57(CRT) (11th Cir. 2002); *Ramos*, 45 BRBS 61; *Charles v. Universal Ogden Servs.*, 37 BRBS 37 (2003); *Gonzalez v. Ocean Voyage Ship Repair*, 26 BRBS 12 (1992); Tr. at 19-20 (Employer's Louisville Road facility is not contiguous with navigable waters or customarily used by an employer for maritime activities).

[4] To the extent there remains any issue, Claimant clearly raised a claim for aggravation. A review of the conference transcript reveals Claimant, through counsel, specifically stated Claimant "aggravated his knee at the Port and he complained about it aggravating his knee, both to his supervisor and to Derrick Smith." Tr. at 11. Claimant's counsel further stated, "it's our contention [Claimant] aggravated himself doing the work on the Port which meets the – which would meet the situs requirement in and of itself, being on the Port, within their geographical boundary" and that "while he may not have

Section 3(a) because he found there is insufficient evidence any aggravation or injury occurred. The ALJ stated: the "very limited amount of time [Claimant] would have spent at the Port" is insufficient to establish he aggravated his knee injury at a covered situs. *Id.* at 15-16. Although acknowledging Claimant's June 19, 2013 date of injury "technically" constitutes an aggravation claim, the ALJ found Claimant's testimony regarding his work at the port "pretty darn vague" as he is "not alleging a specific aggravation," nor did he "testify to any specific aggravation" in the course of that work,[5] so his alleged aggravation claim is "not tied to any specific date of loss," *id.* at 18. In this regard, he stated, "what bothers me most is [Claimant] can't pin down even the year that it occurred during his entire employment, and we don't even know after what accident" so "there's a big span there" which is "[j]ust too much to pin down." *Id.* at 19-20. He concluded, even assuming everything Claimant alleges regarding his aggravation claim were true, "I don't have enough there to say there was a true aggravation of an injury that would warrant a finding of that nature" sufficient to meet the situs requirement (that Claimant sustained any injury while he was working within the Port of Savannah). *Id.* at 20. That is, the ALJ found Claimant did not satisfy the situs requirement for that period of his employment because his "vague" testimony did not pinpoint the time frame, and he otherwise did not put forth sufficient evidence to show he sustained any aggravating injury in the course of that work.

Initially, the ALJ should have viewed the evidence in the light most favorable to Claimant because the ALJ addressed the issues in terms of Employer's M/SD.[6] *Walker v. Todd Pac. Shipyards*, 47 BRBS 11 (2013), *vacating in pert. part on recon.*, 46 BRBS 57 (2012); *Irby v. Blackwater Sec. Consulting*, 44 BRBS 17 (2010). The scant record before the Benefits Review Board contains evidence pertinent to Claimant's aggravation claim, and although the ALJ stated he "read the Motions, the Exhibits, et cetera," and recognized

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had a new specific injury, the aggravation of his knee condition, while working at the Port would certainly bring it under the Longshore Act." *Id.* at 16. In other words, although "his original injuries occurred at the Louisville [Road] Facility, he aggravated it working as a Longshoreman within the boundaries of the [Port of Savannah] which would meet the situs requirement." *Id.*

[5] The ALJ, "according to [his] math," calculated Claimant's work within the port may have involved "a total of 43 days" during his entire career with Employer. Tr. at 19.

[6] Because he applied incorrect aggravation law, *see infra*, the ALJ's statement that even if everything Claimant said was true does not meet the standard necessary for viewing the evidence in the light most favorable to the non-moving party.

Claimant "technically" stated a claim for aggravation, Tr. at 7, 8,[7] 18, he did not adequately address all of this relevant evidence.

Claimant stated, "there was a four-month period where I was required to go several times per week to the same job (working on tires/chassis) at the Georgia Ports Authority and inside their gate" and that while working for Employer at its Louisville Road facility and at the Port of Savannah, his "work continued to aggravate my knee after August of 2011 and April of 2013." CX B. Kevin Walker, Claimant's supervisor, stated, "between 2011 and 2013, both [Claimant] and I would be assigned by [Employer] to go work on tires for chassis inside the gates of the Georgia Ports Authority in Garden City, Georgia" and that during such work, as well as when working at the Louisville Road facility "between 2011 and 2013, [Claimant] made complaints that the bending and squatting repeatedly was aggravating his knee." CX C. His co-worker, Derrick Smith, who also worked for Employer during the 2011-2013 time frame, testified that after Claimant's 2011 accident, Claimant complained of pain and swelling in his right knee, he could see Claimant limping and observed Claimant's swollen right knee, and Claimant told him he was hurting and having trouble doing his job. CX D, Dep. at 10-13; 15-17. The ALJ did not address this evidence in his bench decision (either during the conference or in his corresponding order),[8] though it supports Claimant's claim that he sustained an aggravating injury to his right knee during his work for Employer within the Port of Savannah sometime between his 2011 and 2013 work injuries.[9] Any vagueness in Claimant's aggravation claim should

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[7] The ALJ explicitly stated "[t]here is an allegation that during his four-month stint [working at the Port of Savannah] he may have aggravated his right knee injury, but he didn't receive a new injury." Tr. at 8.

[8] Moreover, we hold the ALJ's bench decision and accompanying order fall short of the Administrative Procedure Act's (APA) requirement to adequately detail the rationale behind his decision, ***analyze and discuss the relevant evidence of record***, and explicitly set forth the reasons for his acceptance or rejection of such evidence. 5 U.S.C. §557(c)(3)(A) (emphasis added); *see Santoro v. Maher Terminals, Inc.,* 30 BRBS 171 (1996); *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380 (1990); *Cairns v. Matson Terminals, Inc.,* 21 BRBS 252 (1988).

[9] Although the ALJ accurately noted Claimant "doesn't even know when he worked at the Port" and "said generally it was after an accident," Tr. at 18; *see also* Ex. A, Dep. at 65, he neglected to consider that testimony in the context of the overall evidence, which indicates Claimant's work at the Port of Savannah occurred sometime after his 2011 work injury but before his 2013 work injury. Claimant's statement, as the ALJ noted, that "it was after an accident," coupled with the fact that such work occurred over the course of a four-month period, necessarily means he worked within the Port of Savannah sometime

have been considered in context with other statements of the alleged facts and in the light most favorable to him.

Additionally, although Claimant did not claim or establish a specific aggravating injury, and the ALJ found this significant, no such specificity is necessary. *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 44 BRBS 13(CRT) (1st Cir. 2010) (a claim may be based on a work-related activation or aggravation of symptoms); *Obadiaru v. ITT Corp.*, 45 BRBS 17 (2011) (it is sufficient if a claimant's employment activities made his existing condition symptomatic – the underlying condition does not have to be physically worsened). An aggravation may occur over time. *Care v. Wash. Metro. Area Transit Auth.*, 21 BRBS 248 (1988) (an aggravation of a pre-existing condition is an injury and an injury may occur gradually as a result of continuing exposure to conditions of employment). Claimant testified, as Mr. Walker and Mr. Smith confirmed, that his work with Employer aggravated his right knee condition. CX B. He also alleged time working at the Port of Savannah. Viewing the facts in the light most favorable to Claimant, he sustained a knee aggravation at the port. Work at the port can constitute work on a covered situs. Consequently, the ALJ's consideration of situs vis-à-vis Employer's M/SD should not have focused on whether there was an aggravation, but, rather, where on the job site did the aggravation occur. Because the ALJ did not properly address the situs issue and fact-finding is necessary to ascertain the answer, the ALJ should not have granted summary decision on this issue. We therefore vacate the ALJ's finding that Claimant did not meet the situs requirement, only insofar as this particular work site is concerned, and remand the case for further consideration of this issue.

On remand, the ALJ must address whether the location of Claimant's work within the Port of Savannah constitutes a covered situs, *Bianco*, 304 F.3d 1053, 36 BRBS 57(CRT) (entire facility need not be a covered situs merely because a portion of it conducts maritime activities); *but see Williams v. Northrop Grumman Shipbuilding, Inc.*, 45 BRBS 57 (2011) (entire shipyard covered); *Uresti v. Port Container Indus., Inc.*, 33 BRBS 215, *aff'd on recon.,* 34 BRBS 127 (2000) (entire port covered); *Peterson v. Gen. Dynamics Corp.*, 25 BRBS 71 (1991), *aff'd sub nom. Ins. Co. of North America v. U. S. Dept. of Labor*, 969 F.2d 1400, 26 BRBS 14(CRT) (2d Cir. 1992), *cert. denied*, 507 U.S. 909 (1993) (entire shipyard covered), and if so, whether Claimant sustained a disabling aggravating injury in the course of his work at that location.

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after his 2011 accident and before his 2013 accident – Claimant only worked with Employer for two months following his 2013 work accident.

Status

Section 2(3) of the Act provides:

> The term 'employee' means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker….

33 U.S.C. §902(3). A claimant satisfies the "status" requirement if he is an employee engaged in work which is integral to the loading, unloading, constructing, or repairing of vessels. 33 U.S.C. §902(3); *Chesapeake & Ohio Ry. Co. v. Schwalb*, 493 U.S. 40, 23 BRBS 96(CRT) (1989). To satisfy this requirement, he need only "spend at least some of [his] time in indisputably longshoring operations." *Caputo*, 432 U.S. at 273, 6 BRBS at 165. Although an employee is covered if some portion of his activities constitute covered employment, those activities must be more than episodic, momentary, or incidental to non-maritime work. *Stalinski v. Elec. Boat Corp.,* 38 BRBS 85, (2005); *Zeringue v. McDermott, Inc.*, 32 BRBS 275 (1998); *Coleman v. Atl. Container Serv., Inc.*, 22 BRBS 309 (1989), *aff'd*, 904 F.2d 611, 23 BRBS 101(CRT) (11th Cir. 1990).

The ALJ found Claimant's work on tires did not involve "anything that had to do with the loading and unloading of vessels" and was "too far removed" from traditional longshoring work to consider it maritime employment. Tr. at 14. He found Claimant's work repairing tires that were to be mounted on wheels that "go on chassis that eventually connect to a container," *id.* at 15, is distinguishable from work "repairing containers and chassis," as the former merely involves "working on a part that goes on a chassis" whereas the latter involves "working on the specific chassis or container that's going to transport this material off the ships." *Id.* at 17. In this regard, he found Claimant's work beyond the scope of "the status requirement as the Eleventh Circuit defined it" in *Atl. Container Serv., Inc. v. Coleman*, 904 F.2d 611, 23 BRBS 101(CRT) (11th Cir. 1990). *Id.* at 15. For these reasons, he distinguished *Coleman* and therefore concluded Claimant's work is "too far insinuated back to the status argument," Tr. at 17, and did not satisfy the status requirement.

Claimant contends the distinction between repairing tires that go on chassis and repairing containers and chassis is not valid and asserts his work is integrally related to loading and unloading operations. He likens his situation to that of the claimant in *Coleman*, 904 F.2d 611, 23 BRBS 101(CRT), who was injured changing a tire. The court held a job duty involving maintenance work on containers and chassis necessarily involves "indisputably maritime activities." *Coleman*, 904 F.2d at 618, 23 BRBS at 108(CRT). Claimant states this, coupled with the fact he performed at least some of his work at the Port of Savannah, establishes, under the controlling precedent of *Coleman*, that his work is maritime in nature and therefore satisfies the status requirement of Section 2(3).

In *Coleman*, the claimant was employed at the port facility as "a chassis and container repairman" for an employer whose business involved maintaining and repairing equipment used to transport goods traveling from sea to land and back again. *Coleman*, 22 BRBS at 310, 311. The Board affirmed the ALJ's finding that he was a covered employee, holding his overall employment was maritime in nature as it facilitated the movement of cargo between ship and land transportation. *Id.*, 22 BRBS at 312. Additionally, the Board held the claimant's "specific work on containers coming into the port to be put on ships and on equipment used solely to move cargo within the port is directly integral to the loading and unloading process." *Id.* The United States Court of Appeals for the Eleventh Circuit affirmed the Board's conclusion, holding:

> Maintenance of the chassis in good working order is essential to prevent the loading and unloading process from breaking down. They must be kept in good condition to support the containers attached to them at dockside. They must be maintained in order to be hauled by hustlers as well as tractor trucks. Similarly, hustlers and containers, both of which Coleman worked on periodically, are essential to the loading and unloading process.
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> The fact Coleman worked primarily on making loaded chassis/container rigs road worthy does not diminish his involvement in the loading and unloading process. Without the essential maintenance necessary to make the outbound rigs road worthy, the unloading process would stop indefinitely at the Port Authority.

Coleman, 904 F.2d at 618, 23 BRBS at 108(CRT). Ultimately, in *Coleman*, the court concluded, upon consideration of the United States Supreme Court's decisions in *Caputo*, *P.C. Pfeiffer Co. v. Ford*, 444 U.S. 698 (1979), and *Schwalb*, that repair of chassis and containers is covered work. In *Schwalb*, the Supreme Court stated:

> Although we have not previously so held, we are quite sure that employees who are injured while maintaining or repairing equipment essential to the loading or unloading process are covered by the Act. Such employees are engaged in activity that is an integral part of and essential to those overall processes. That is all that §902(3) requires.

Schwalb, 493 U.S. at 47, 23 BRBS at 99(CRT); *see Coleman*, 904 F.2d at 616, 23 BRBS at 105-106(CRT). The Supreme Court further stated the determinative consideration is whether the ship loading and unloading process could continue without the claimant's job function. An employee need not be injured while actively engaged in tasks integral to the loading and unloading process; rather, the proper analysis looks to the claimant's regular

duties and the tasks to which he may be assigned. *See Ford*, 444 U.S. at 82, 11 BRBS at 328; *Caputo*, 432 U.S. at 272-274, 6 BRBS at 165; *Maher Terminals, Inc. v. Director, OWCP [Riggio]*, 330 F.3d 162, 37 BRBS 42(CRT) (3d Cir.), *cert. denied*, 124 S.Ct. 957 (2003).

As with his situs inquiry, the ALJ did not adequately address the status issue, as he did not address whether Claimant's actual job duties within the Port of Savannah involved working directly on chassis. This is a dispute requiring fact-finding, and the resolution is a key to making a status determination. Thus, there is a genuine issue of material fact regarding whether this aspect of Claimant's work duties is adequate to confer Section 2(3) status upon him so that the ALJ should not have granted Employer's M/SD. *See Irby*, 44 BRBS 17; *Morgan*, 40 BRBS 9; *Dunn v. Lockheed Martin Corp.*, 33 BRBS 204 (1999).

Employer correctly maintains there is no actual evidence in the record establishing Claimant mounted and dismounted tires directly off of and back on to any chassis. In this regard, Claimant's statements, as well as those that Mr. Walker, Mr. Smith, and Employer's managing partner, Bruce Chamblee, provided, make no specific mention of such work. Rather, they each generally describe Claimant's job duties in terms of dismounting and remounting tires without clarifying whether this involves the tire from the rim or the tire/rim from a chassis. *See* EX A, Dep. at 68-69; EX B; CX C; CX D, Dep. at 13-14. Clearly, Claimant's work, at least while performed at Employer's Louisville Road facility, was limited to the tire and rim because there is nothing to suggest that chassis were present at that facility. However, Claimant's counsel made several statements during the conference which suggest Claimant's job duties at the Port of Savannah involved direct work with chassis. When asked whether the parties' disputed the facts as the ALJ articulated, Claimant's counsel stated, "he primarily did changing tires on chassis and working on tires and chassis at the Port." Tr. at 5. The ALJ later asked whether Claimant's work at the Port of Savannah involved any mounting or dismounting of the tire on the chassis, to which Claimant, again through counsel, responded, "I believe they are mounting them on the chassis after they repair them at the Port." Tr. at 11. Claimant's counsel further stated, "part of that is why he aggravated his knee at the Port and he complained about it aggravating his knee, both to his supervisor and to Derrick Smith." *Id.* Indeed, if Claimant's work for Employer at the Port of Savannah involved direct work on chassis (dismounting tires from chassis, repairing them, and then remounting them onto chassis), work which arguably involves maintenance or repair of a chassis that is integral to the loading or unloading of a vessel, then those work duties, assuming he regularly performed

such work some of the time,[10] would satisfy the status element of Section 2(3) of the Act.[11] *Coleman*, 904 F.2d at 618, 23 BRBS at 108(CRT); *see also Caputo,* 432 U.S. 249, 6 BRBS 150; *see also Schwalb*, 493 U.S. 40, 23 BRBS 96(CRT) (worker "who repairs or maintains a piece of loading equipment is just as vital to and an integral part of the loading process as the operator of the equipment"); *Victorian v. International-Matex Tank Terminals*, 52 BRBS 35 (2018), *aff'd sub nom. International-Matex Tank Terminals v. Director, OWCP*, 943 F.3d 278, 53 BRBS 79(CRT) (5th Cir. 2019) (at least some of the claimant's regular job duties were integral to the loading and unloading process, thereby conferring Section 2(3) status upon him); *Jones v. Aluminum Co. of Am.*, 31 BRBS 130 (1997) (As decedent's work maintaining and repairing conveyor belts constituted a regular, non-discretionary, albeit infrequent, portion of his job, it met the *Caputo* requirement of "some" time and conferred coverage under the Act.).

Consequently, the ALJ did not adequately address whether Claimant's duties within the Port of Savannah included the direct repair of chassis. Moreover, the ALJ did not make any determination as to whether Claimant's work activities within the Port of Savannah were more than incidental to his non-maritime work at Employer's Louisville Road facility.

We therefore vacate the ALJ's finding that Claimant did not satisfy the status requirement and the resulting decision to grant Employer's M/SD, and remand the case for further consideration of the status issue. On remand, the ALJ must address Claimant's contention that his work at the Port of Savannah included dismounting and remounting tires directly on chassis and, therefore, involved the repair and maintenance of equipment integral to the loading and unloading process. If so, the ALJ must then consider whether

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[10] The ALJ presumably found Claimant's work for Employer within the Port of Savannah was not a regular part of his overall work for Employer. This may be inferred from his statement that Claimant might have worked "a total of 43 days" during his entire career with Employer. Tr. at 19. Nevertheless, he did not address whether those "43 days" in approximately two years of work between August 2011 and April 2013 constituted a regular part of Claimant's overall work for Employer and were not too episodic, momentary, or incidental as to constitute non-maritime work. *Coleman*, 22 BRBS at 312.

[11] The issue of "walking in and out of coverage" applies to status generally and is typically resolved by considering any work to which an employee could be assigned. *See Ford*, 444 U.S. 69, 11 BRBS 320; *Bianco*, 304 F.3d 1053, 36 BRBS 57(CRT); *W.B. v. Sea-Logix, L.L.C.*, 41 BRBS 89 (2007). Specifically, if, in a claimant's employment, he may be assigned to regularly perform both maritime and non-maritime duties, then he cannot "walk in and out of coverage." *Id.* He would satisfy the status requirement even if he were injured while performing the non-maritime work. *Id.*

that is sufficient to confer covered status upon him. He must also address whether this particular aspect of Claimant's job was more than episodic, momentary, or incidental to his general non-maritime work at Employer's Louisville Road facility. If the evidence presented by the parties with respect to Employer's M/SD is insufficient for a resolution of either Section 2(3) and/or Section 3(a),[12] or the issues require additional factfinding, the ALJ should hold an evidentiary hearing on those issues and on any other issues the parties raised. 33 U.S.C. §§919(d), 923; 20 C.F.R. §702.331 *et seq.*

Accordingly, we vacate the ALJ's findings that Claimant has not satisfied the situs and status requirements, and his resulting Order Granting Employer's Motion for Summary Decision and Dismissing Claim, and remand this case for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

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[12] As Claimant must satisfy both the status and situs requirements for his injury to be covered, the ALJ need not address both issues if he finds Claimant has failed to satisfy one of them.