BRB No. 11-0515

TIMOTHY S. GELINAS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ELECTRIC BOAT CORPORATION	)	DATE ISSUED: 12/13/2011
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

Scott N. Roberts (Law Office of Scott Roberts, LLC), Groton, Connecticut, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2011-LHC-00022) of Administrative Law Judge Jonathan C. Calianos 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). The Board heard oral argument in this case in Providence, Rhode Island, on October 25, 2011.

Claimant is employed by employer as a security guard at employer's Quonset Point facility, which produces submarines, in North Kingstown, Rhode Island. Claimant's position as a security guard required that he obtain an emergency medical technician (EMT) certificate. During the regular work week, claimant is primarily assigned to the entry gates of employer's facility; during weekends, claimant performs

security rounds through, *inter alia*, employer's submarine production areas. In addition to his usual security-related duties, claimant is required to respond, as a consequence of his EMT certification, to medical incidents which occur at employer's facility. On April 21, 2010, claimant filed a claim for benefits under the Act averring that his exposure to loud industrial noise while working for employer resulted in a bilateral hearing impairment.

Following a March 16, 2011, formal hearing, the parties agreed to try separately the issue of coverage. On March 30, 2011, after the parties each filed a brief on this issue, the administrative law judge convened a telephone conference call with the parties during which time he informed them that, based upon his determination that claimant's employment duties as a security guard/EMT are not integral to the shipbuilding process and did not subject claimant to traditional maritime hazards, it was his intent to enter an order incorporating those findings and denying claimant's claim for benefits under the Act. In a Decision and Order dated March 31, 2011, the administrative law judge found that while claimant's employment as a security guard also involved additional duties as an EMT, claimant's employment duties are neither maritime in nature, integral to the loading, unloading, constructing, or repairing of vessels, or such that claimant is exposed to traditional maritime hazards. The administrative law judge thus concluded that claimant did not meet the status requirement necessary for coverage under the Act, and he denied claimant's request for benefits.

On appeal, claimant contends that the administrative law judge erred in concluding that his employment duties as a security guard/EMT are not covered under the Act. Employer responds, urging affirmance of the administrative law judge's Decision and Order.

In order for a claim to be covered under the Act, a claimant must establish that his injury occurred upon a site covered by Section 3(a), that he was a maritime employee pursuant to Section 2(3), and that he is not subject to any specific statutory exclusions.[1] 33 U.S.C. §§902(3), 903(a); *Director, OWCP v. Perini North River Associates*, 459 U.S. 297, 15 BRBS 62(CRT) (1983). Generally, a claimant satisfies the "status" requirement if he 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). Employees whose work is not integral to these maritime purposes are not covered by the Act. *See, e.g., Sea-Land Service, Inc. v.*

[1]In this case, it does not appear that employer asserted that claimant was not injured on a covered situs pursuant to Section 3(a), 33 U.S.C. §903(a).

Rock, 953 F.2d 56, 25 BRBS 112(CRT) (3d Cir. 1992) (courtesy van driver not covered); *Coloma v. Director, OWCP*, 897 F.2d 394, 23 BRBS 136(CRT) (9th Cir.), *cert. denied*, 498 U.S. 818 (1990) (cook at pier mess hall not covered); *Gelinas v. Electric Boat Corp.*, 44 BRBS 85 (2010) (occupational health nurse failed to establish work was integral to shipbuilding); *B.E. [Ellis] v. Electric Boat Corp.*, 42 BRBS 35 2008) (bathroom/cafeteria janitor not covered). A claimant also is not covered under the Act if a statutory exclusion applies. *See Dobey v. Johnson Controls*, 33 BRBS 63 (1999); *Daul v. Petroleum Communications, Inc.*, 32 BRBS 47 (1998), *aff'd*, 196 F.3d 611, 33 BRBS 193(CRT) (5th Cir. 1999); *Keating v. City of Titusville*, 31 BRBS 187 (1997); 20 C.F.R. §701.301(a)(12). With regard to the exclusion from coverage relevant to this case, Section 2(3)(A) 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, but such term does not include—
>
> (A) individuals employed exclusively to perform office clerical, secretarial, security, or data processing work [provided such persons are covered by State workers' compensation laws].

33 U.S.C. §902(3)(A). The term "exclusively" modifies all four classifications of work listed in this exclusion. *Dobey*, 33 BRBS at 65 n.7. Moreover, the Board has held that the term "office" also modifies those classifications of work. *Morganti v. Lockheed Martin Corp.*, 37 BRBS 126 (2003), *aff'd*, 412 F.3d 407, 39 BRBS 37(CRT) (2d Cir. 2005), *cert. denied*, 547 U.S. 1175 (2006); *K.L. [Labit] v. Blue Marine Security, LLC*, 43 BRBS 45 (2009); *Boone v. Newport News Shipbuilding & Dry Dock Co.*, 37 BRBS 1 (2003); *Wheeler v. Newport News Shipbuilding & Dry Dock Co.*, 39 BRBS 49 (2005); *Stalinski v. Electric Boat Corp.*, 38 BRBS 85 (2005).

The administrative law judge rejected employer's position that claimant, as a security guard, was excluded from coverage under the Act pursuant to Section 2(3)(A). The administrative law judge found that claimant has EMT duties and thus is not exclusively a security guard. Decision and Order Denying Benefits at 2. As employer has not appealed this finding, *see* Oral Argument Hearing Tr. at 11, we affirm the

administrative law judge's finding that claimant is not excluded from coverage pursuant to Section 2(3)(A).[2]

We cannot affirm, however, the administrative law judge's summary conclusion that claimant was not engaged in "maritime employment." As the administrative law judge did not fully address the evidence of record nor apply that evidence to the case precedent addressing the issue before him, the administrative law judge's decision must be vacated and the case remanded for further consideration.

In this case, the administrative law judge, after adopting and incorporating by reference the March 30, 2011, transcript of his telephonic conference with the parties into his decision, summarily concluded that:

> Notwithstanding the fact that the Claimant has additional (albeit infrequent) duties as an EMT, these additional duties are not maritime in nature. Simply put, [claimant] does not meet the status requirement of the Act because none of his job functions are integral to the loading, unloading, constructing, or repairing of vessels, nor does the nature of his work expose him to traditional maritime hazards.

Decision and Order Denying Benefits at 2. We cannot affirm the administrative law judge's decision since it does not satisfy the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §554, and is thus unreviewable. Hearings of claims arising under the Act are subject to the APA, *see* 33 U.S.C. §919(d), which requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record." 5 U.S.C. §557(c)(3)(A). An administrative law judge thus must adequately detail the rationale behind his decision and specify the evidence upon which he relied. *See Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988); *see also Frazier v. Nashville Bridge Co.*, 13 BRBS 436 (1981).

The administrative law judge did not cite case precedent relevant to security guards in his decision. In *Arbeeny v. McRoberts Protective Agency*, 642 F.2d 672, 13 BRBS 177 (2d Cir.), *cert. denied*, 454 U.S. 836 (1981), the Second Circuit found coverage under the Act for "pier guards" who monitored cargo on the piers and who

[2]We additionally note that, as employer acknowledges, claimant's employment requires that he patrol employer's production facility. Thus, claimant is not confined, physically or by function, to an office or administrative area on land.

occasionally went aboard ships.[3] In *Arbeeny*, the claimants were injured on waterfront piers while in the course of their employment as "pier guards," the duties of which were described as insuring the protection of cargo against theft, pilferage, vandalism, and fire. The court stated that the fact that the claimants did not physically load or off load cargo was not essential to a determination of whether they were covered under the Act. Rather, noting that the Supreme Court in *Caputo*, 432 U.S. 249, 6 BRBS 150, suggested that an expansive view of coverage should be taken, the court determined that the "pervasive surveillance conducted by claimants on the pier and occasionally on board ship is essential to the longshoring operation." *Arbeeny*, 642 F.2d at 675, 13 BRBS at 181. The court held that the employee's duties were an inextricable part of the loading and unloading function and thus he was engaged in maritime employment under the Act. *Id.*, 642 F.2d at 675, 13 BRBS at 181-182; *see also Kelly v. Director, OWCP*, 678 F.2d 830, 15 BRBS 151(CRT) (9th Cir. 1982) (adopting *Arbeeny* on indistinguishable facts).

The Board subsequently addressed the issue of whether a claimant's employment as a security guard was covered under the Act. In *Birdwell v. Western Tug & Barge*, 16 BRBS 321 (1984), the Board affirmed the administrative law judge's finding that the employee, whose watchman duties made him responsible for the security of employer's yard and vessel, was engaged in maritime employment. In *Spear v. General Dynamics Corp.*, 25 BRBS 132 (1991), the claimant worked as a guard and watchman. His employment duties in this position required him to patrol the shipyard for intruders or saboteurs, assure that other employees observed the safety rules and prohibit unauthorized personnel from entering the reactor chambers on the submarines. Claimant also worked in the dry dock or wet dock areas on an as-needed or overtime basis, and he served as a relief watchman on board submarines. In its decision, the Board affirmed the administrative law judge's finding that claimant was not excluded from the Act's coverage because he did not work "exclusively" as a security guard. The Board, citing *Arbeeny*, 642 F.2d 672, 13 BRBS 177, held that the claimant's job title is not

[3]The Board had previously held that security guards working in maritime areas were not covered under the Act since they lacked a realistically significant relationship to maritime activities involving navigation and commerce over navigable waters. *See, e.g., Holcomb v. Robert W. Kirk & Assoc., Inc.*, 11 BRBS 835 (1980) (Miller, dissenting); *Arbeeny v. McRoberts Protective Agency*, 12 BRBS 435 (1980) (Miller, dissenting); *Conlon v. McRoberts Protective Agency*, 12 BRBS 473 (1980) (Miller, dissenting). Specifically, in these cases, the Board relied on the rationale that security guards provide support services incidental to general business operations. These decisions were subsequently reversed by the United States Courts of Appeals for the Second and Fifth Circuits. *See Holcomb v. Robert W. Kirk & Assoc., Inc.*, 655 F.2d 589, 13 BRBS 839 (5th Cir. 1981), *cert. denied*, 459 U.S. 1170 (1983); *Arbeeny v. McRoberts Protective Agency*, 642 F.2d 672, 13 BRBS 177 (2d Cir.), *cert. denied*, 454 U.S. 836 (1981).

determinative of his coverage under the Act and that the administrative law judge rationally found that claimant's duties related to fire prevention and safety and as a night watchman were an integral part of the shipbuilding process and therefore covered under the Act.[4] *Spear*, 25 BRBS at 136; *see also Labit*, 43 BRBS 45 (security guard aboard ship on Mississippi River covered because injury occurred on actual navigable waters); *Dobey v. Johnson Controls*, 33 BRBS 63 (1999) (security guard covered because injury occurred during claimant's occasional work on patrol boat on navigable waters).[5]

The administrative law judge also did not discuss the evidence of record concerning claimant's job duties. Before the administrative law judge, claimant argued that his employment duties aided in the construction of vessels being built by employer. The parties presented testimony and evidence concerning claimant's duties. Specifically, claimant and his supervisor, Capt. Grandchamp, each testified regarding the duties claimant was required to perform in his capacity as a security guard, *see* March 16, 2011 Hearing Tr. at 43-46, 49-59, 67-72, 88-89, 91-95, 127-128, and employer submitted into evidence an Incident Report summary documenting claimant's response to accidents in employer's facility, safety issues, vandalism, damage to employer's property, equipment and power failures, lost equipment and contractor/vendor violations. *See* EX 6. While acknowledging the testimony of claimant and Capt. Grandchamp during the telephonic conference call, the administrative law judge did not discuss it or any other evidence in his decision in light of case precedent addressing coverage of security guards.[6] Moreover, in summarily determining that claimant's employment duties did not expose him to traditional maritime hazards, the administrative law judge seemingly relied on the

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[4]The Board also cited *Holcomb v. Robert W. Kirk & Associates, Inc.*, 655 F.2d 589, 13 BRBS 839 (5th Cir. 1981), *cert. denied*, 459 U.S. 1170 (1983), in which the Fifth Circuit held covered a ship's watchman, as his work was integral to the repair of the ship. *See Spear*, 25 BRBS at 136.

[5]In *Dobey*, the Board acknowledged that certain types of security work, notably that of a ship's watch, have been viewed as traditional maritime activity covered under the Act. *Dobey*, 33 BRBS at 67.

[6]In his telephonic conference call with the parties, the administrative law judge distinguished *Spear* from this case based on the fact that the claimant in *Spear* worked on submarines, while claimant in this case only worked near the hull of a submarine being constructed by employer. March 30, 2011 Telephone Conference Tr. at 9 – 10. The administrative law judge's basis for distinguishing *Spear* on this basis cannot stand as the administrative law judge did not discuss evidence that claimant worked throughout employer's submarine-building facility, and there is no requirement that an employee work on a vessel in order to be covered by the Act.

discredited "support services" rationale to find that claimant's work was not integral to shipbuilding. *See* n.3, *supra*.

Accordingly, as the administrative law judge did not address the relevant evidence or discuss it in view of relevant case law, we vacate the administrative law judge's finding that claimant did not meet the status requirement for coverage under the Act. We remand the case for the administrative law judge to determine if claimant's work is integral to the shipbuilding process. He should discuss the evidence relevant to the status issue, make appropriate findings based on the relevant law and evidence, and give a written explanation of the reasons and basis for his findings of fact and conclusions of law. If, on remand, the administrative law judge finds that claimant's work is integral to the shipbuilding process, *see Schwalb*, 493 U.S. 40, 23 BRBS 96(CRT), he should resolve any other issues raised by the parties.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge