

W.B.)
)
 Claimant-Petitioner)
)
 v.)
)
 SEA-LOGIX, L.L.C.) DATE ISSUED: 08/23/2007
)
 and)
)
 SIGNAL MUTUAL INDEMNITY)
 ASSOCIATION)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Decision and Order Denying Claim of Jennifer Gee, Administrative Law Judge, United States Department of Labor.

Joshua T. Gillelan II (Longshore Claimants' National Law Center), and Steven M. Birnbaum, San Rafael, California, Washington, D.C., for claimant.

Frank B. Hugg, Oakland, California, for employer/carrier.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Claim (2005-LHC-00876) of Administrative Law Judge Jennifer Gee rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant filed a claim for benefits under the Act for cumulative trauma to his head, back and knee sustained in the course of his employment as a truck driver for employer from March 1, 2003 to the date of the hearing.¹ In her decision, the administrative law judge determined that claimant did not meet the status requirement of Section 2(3), 33 U.S.C. §902(3), as claimant's primary job duties, which involved the transportation of cargo between maritime areas and land-based locations, are not covered activities. Accordingly, the administrative law judge denied benefits.

On appeal, claimant concedes that the majority of his work, which involves transporting containers between the marine terminal and inland customers located outside the Port of Oakland, is not covered activity under Section 2(3).² He contends, however, that three of his other work assignments constitute intermediate steps of moving cargo between ship and land transportation and, thus, satisfy the status requirement. These three work duties involve transporting containers between the APM marine terminal and the Port of Oakland railhead, other marine terminals within the port, and employer's warehouse adjacent to the APM marine terminal.³ Employer responds, urging affirmance of the administrative law judge's finding that the status requirement is not satisfied.

For a claim to be covered by the Act, a claimant must establish that 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 under Section 2(3) and is not specifically excluded by the Act. 33

¹ Claimant sustained a work-related injury on April 12, 2000, while working for employer's predecessor-in-interest and settled all of his claims for injuries for the period prior to March 1, 2003. *See* Decision and Order at 2; Hearing Tr. at 17-18, 91-92.

² Claimant does not contend on appeal that the administrative law judge erred in finding that his occasional performance of longshore work for employer as a hostler, receiver, dock man, and big lift driver was momentary, episodic and incidental and, thus, is insufficient to confer coverage. *See* Cl. Br. at 11; Decision and Order at 4, 6-7, 15-18.

³ In his brief, claimant urges the Board to take official notice of information regarding employer's business structure obtained from various websites and included as attachments to claimant's brief. *See* Cl. Br. at 3-4 and attachments. Employer has moved to strike claimant's attachments, which were not part of the record before the administrative law judge and to expunge all arguments made by claimant that are based on these attachments; claimant opposes employer's motion. Employer's Motion to Strike is hereby granted; the arguments made by claimant based on these documents have not been considered by the Board. 20 C.F.R. §§802.219, 802.301.

U.S.C. §§902(3), 903(a);⁴ *Director, OWCP v. Perini North River Associates*, 459 U.S. 297, 15 BRBS 62(CRT) (1983); *P.C. Pfeiffer Co. v. Ford*, 444 U.S. 69, 11 BRBS 320 (1979); *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 6 BRBS 150 (1977). Generally, 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. *See 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 maritime activities. *Caputo*, 432 U.S. at 273, 6 BRBS at 165. Although an employee is covered if some portion of his activities constitutes covered employment, those activities must be more than episodic, momentary or incidental to non-maritime work. *See, e.g., Coleman v. Atlantic Container Serv., Inc.*, 22 BRBS 309 (1989), *aff’d*, 904 F.2d 611, 23 BRBS 101(CRT) (11th Cir. 1990); *see also Schwabenland v. Sanger Boats*, 683 F.2d 309, 312, 16 BRBS 78, 80-81(CRT) (9th Cir. 1982)(the regular performance of maritime activities, even though it constitutes less than a “substantial portion” of the employee’s overall employment duties, is sufficient to meet the status requirement). Workers are considered to be engaged in covered employment if they are “engaged in intermediate steps of moving cargo between ship and land transportation.” *Ford*, 444 U.S. at 83, 11 BRBS at 328.

In the instant case, employer, as presently constituted, is a warehouse and transportation company that loads, unloads, consolidates, and transports containerized and loose cargo. Hearing Tr. at 147, 199-202; EXs 1, 2. Employer’s warehouse, also referred to as a “container freight station,” is located in the Port of Oakland and is directly adjacent to, separated only by a fence and gate from, the marine terminal operated by APM.⁵ Hearing Tr. at 67, 108, 195-199. Claimant, who is classified as a street driver, drives a tractor truck licensed for over-the-road use and is a member of the Teamsters union. *Id.* at 91, 94-95, 100-102, 177. The majority of claimant’s work involves transporting containers between the APM marine terminal and customers located outside the Port of Oakland. Claimant acknowledges that this activity is not covered under Section 2(3) as it involves picking up stored cargo for trans-shipment to its inland destination. *See Caputo*, 432 U.S. at 266-67, 6 BRBS at 160-61. It is uncontested,

⁴ The administrative law judge did not address the issue of whether claimant met the situs requirement of Section 3(a), 33 U.S.C. §903(a).

⁵ Whenever cargo is transported into and out of the APM marine terminal, it is subject to an electronic data interchange, also referred to as a gate transaction and as an electronic release, that is conducted at the terminal gate and involves the transfer of legal control or custody of the cargo. Hearing Tr. at 155, 160-161, 165-167, 208-229.

however, that claimant's work assignments include transporting containers between the APM marine terminal and three other locations within the Port of Oakland: 1) the Joint Intermodal Terminal (JIT) railhead; 2) other marine terminals; and 3) employer's adjacent warehouse. The issue presented by the instant appeal is whether the administrative law judge erred in finding that these three duties involve activity related to the land-based stream of transportation, and, thus, do not satisfy the Section 2(3) status requirement. We reverse the administrative law judge's finding that claimant was not engaged in covered employment pursuant to Section 2(3), first addressing claimant's contentions regarding the administrative law judge's legal errors, and then the specific facts of claimant's employment giving rise to the holding that claimant is a maritime employee.

At the outset, it bears emphasis that if these three work activities, which were part of claimant's regular job assignments, constitute longshoring activities, the status requirement is met despite the fact that the majority of claimant's time was spent in non-covered work. *See Caputo*, 432 U.S. at 273, 6 BRBS at 165; *Schwabenland*, 683 F.2d at 312, 16 BRBS at 80-81(CRT); *Boudloche v. Howard Trucking Co.*, 632 F.2d 1346, 12 BRBS 732 (5th Cir. 1980), *cert. denied*, 452 U.S. 915 (1981); *Lewis v. Sunnen Crane Serv., Inc.*, 31 BRBS 34, 39-41 (1997); *Odness v. Import Dealers Serv. Corp.*, 26 BRBS 165, 170 (1992). Although the administrative law judge acknowledged this legal principle, Decision and Order at 15, 18, she attached considerable significance to her findings that claimant did not transport containers exclusively within the confines of the port area and that his "overall employment situation" and "primary employment responsibility" involve inland transportation, a non-covered activity. *See* Decision and Order at 12, 14, 19-20, 22-23. We agree with claimant that the administrative law judge's focus on claimant's "primary" duties and responsibilities and on the fact that claimant did not work "exclusively" in the port is contrary to law, as claimant need only spend "at least some of [his] time" in covered activity. *Caputo*, 432 U.S. at 273, 6 BRBS at 165; *see Schwabenland*, 683 F.2d at 312, 16 BRBS 80-81(CRT); *Boudloche*, 632 F.2d 1346, 12 BRBS 732; *Lewis*, 31 BRBS at 39-41; *Odness*, 26 BRBS at 170.

In addition, claimant's argument that the administrative law judge erred in finding that claimant's work transporting containers between the APM marine terminal and the JIT railhead, other marine terminals, and employer's warehouse is not covered activity has merit. As claimant contends, the administrative law judge's determination rests on findings and reasoning that are incompatible with the United States Supreme Court's rejection of the "point of rest" theory. In rejecting the "point of rest" theory, which advocated coverage of only those employees who moved cargo from the vessel to its initial point of rest on the pier or terminal area, and vice versa, the Court held that coverage extends to workers who are involved in intermediate steps of moving cargo

between ship and land transportation.⁶ *Ford*, 444 U.S. at 75-76, 82, 11 BRBS at 323-24, 328; *Caputo*, 432 U.S. at 276-79, 6 BRBS at 166-169. The Supreme Court stated that the status inquiry focuses upon the nature of the employee's work activities. *Ford*, 444 U.S. at 83, 11 BRBS at 328-29. The Court reasoned that since workers who performed traditional longshoring work loading and unloading cargo directly between a ship and its landward mode of transport are covered, those employees whose duties involve the movement of cargo from a storage area to the point at which it leaves the port are similarly covered.⁷ *Id.*

Claimant further avers that the administrative law judge attached disproportionate weight to the evidence that cargo transported into and out of the APM marine terminal is subject to an electronic release. See Decision and Order at 3-4, 7-10, 13, 21-23; n.5, *supra*. Claimant argues, in this regard, that consideration of the nature of his functional job responsibilities within the port is not outweighed by issues pertaining to the legal custody of the cargo. The Supreme Court has emphasized that the nature of the work

⁶ In contrast, a truck driver, or other worker, whose responsibility on the waterfront is solely to pick up and transport cargo between the waterfront and inland consignees is engaged in land-based transportation, rather than an intermediate step of moving cargo between ship and land transportation, and is not covered under the Act. See *Ford*, 444 U.S. at 79-80, 83, 11 BRBS at 326, 329, *Caputo*, 432 U.S. at 266-67, 6 BRBS at 160-61; *Dorris v. Director, OWCP*, 808 F.2d 1362, 19 BRBS 82(CRT) (9th Cir. 1987), *aff'g Dorris v. California Cartage*, 17 BRBS 218 (1985); *Zube v. Sun Refining & Marketing Co.*, 31 BRBS 50 (1997), *aff'd mem.*, No. 97-3382 (3^d Cir. July 31, 1998).

⁷ In *Ford*, 444 U.S. 69, 11 BRBS 320, claimant Ford was working in the Port of Beaumont as a warehouseman when he was injured on a dock while fastening vehicles that had been unloaded earlier and stored to railroad cars for landward shipment. Claimant Bryant, in a consolidated case, was working in the Port of Galveston as a cotton header when he was injured while unloading a bale of cotton from a dray wagon into a pier warehouse where it was stored until loaded on a vessel. The Supreme Court held that both claimants were covered because they were engaged in intermediate steps of moving cargo between ship and land transportation. The Court concluded that claimant Ford was performing the last step before the vehicles left on their landward journey. Similarly, claimant Bryant was performing the first step in removing cargo from a vehicle used in land transportation so that it could be readied for loading onto ships. The Court reasoned that if the goods had been taken directly from the ship to the train, or from the truck directly to the ship, the claimants' activities would have been performed by longshoremen and that the only ground to distinguish the claimants from those who do such "direct" loading would be the "point of rest" theory previously rejected in *Caputo*. *Ford*, 444 U.S. at 82, 11 BRBS at 328.

activity to which an employee may be assigned is the paramount consideration in determining whether the status requirement is satisfied. *Ford*, 444 U.S. at 83, 11 BRBS at 328-29. Factors regarding the transfer of legal custody are not determinative of the status inquiry, which is governed instead by the functional nature of the work activity. *See Novelties Distribution Corp. v. Molee*, 710 F.2d 992, 15 BRBS 168(CRT) (3^d Cir. 1983), *aff'g* 15 BRBS 1 (1982); *McKenzie v. Crowley American Transport, Inc.*, 36 BRBS 41, 44 (2002); *Lewis*, 31 BRBS at 37. Thus, we agree with claimant that the administrative law judge erred in relying in significant part on factors related to the legal custody of the cargo to deny coverage.

Claimant also contends that the administrative law judge accorded inordinate significance to the fact that claimant is a member of the Teamsters union rather than the longshoremen's union. *See* Decision Order at 3, 21-22. The United States Supreme Court stated both in *Ford*, 444 U.S. at 82, 11 BRBS at 328, and in its earlier decision in *Caputo*, 432 U.S. at 268 n.30, 6 BRBS at 162 n.30, that the scope of maritime employment is not dependent on "the vagaries of union jurisdiction." In the present case, the administrative law judge found that claimant's membership in the Teamsters union "is an additional factor--although not a determinative one--that weighs against a finding of longshore 'status.'"⁸ Decision and Order at 22. We agree with claimant that the administrative law judge erred in considering claimant's Teamsters' union membership as a factor that weighs against a finding of Section 2(3) status. *See Ford*, 444 U.S. at 82, 11 BRBS at 328; *Caputo*, 432 U.S. at 268 n.30, 6 BRBS at 162 n.30; *Lewis*, 31 BRBS at 37 n. 7.

We turn now to consideration of the three specific work activities performed within the Port of Oakland, which, claimant asserts, constitute intermediate steps of moving cargo between ship and land transportation. With respect to the first of these activities, referred to in claimant's hearing testimony as a "land bridge move," claimant

⁸ The administrative law judge cited *Triguero v. Consolidated Rail Corp.*, 932 F.2d 95 (2^d Cir. 1991), for the proposition that union membership is a proper factor, although not determinative, in determining whether the status requirement is met. Decision and Order at 21. In *Triguero*, the claimant's work was held to satisfy the status requirement; in enumerating the factors that supported this holding, the court observed that, although not a dispositive factor, the claimant was a member of the longshoremen's union. 932 F.2d at 100. Although the court in *Triguero* considered the employee's union membership as a factor, albeit not a determinative one, supporting a finding of status, we do not broadly interpret *Triguero* as standing for the converse proposition that an employee's lack of longshoremen's union membership may be properly considered as a factor weighing against a finding of coverage. *See Ford*, 444 U.S. at 82, 11 BRBS at 328; *Caputo*, 432 U.S. at 288 n.30, 6 BRBS at 162 n. 30.

transported containers from the APM marine terminal to the JIT railhead.⁹ *See* Hearing Tr. at 55. Specifically, claimant picked up sealed containers that either were already on chassis in the marine yard or were stacked on the ground at the waterfront, exited the APM terminal, and drove within the Port of Oakland to the JIT railhead, which is located one mile from the APM terminal and approximately ½ mile from the water, where he delivered the containers. *See id.* at 57-60, 118-126, 129- 131, 164-168, 182-183, 208-210. Employer discontinued these land bridge operations approximately 7-8 months prior to the hearing; before the discontinuance, claimant had been involved in land bridge operations almost every Sunday, averaging between 9-12 runs in a day. *See id.* at 61-63. The administrative law judge found that claimant’s work transporting containers between the APM marine terminal and the JIT railhead does not constitute an intermediate step in moving cargo between ship and land transportation. Decision and Order at 18-19, 22-23. Specifically, the administrative law judge observed that the vessel had been fully discharged and the containers placed in storage prior to claimant’s involvement. *Id.* at 18. She determined that at the point that claimant picked up a container from the marine terminal to transport it to the JIT railhead, all longshoring operations had ceased and that claimant was engaged in the first step in the land-based stream of transportation.¹⁰ *Id.* at 18-19. The administrative law judge further stated that when performing land bridge moves, claimant “never moved cargo to an intermediate storage area” *Id.* at 22-23.

We agree with claimant that the administrative law judge’s analysis of this particular work activity cannot be affirmed as it is incompatible with the “point of rest” theory rejected by the United States Supreme Court in *Caputo* and *Ford*. *See Lewis*, 31 BRBS at 36-38. As set forth *supra* at n. 7, in the *Ford* case, claimant Ford’s work involved fastening onto railroad cars vehicles that had previously been unloaded and stored within a port. In holding that this work represents an intermediate step in transferring cargo between ship and land transportation, the Court reasoned that the only

⁹ The JIT is a rail facility located in a maritime area within the Port, and was created for the loading and unloading of ocean-going containers onto or from railroad cars. *See* Hearing Tr. at 182-183, 186-188. The Maersk-Sealand steamship company contracted with employer for the movement of containers between the APM terminal and the JIT railhead. *See id.* at 55, 208.

¹⁰ The administrative law judge additionally remarked that, when transporting containers to the JIT railhead, claimant drove a truck licensed for use on public roads and was required to travel on a public road. Decision and Order at 18. We agree with claimant that, on the facts of this case, these factors are not determinative of whether claimant’s work activity is an intermediate step in moving cargo between ship and land transportation. In this regard, it is undisputed that in traveling between the APM terminal and the JIT railhead, claimant did not leave the Port of Oakland.

basis for distinguishing claimant Ford from longshoremen who otherwise would perform the same work is the discredited “point of rest” theory. *Ford*, 444 U.S. at 82, 11 BRBS at 327-328. In the present case, the primary basis for the administrative law judge’s conclusion that claimant was engaged in the first step of landward transportation is that the containers had already been unloaded from the vessel and placed in storage before claimant took physical custody of the containers. *See* Decision and Order at 18-19, 21-22. Claimant transported containerized cargo from its “point of rest” in the APM marine terminal to the JIT railhead, located within the same port, where the containers were loaded onto railroad cars for further shipment. As in *Ford*, wherein the claimant actually fastened the containers onto the railcars, the only basis for distinguishing claimant from workers who would have been covered had the cargo been taken directly from the ship to the train, is the rejected “point of rest” theory. *Ford*, 444 U.S. at 82, 11 BRBS at 328. The landward mode of transport here is by rail, and claimant’s duties in transporting the cargo within the Port is simply an intermediate step in its movement from ship to rail. We therefore reverse the administrative law judge’s finding that claimant’s work transporting containers between the APM terminal and the JIT railhead does not constitute an intermediate step in moving cargo between ship and land transportation. *Id.*; *see also Lewis*, 31 BRBS at 38. As the administrative law judge found that this work was a “regular part” of claimant’s duties, Decision and Order at 18, we hold that claimant satisfies the Section 2(3) status requirement on this basis. *Triguero v. Consolidated Rail Corp.*, 932 F.2d 95 (2^d Cir. 1991).

The second job assignment which claimant asserts constitutes an intermediate step of moving cargo between ship and land transportation is his work involving employer’s Oakland Inner Harbor dray service in which containers are transported between either the APM terminal or employer’s warehouse and the marine yards of other steamship companies located within the Port of Oakland. Hearing Tr. at 202; EXs 2, 3. Claimant testified that he transports containers between APM Terminals and SSA Terminals, driving within the port, on an average of once a month.¹¹ Hearing Tr. at 54-57, 133. As the administrative law judge did not provide a clear analysis of this activity, it is difficult to discern the reasoning underlying her summary conclusion that this activity is classified as land-based transportation. *See* Decision and Order at 6, 10, 18, 20-21. In its decision

¹¹Employer’s witness, W.A., testified that steamship companies have agreements with one another to ship the other company’s container that did not make its intended sailing. Testifying in regard to a specific instance in which claimant transported a container from APM Terminals to SSA Terminals, W.A. explained that the container was scheduled to go aboard a Horizon Lines vessel but did not make the sailing. Horizon Lines nominated employer to transport the container from APM Terminals to SSA Terminals, the stevedoring company for Matson Lines, so that the container could sail on a Matson vessel. Hearing Tr. at 171-173.

in *Dorris v. Director, OWCP*, 808 F.2d 1362, 19 BRBS 82(CRT) (9th Cir. 1987), *aff'g Dorris v. California Cartage*, 17 BRBS 218 (1985), the United States Court of Appeals for the Ninth Circuit, within whose jurisdiction this case arises, held that a truck driver who transported cargo from a port in one city to a different port in another city was not engaged in covered activity. The facts presented in the *Dorris* case, however, did not require the Ninth Circuit to “decide whether moving cargo from berth to berth in the same harbor would be longshore work.” *Id.*, 808 F.2d at 1365, 19 BRBS at 84(CRT). In the present case, it is undisputed that claimant’s involvement in this activity entailed moving a container that had missed its intended shipping from one terminal within the Port of Oakland to another terminal within the same port so that the container could be shipped aboard another vessel. When assigned to this activity, claimant was engaged in the transport of maritime cargo within a single port for further shipment by vessel; thus, the administrative law judge erred in characterizing this activity as land-based transportation. As it is uncontested that claimant was assigned this work on an average of once per month, it constitutes a regular part of his employment for purposes of conferring coverage under the Act. *See Schwabenland*, 683 F.2d 309, 16 BRBS 78(CRT).

Lastly, claimant avers that the administrative law judge erred in finding that claimant’s work transporting loaded or empty containers or empty chassis between the APM marine terminal and employer’s adjacent warehouse, an activity referred to as “shuttling,” is not covered activity.¹² *See* Hearing Tr. at 64-68, 107-113. With respect to claimant’s shuttling of containers and chassis between the marine terminal and employer’s warehouse, the administrative law judge found that even where claimant was not the driver who ultimately transported the container to its land-based destination, “his sole responsibility was to retrieve the container from storage so that it could ultimately be transported to an inland destination.” Decision and Order at 14. She concluded that this activity was ancillary or incidental to claimant’s overall responsibility of transporting containers to inland customers and was not an intermediate step in the loading and unloading process. *Id.*; *see also id.* at 21-23. We agree with claimant that the administrative law judge erred in concluding that even when claimant was not the driver who ultimately transported the container to its land-based destination, his work shuttling containers from the terminal to employer’s warehouse is not covered activity. It is

¹² Specifically, claimant transported loaded containers from the marine yard to the warehouse, *see* Hearing Tr. at 64, transported damaged containers on chassis or in stacks in the marine yard to the warehouse, *see id.* at 64-66, or transported empty containers from the marine yard to the warehouse so the containers could be loaded with automobiles, *see id.* at 68. Claimant also moved empty chassis from the marine yard to the warehouse to be loaded with a loaded container; when performing this task, claimant would not necessarily be the driver who would then take the loaded container from the warehouse out on the road to be delivered to a customer. *Id.*

uncontested that containers were transported from the APM marine terminal to employer's warehouse where they were stripped, stuffed, and repacked.¹³ See Hearing Tr. at 64-68, 199-201. In *Childs v. Western Rim Co.*, 27 BRBS 208 (1993), the Board rejected the employer's argument that all longshoring operations ceased once the containers were loaded onto trucks for transportation to the employer's warehouse where they were to be stripped, checked sorted, and stored. Citing the Supreme Court's decisions in *Caputo* and *Ford*, the Board stated that the employer's argument "is nothing more than a renewed attempt to revive a 'point of rest' approach, cutting off coverage once the container has been moved to a different pier for checking and stripping." *Childs*, 27 BRBS at 211. Accordingly, the Board held that the claimant's duties stripping and checking containers at the employer's warehouse constituted an intermediate step in the movement of cargo between ship and land transportation. *Id.* In the present case, the administrative law judge found that even when claimant was not the driver who ultimately transported the cargo to its land-based destination, his work transporting containers and chassis between the terminal and the warehouse is not covered. This finding, like the argument advanced by the employer in *Childs*, rests on the discredited "point of rest" theory, and, thus, cannot be upheld. The containers and chassis moved between the APM terminal and employer's warehouse remain in the stream of maritime commerce, and their transport between these facilities constitutes an intermediate step between sea and land transportation. *Ford*, 444 U.S. at 83, 11 BRBS at 328.

We therefore hold that claimant's work assignments involving the transporting of containers between the APM terminal and the JIT railhead, other marine terminals, and employer's warehouse, all located within the Port of Oakland, represent intermediate steps in the movement of cargo between ship and land-based transportation as contemplated by the Supreme Court in *Caputo* and *Ford* and, thus, constitute maritime activities. See *Ford*, 444 U.S. 69, 11 BRBS 320; *Caputo*, 432 U.S. 249, 6 BRBS 160. As claimant was assigned, or could be assigned, these maritime activities as part of his regular employment duties, he is covered under Section 2(3) of the Act. See *Caputo*, 432 U.S. at 273, 6 BRBS at 165; *Schwabenland*, 683 F.2d at 312, 16 BRBS at 80-81(CRT). We therefore reverse the administrative law judge's finding that claimant is not covered by Section 2(3) of the Act, and her consequent denial of benefits, and we remand the case to the administrative law judge to address any remaining issues.

¹³ Employer's witness, W.A., testified that employer's warehouse is involved with the loading and unloading of automobiles and the packing of loose cargo into containers and flat racks for shipping on vessels and with the management of cargo outside of the APM marine terminal. See Hearing Tr. at 199-201.

Accordingly, the administrative law judge's finding that claimant did not satisfy the Act's status requirement is reversed. The Decision and Order denying benefits is vacated, and the case is remanded to the administrative law judge for consideration of the remaining issues.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge