BRB No. 10-0422

LUCILLE GELINAS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ELECTRIC BOAT CORPORATION	)	DATE ISSUED: 11/23/2010
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Order Granting Employer's Motion for Summary Decision of Colleen A. Geraghty, Administrative Law Judge, United States Department of Labor.

Scott N. Roberts, Groton, Connecticut, for claimant.

Mark P. McKenney (McKenney, Quigley, Izzo & Clarkin, L.L.P.), Providence, Rhode Island, for self-insured employer.

Before: DOLDER, Chief Administrative Appeals Judge, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Order Granting Employer's Motion for Summary Decision (2010-LHC-0050) of Administrative Law Judge Colleen A. Geraghty 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 administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are 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, who was employed as an occupational health nurse for employer from December 1974 until her retirement in December 2007, sought benefits under the Act for a work-related, noise-induced hearing loss. Claimant's work involved treating injured employees in employer's medical clinic; responding to ambulance calls in the shipyard; performing physical examinations, audiograms and EKGs; stocking RADCON (radiological control) supplies; and participating in RADCON training drills. Order at 2-

4; Motion for Summary Decision – EX 1. On December 20, 2009, employer moved for summary decision, arguing that claimant does not satisfy the Act's status requirement, 33 U.S.C. §902(3), and thus there is no coverage under the Act. In support of its motion, employer submitted the transcript of claimant's deposition taken in conjunction with proceedings before the Connecticut Workers' Compensation Commission. Motion for Summary Decision - EX 1. Claimant did not file a substantive response to the arguments presented in employer's motion.[1]

The administrative law judge found that the facts relevant to the issue of coverage are based on claimant's deposition testimony and are not disputed. He also found that employer is entitled to summary decision as a matter of law. Specifically, the administrative law judge determined that claimant's employment duties as a nurse were not integral to the shipbuilding process since claimant's failure to perform these duties would not have impeded employer's shipbuilding activities. Therefore, the administrative law judge concluded that claimant was not a covered employee under Section 2(3) of the Act. Order at 7. Accordingly, the administrative law judge granted employer's motion for summary decision and denied the claim. *Id.*

On appeal, claimant contests the denial of her claim. Employer responds, urging affirmance.

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. *B.E. [Ellis] v. Electric Boat Corp.*, 42 BRBS 35 (2008); *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 Electric, Inc.*, 903 F.2d 1523 (11th Cir. 1990), *cert. denied*, 498 U.S. 1026 (1991); *Buck v. General Dynamics Corp.*, 37 BRBS 53 (2003); 29 C.F.R. §§18.40(c), 18.41(a). As the facts of this case pertaining to claimant's employment are undisputed, the administrative law judge properly found that there are no genuine issues

[1] In a December 28, 2009 response to employer's motion, claimant requested an extension of time in which to allow her the opportunity to submit the transcript of her testimony taken at the formal hearing held on November 18, 2009, on her claim for benefits under the Connecticut workers' compensation law. As of January 19, 2010, when the administrative law judge held a telephone status conference with the parties, claimant had not yet received the transcript of the Connecticut workers' compensation hearing; the administrative law judge granted claimant until February 15, 2010, in which to submit the hearing transcript. Claimant did not submit the transcript or otherwise respond to employer's motion for summary decision by the February 15, 2010 deadline.

of material fact in dispute.[2] Therefore, the issue raised on appeal by claimant is whether the administrative law judge properly applied the law to the established facts with respect to the issue of claimant's status pursuant to Section 2(3).

Section 2(3) provides that "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) (1998). Generally, a claimant satisfies the "status" requirement if she is an employee at least some of whose work is integral to the loading, unloading, constructing, or repairing of vessels. *See* 33 U.S.C. §902(3); *Chesapeake & Ohio Ry. Co. v. Schwalb*, 493 U.S. 40, 23 BRBS 96(CRT) (1989); *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 6 BRBS 150 (1977); *American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001).

In this case, the administrative law judge cited the Supreme Court's decision in *Schwalb* and other case precedent relevant to the issue of whether claimant's work as a nurse was integral to the shipbuilding process. Order at 5-7. The administrative law judge cited in particular the Board's decisions in *Ellis*, 42 BRBS 35; *Gonzalez v. Merchants Building Maintenance*, 33 BRBS 146 (1999); and *Buck*, 37 BRBS 53, in concluding that the non-performance of claimant's nursing duties would not have impeded employer's shipbuilding activities, and that claimant was thus not engaged in maritime employment while employed by employer as a nurse.

In *Schwalb*, 493 U.S. 40, 23 BRBS 96(CRT), the Supreme Court reasoned that employees "who are injured while maintaining or repairing equipment essential to the loading or unloading process are covered by the Act." *Schwalb*, 493 U.S. at 47, 23 BRBS at 99(CRT). The Court stressed that coverage "is not limited to employees who are denominated 'longshoremen' or who physically handle the cargo," *id.*, and held that "it has been clearly decided that, aside from the specified occupations [in Section 2)(3)], land-based activity . . . will be deemed maritime only if it is an integral or essential part of loading or unloading a vessel." *Id.*, 493 U.S. at 45, 23 BRBS at 98(CRT); *see P.C. Pfeiffer Co. v. Ford*, 444 U.S. 69, 82, 11 BRBS 320, 328 (1979). In *Sea-Land Service, Inc. v. Rock*, 953 F.2d 56, 25 BRBS 112(CRT) (3d Cir. 1992), a courtesy van driver who transported various individuals within a marine terminal was held not to satisfy the status requirement, based on *Schwalb*. The court stated in this regard that while the claimant's duties were helpful, they were not indispensable to the loading process itself which would

[2] Claimant expressly states in her brief filed with the Board that she finds no error in the administrative law judge's findings of fact, Cl. Brief at 2, but rather that she takes exception to the administrative law judge's legal analysis of the status issue. *Id.* at 3.

be completely unaffected by the elimination of the claimant's position. *Id.*, 953 F.2d at 67, 25 BRBS at 121(CRT). *See also Coloma v. Director, OWCP*, 897 F.2d 394, 400, 23 BRBS 136, 142(CRT) (9th Cir.), *cert. denied*, 498 U.S. 818 (1990)(pursuant to *Schwalb*, duties of a messman/cook at a wharf held not to be essential to the loading process; the court noted that longshoring operations continued uninterrupted when the mess hall was closed down.).

In *Ellis*, 42 BRBS 35, the Board affirmed the administrative law judge's finding that the claimant, a janitor who cleaned offices, bathrooms and the cafeteria in a shipyard, was not a covered employee pursuant to Section 2(3). The Board held that the administrative law judge properly found that, unlike the claimants in *Schwalb*, claimant Ellis's duties were not integral to her employer's shipbuilding operations since failure to perform her job would not disrupt the shipbuilding process. Specifically, the Board observed that the claimant did not clean or maintain any shipbuilding equipment or the production areas around the equipment. *Ellis*, 42 BRBS at 39. Similarly, in *Gonzalez*, 33 BRBS 146, the Board affirmed the administrative law judge's finding that the duties of a janitor who cleaned restrooms in a shipyard and onboard ships were not integral to shipbuilding operations as the maintenance duties did not involve any equipment used in the shipbuilding process; thus, the claimant was held not to satisfy the Section 2(3) status requirement. *Gonzalez*, 33 BRBS at 148.

In *Buck*, a consolidated case involving claims by two workers' compensation claims adjusters, the Board affirmed the administrative law judges' findings that the claimants did not satisfy the Section 2(3) status requirement. In this regard, the Board upheld the administrative law judges' determinations that the "claimants' jobs were not integral to shipbuilding, in the sense that their failure to perform their jobs would impede the shipbuilding process." *Buck*, 37 BRBS at 57. Specifically, the Board stated that based on the evidence regarding the claimants' job duties, "the administrative law judges rationally concluded that they could not infer that claimants' failure to perform their jobs would eventually lead to work stoppages or otherwise interrupt the shipbuilding and repair activities at employer's shipyard." *Id.*

Contrary to claimant's contention on appeal, the administrative law judge did not err in finding the Board's decision in *Buck* to be instructive in her consideration of whether claimant's duties as an occupational health nurse were integral to the shipbuilding process. The administrative law judge found that claimant was employed exclusively as a nurse, and that "[w]hile [claimant's] duties were undoubtedly useful to Electric Boat in providing medical care for injured employees and performing pre-employment medical evaluations, similar to the duties of a workers' compensation [claims] examiner [the positions held by the claimants in *Buck*], [claimant's] duties were not integral to the shipbuilding process." Order at 7. Having determined that "[t]he

failure to perform Claimant's nursing duties would not have impeded the shipbuilding activities," the administrative law judge concluded that claimant was not covered under Section 2(3). *Id.* Although claimant contends that it would be reasonable to infer that claimant's failure to provide medical care to injured production workers would impede the shipbuilding process, claimant concedes that her deposition testimony does not specifically address this issue. Moreover, claimant expressly states that she does not contest the administrative law judge's factual determinations. Thus, as claimant has presented no evidence that could support a finding that the failure to perform her duties as a nurse would disrupt employer's shipbuilding operations, the administrative law judge properly found that, like the claimants in *Ellis*, *Buck*, and *Gonzalez*, claimant's job was not such that her failure to perform it would have impeded employer's shipbuilding activities. *See Schwalb*, 493 U.S. 40, 23 BRBS 96(CRT); *Rock*, 953 F.2d 56, 25 BRBS 112(CRT); *Coloma*, 897 F.2d 394, 23 BRBS 136(CRT); *Ellis*, 42 BRBS 35; *Gonzalez*, 33 BRBS 146. As "Congress did not seek to cover all those who breathe salt air[,]" *Herb's Welding, Inc. v. Gray*, 470 U.S. 414, 423, 17 BRBS 78, 82(CRT) (1985), employees who are on a shipyard site but do not perform duties essential to the shipbuilding process are not covered by the Act. The administrative law judge properly applied the applicable law to the undisputed facts in this case. As these facts establish that claimant's work as a nurse was not integral to the shipbuilding process, we affirm the administrative law judge's finding that claimant was not a maritime employee pursuant to Section 2(3) and the resultant determination that employer is entitled to summary decision as a matter of law. *Buck*, 37 BRBS 53.

Accordingly, the administrative law judge's Order Granting Employer's Motion for Summary Decision is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge