



BRB No. 15-0233

STEVEN RITZHEIMER)	
)	
Claimant-Respondent)	
)	
v.)	
)	DATE ISSUED: <u>Feb. 23, 2016</u>
TRIPLE CANOPY, INCORPORATED)	
)	
and)	
)	
ALLIED WORLD NATIONAL)	
ASSURANCE COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	DECISION and ORDER
Respondent)	EN BANC

Appeal of the Decision and Order of Kenneth A. Krantz, Administrative Law Judge, United States Department of Labor.

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

Keith L. Flicker and Timothy A. Pedergrana (Flicker, Garelick & Associates, LLP), New York, New York, for employer/carrier.

Matthew W. Boyle (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, BOGGS, BUZZARD, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2014-LDA-00381) of Administrative Law Judge Kenneth A. Krantz 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), as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the DBA). We must affirm the administrative law judge's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with 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 on November 5, 2015, in Savannah, Georgia.

Claimant sought benefits under the DBA for injuries sustained on March 3, 2012, while he was employed in Israel as a force protection officer under a contract between employer and the United States Department of Defense.¹ *See* Tr. at 56-58; CX 8. Claimant was authorized to testify very generally that he performed force protection work, but his exact duties and work locations were classified and were subject to a Department of Defense non-disclosure agreement. *See* Tr. at 58-59, 66-67; EX 13 at 62-64. Claimant testified he was required to live in an apartment in Be'er Sheva,² which was selected and paid for by employer, with a roommate assigned by employer. Tr. at 60-61, 114-115. The apartment provided by employer was furnished, including such items as kitchen utensils, but the furnishings did not include a bath mat. *Id.* at 113, 153. The physical layout and condition of the bathroom were comparable to bathrooms in the United States. *Id.* at 117-119.

Although claimant's assigned housing was in Be'er Sheva, he worked elsewhere. Tr. at 62-63, 152-153. Claimant worked a swing shift, with some shifts in the day and others at night, 12 or more hours a day, seven days a week.³ *Id.* at 61-62. He was on call

¹ Claimant, a former Air Force captain and law enforcement officer, worked overseas for various employers in force protection and security positions from April 2000 to May 2012. *See* Decision and Order at 3-5; Tr. at 15-17, 24-56; CXs 9-11. Claimant's overseas employment included three assignments working for employer in Iraq beginning in 2009. *See* Tr. at 46-53. Claimant reapplied for employment with employer and was hired for the mission in Israel effective December 5, 2011. *See id.* at 56-58; CX 8. Claimant had no physical or psychological problems prior to his March 3, 2012 injury, and he passed physical and psychological examinations before being rehired by employer to work in Israel. *See* Tr. at 57-58, 69-71.

² Be'er Sheva is a city located in the Negev Desert. Tr. at 109.

24 hours a day, seven days a week.⁴ *Id.* at 62, 65-66, 105-106. Before each shift, claimant and his team members met at an assigned location where they were picked up by unmarked vehicles and driven to the mission location or worksite. *Id.* at 63-64. Claimant wore civilian clothes to the worksite and carried his uniform in a backpack. *Id.*

Once at the worksite, claimant wore a uniform, including a helmet and a Kevlar protective vest, and carried weapons, ammunition, a gas mask, and a medical kit; he estimated that his gear weighed 100 pounds. *Tr.* at 64-65. Claimant described the environment in which he worked as extremely windy and hot, infested with flies, and subject to sandstorms. *Id.* at 69. Because of the weather conditions and the weight of the gear he carried, claimant was sweaty, dirty, and had sand in his clothing at the end of his work shift. *Id.* at 71.

Claimant's employment contract included a provision requiring him to maintain a professional appearance, including his personal hygiene. Specifically, Paragraph 3 of the contract includes the following provision regarding "appearance":

The U.S. Government requires a favorable image and considers it to be a major asset of a protective force. The Company requires its employees to maintain a neat and professional appearance, paying particular attention to their grooming, personal hygiene, bearing, clothing, and equipment while conducting business on behalf of the Company and the U.S. Government. This includes transit into and out of Mission Locations.

CX 8 at 3; *see also* *Tr.* at 121-122. Claimant testified that he considered personal hygiene to be part of his job when working overseas and that his overseas employers expected professionalism, including good grooming. *Tr.* at 153. He testified he took a shower in his apartment after work because he would be sweaty and dirty from work, although he acknowledged that he also showered on his days off. *Id.* at 71, 119-123.

Claimant was injured after returning from work on March 3, 2012. *See* EX 13 at 88, 96. While showering in his apartment, the shower curtain came out of the bathtub, and the bathroom floor became wet. *See* *Tr.* at 72. When claimant stepped out of the tub, he slipped on the floor and struck his right side on the edge of the tub. *See id.*; EX 13 at

³ Claimant could be called into work Monday through Sunday, depending on the swing shift or the schedule, but he did not work 12 hours a day, seven days a week all in the same week. *See* *Tr.* at 105-106.

⁴ Although claimant was on call at all times, he was paid only when he was actually working onsite. *See* EX 13 at 114, 116. Claimant's employment contract included a provision stating that the mission location constituted a dangerous environment. CX 8 at 5-6.

89; *see also* CX 32. He was hospitalized for three days for treatment of four broken ribs and a punctured lung. *See* Tr. at 73; CX 14.

Although claimant attempted to return to work, he was advised by medics to return to the United States for further medical treatment, and he returned home in May 2012. *See* Tr. at 74-75. Claimant was found to have malunion of his rib fractures and intercostal neuralgia, and he underwent external fixation surgery on August 7, 2012. *See* CX 21. Claimant has received conservative treatment for his continued pain. He has been assigned permanent physical restrictions and prescribed pain medication. *See id.*; CXs 24, 25; Tr. at 76-82. He also takes medication for depression which doctors have related to the pain and limitations resulting from his March 3, 2012 physical injuries. *See* CX 28; EX 10.

Employer voluntarily paid claimant temporary total disability benefits from May 27, 2012 to September 25, 2013, 33 U.S.C. §908(b), and permanent partial disability benefits commencing September 26, 2013, 33 U.S.C. §908(c)(21), but subsequently contested the compensability of the claim under the DBA. *See* Decision and Order at 2. Claimant has not worked since returning to the United States. *See* Tr. at 15.

In his Decision and Order, the administrative law judge found that the obligations and conditions of claimant's employment created a zone of special danger out of which the physical injuries resulting from his March 3, 2012 accident arose, and, thus, claimant's injuries are compensable under the DBA. The administrative law judge further found that claimant suffers from depression and anxiety due to the pain and physical limitations resulting from his work-related physical injuries, and, thus, his psychological injuries also are compensable. The administrative law judge found that claimant has reached maximum medical improvement with respect to his physical injuries, that he is unable to return to his usual employment, and that employer's labor market survey is insufficient to establish the availability of suitable alternate employment. He therefore found claimant entitled to continuing permanent total disability benefits commencing September 26, 2013.⁵ 33 U.S.C. §908(a). The administrative law judge also found claimant entitled to reasonable and necessary medical benefits for his physical and psychological injuries. 33 U.S.C. §907(a).

On appeal, employer challenges the administrative law judge's finding that the zone of special danger doctrine is applicable to this case. Employer asserts that the activity that caused claimant's injuries was personal in nature and was not rooted in any actual obligations and conditions of his employment; therefore, employer contends the

⁵ The administrative law judge also found that claimant has not yet reached maximum medical improvement with respect to his psychological condition and that while he would be entitled to benefits for that condition, he cannot receive compensation greater than the permanent total disability benefits to which he is entitled for his physical injuries.

doctrine does not apply and claimant's injuries are not compensable under the DBA. Claimant and the Director, Office of Workers' Compensation Programs (the Director), respond that the administrative law judge properly found the claim compensable under the DBA pursuant to the zone of special danger doctrine. Employer filed a reply brief in support of its position.

Under the Act, an injury generally occurs in the "course of employment" if it occurs within the time and space boundaries of the employment and in the course of an activity whose purpose is related to the employment. *See, e.g., Phillips v. PMB Safety & Regulatory, Inc.*, 44 BRBS 1 (2010). In cases arising under the DBA, the United States Supreme Court has held that an employee may be within the course of employment, even if the injury did not occur within the space and time boundaries of work, so long as the "obligations or conditions of employment" create a "zone of special danger" out of which the injury arose. *O'Leary v. Brown-Pacific-Maxon, Inc.*, 340 U.S. 504, 507 (1951); *see also Gondeck v. Pan American World Airways, Inc.*, 382 U.S. 25 (1965); *O'Keefe*, 380 U.S. 359; *Battelle Mem'l Inst. v. DiCecca*, 792 F.3d 214, 49 BRBS 57(CRT) (1st Cir. 2015), *aff'g* 48 BRBS 19 (2014); *Kalama Services, Inc. v. Director, OWCP*, 354 F.3d 1085, 37 BRBS 122(CRT) (9th Cir.), *cert. denied*, 543 U.S. 809 (2004), *aff'g Ilaszczat v. Kalama Services*, 36 BRBS 78 (2002). Thus, an injury is covered by the statute where it results from "one of the risks of the employment, an incident of the service, foreseeable, if not foreseen."⁶ *O'Leary*, 340 U.S. at 507; *see also DiCecca*, 792 F.3d at 220, 49 BRBS

⁶ The zone of special danger doctrine has been applied to award benefits in the following cases arising under the DBA: *Gondeck v. Pan-American World Airways, Inc.*, 382 U.S. 25 (1965) (employee killed in a car accident while on the way back from having a beer in town on San Salvador Island); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965) (employee drowned on lake in Korea during weekend activities); *O'Leary v. Brown-Pacific-Maxon, Inc.*, 340 U.S. 504 (1951) (employee drowned while attempting rescue at riverside recreational facility in Guam); *Battelle Mem'l Inst. v. DiCecca*, 792 F.3d 214, 49 BRBS 57(CRT) (1st Cir. 2015), *aff'g* 48 BRBS 19 (2014) (employee killed in taxi in Tbilisi on the way to the grocery store; employer provided taxi vouchers and hazard pay); *Kalama Services, Inc. v. Director, OWCP*, 354 F.3d 1085, 37 BRBS 122(CRT) (9th Cir.), *cert. denied*, 543 U.S. 809 (2004), *aff'g Ilaszczat v. Kalama Services*, 36 BRBS 78 (2002) (employee injured in bar fight on Johnston Atoll); *Ford Aerospace & Communications Corp. v. Boling*, 684 F.2d 640 (9th Cir. 1982) (heart attack while off duty in barracks provided by employer in Greenland); *O'Keefe v. Pan-American World Airways, Inc.*, 338 F.2d 319 (5th Cir.), *cert. denied*, 380 U.S. 950 (1965) (employee killed in a motorcycle accident on Grand Turk Island in the British West Indies while driving on the wrong side of the road); *Self v. Hanson*, 305 F.2d 699 (9th Cir. 1962) (employee injured during a midnight rendezvous in a turn-around area at the seaward end of a breakwater on the island of Guam); *Hastorf-Nettles, Inc. v. Pillsbury*, 203 F.2d 641 (9th Cir. 1953) (employee injured in a car accident near Anchorage, Alaska, while on the way back to camp from a sightseeing trip on a

at 60(CRT) (pursuant to the zone of special danger doctrine, the injury must “fall within foreseeable risks occasioned by or associated with the employment abroad”); *Kalama Services*, 354 F.3d at 1091-1092, 37 BRBS at 125-126(CRT). With respect to the scope of the zone of special danger doctrine, once invoked, the Supreme Court stated in *O’Keeffe* that *O’Leary* “drew the line only at cases where an employee had become ‘so thoroughly disconnected from the service of his employer that it would be entirely unreasonable to say that injuries suffered by him arose out of and in the course of his employment.’” *O’Keeffe*, 380 U.S. at 362 (quoting *O’Leary*, 340 U.S. at 507); *see also DiCecca*, 792 F.3d at 220, 49 BRBS at 60(CRT) (“there is a pale of cognizability, however, which stops short of astonishing risks ‘unreasonably’ removed from employment.”).⁷

The question of whether the obligations or conditions of an individual’s employment created a zone of special danger out of which the injury arose involves a factual determination that turns on the particular circumstances of the DBA employment, and the administrative law judge’s findings regarding the doctrine are subject to review based on the substantial evidence standard. *See O’Leary*, 340 U.S. at 507-08; *DiCecca*, 792 F.3d at 218, 221-222, 49 BRBS at 58-60(CRT); *see also Kalama Services*, 354 F.3d 1085, 37 BRBS 122(CRT). In this regard, the United States Court of Appeals for the First Circuit stated in *DiCecca* that the determination of whether an injury falls within foreseeable risks associated with the employment abroad “is necessarily specific to context and thus turns on the totality of circumstances.” 792 F.3d at 220, 49 BRBS at 60(CRT).

scheduled day off); *Jetnil v. Chugach Mgmt. Services*, 49 BRBS 55 (2015), *appeal pending*, No. 15-72873 (9th Cir.) (employee injured foot on coral reef while fishing on restricted island in Kwajalein Atoll); *N.R. [Rogers] v. Halliburton Services*, 42 BRBS 56 (2008) (employee injured while passively resisting MPs in Afghanistan); *Smith v. Board of Trustees, Southern Illinois University*, 8 BRBS 197 (1978) (employee died from a ruptured abdominal aortic aneurysm after playing a round of golf in Katmandu, Nepal).

⁷ The zone of special danger doctrine was held to be inapplicable, and thus the claims were held not to be compensable, in the following DBA cases: *Truczinskas v. Director, OWCP*, 699 F.3d 672, 46 BRBS 85(CRT) (1st Cir. 2012) (zone of special danger doctrine inapplicable where suicide or “misadventure,” i.e., accidental autoerotic asphyxiation, were the only possible causes of death); *R.F. [Fear] v. CSA, Ltd.*, 43 BRBS 139 (2009) (zone of special danger doctrine inapplicable to claim for psychological harm associated with perceived skin injury resulting from cosmetic chemical peel where use of chemical peel was not rooted in conditions and obligations of employment or related to the fact that claimant was employed in Kuwait); *Gillespie v. Gen. Elec. Co.*, 21 BRBS 56 (1988), *aff’d mem.*, 873 F.2d 1433 (1st Cir. 1989) (reversing award of benefits in case of accidental death due to autoerotic asphyxiation where record lacked evidence of relationship between conditions of employment and activity which occasioned death).

We affirm the administrative law judge's determination that the zone of special danger doctrine applies to the circumstances of claimant's March 3, 2012 accident as the administrative law judge's findings are supported by substantial evidence and his conclusions are consistent with the applicable legal principles. The administrative law judge engaged in the proper inquiry under *O'Leary*, considering whether "the obligations or conditions of [claimant's] employment create[d] the zone of special danger out of which the injury arose." Decision and Order at 27. First, the administrative law judge found that claimant's accident occurred in an apartment assigned, and paid for, by employer, and that claimant did not have a choice in selecting his living quarters;⁸ the administrative law judge therefore concluded that the obligations and conditions of claimant's employment required that he reside in the employer-provided housing.⁹ *Id.* Next, the administrative law judge found that the obligations and conditions of claimant's employment required that he be available to work 24 hours a day, seven days a week. *Id.* The administrative law judge further found that the obligations and conditions of claimant's employment required that he maintain his personal appearance and hygiene. *Id.* With respect to this factor, the administrative law judge specifically rejected employer's argument that, in light of claimant's testimony that he would shower daily regardless of any work responsibilities, his injury should be found to have arisen from an activity entirely personal in nature which is unconnected to an employment obligation. *Id.* The administrative law judge found the conditions of claimant's employment, i.e., the requirement that claimant wear heavy gear in a hot, dirty, sandy environment, made it necessary for claimant to shower after work. *Id.* at 27-28. Noting the *O'Leary* holding that an injury is compensable under the DBA if it arises from "one of the risks of the employment, an incident of the service, foreseeable, if not foreseen," 340 U.S. at 507, the administrative law judge found that slipping in the shower was a foreseeable risk of claimant's service. Decision and Order at 27. Moreover, the administrative law judge found that the contractual requirement that employer's employees maintain good hygiene was an obligation of claimant's employment and that "[t]he hot and dirty conditions at the employment site would make fulfilling that obligation impossible without showering." *Id.* at 28.

On appeal, employer contends the administrative law judge's decision is not supported by substantial evidence, asserting the administrative law judge improperly relied on incidental facts to find that the zone of special danger doctrine is applicable to

⁸ Employer concedes that claimant was required to live in the apartment. *See* OA Tr. at 86-87.

⁹ As noted by the administrative law judge, the furnished apartment provided by employer did not include a bath mat to place outside the shower. *See* Decision and Order at 9; Tr. at 113, 153.

claimant's injury.¹⁰ See OA Tr. at 7-9, 41-48, 60-65, 69-71. Employer argues the administrative law judge therefore erred by failing to apply the standards set forth in the Board's decision in *R.F. [Fear] v. CSA, Ltd*, 43 BRBS 139 (2009).¹¹ See OA Tr. at 12-

¹⁰ In its appellate brief, employer also argued that the zone of special danger doctrine is inapplicable to this case because case precedent requires that "the conditions of overseas employment are those which present unique or special dangers to the employees because of their far flung [sic] locale of employment, or special risks presented by overseas employment not presented at home." Emp. Pet. for Rev. at 18. At oral argument, however, employer's counsel made the following statement:

I do not take the position that the zone of special danger is limited to recreational and social circumstances [or] to special dangers that exist overseas that don't exist in the United States. I do not take that position. I take the position that the zone of special danger is broader than that and covers--and rightfully covers more circumstances than just the recreational, social activities and special dangers.

OA Tr. at 7; see also *id.* at 60, 90-91. It is noted that in *DiCecca*, the First Circuit explicitly rejected the argument that the zone of special danger doctrine is applicable only to two classes of cases: 1) those involving injuries occurring during a reasonable recreational or social activity in an isolated locale; and 2) those in which the site of work presented special risks not presented in the United States. *DiCecca*, 792 F.3d at 220, 222-223, 49 BRBS at 60-62 (CRT); see also *Jetnil v. Chugach Mgt. Services*, 49 BRBS 55, 59 & n.7 (2015), *appeal pending*, No. 15-72873 (9th Cir.) (adopting the First Circuit's position that the zone of special danger doctrine is not limited to only the two foregoing classes of cases).

¹¹ In *Fear*, the claimant, while employed in Kuwait, sought cosmetic facial skin treatment, and, as part of the treatment, used a chemical peel. The claimant, who had previously received both psychological treatment and cosmetic dermatological treatments, was diagnosed as being obsessed with his skin. The claimant sought benefits under the DBA, claiming that the chemical peel caused physical skin damage which, in turn, caused a psychological injury. The administrative law judge denied benefits, finding that claimant did not sustain a skin injury and therefore had no psychological harm resulting from the alleged physical harm. The claimant appealed, challenging the administrative law judge's finding that he did not have a compensable psychological injury. The Board held that uncontradicted evidence established a psychological harm associated with self-perceived skin damage the claimant believed was caused by the chemical peel. *Fear*, 43 BRBS at 141. However, the Board held that the claimant's use of the chemical peel was a personal act and was not rooted in the conditions and obligations of his employment or in any way related to the fact that he was employed in

13, 57-58. Specifically, employer contends that the showering activity that resulted in claimant's injuries was purely personal in nature and was thoroughly disconnected from his employment. *Id.* In responding to employer's appeal, claimant and the Director distinguish *Fear* on the basis that claimant Fear's use of a chemical peel had nothing to do with his professional appearance on the job or with any other obligation or condition of his employment in Kuwait, whereas substantial evidence in this case supports the administrative law judge's finding that the obligations and conditions of claimant's employment made it necessary for him to engage in the showering activity that resulted in his injuries. *See* OA Tr. at 18-19, 26-28, 37-40, 50-51. We agree with claimant and the Director that the facts underlying the Board's holding in *Fear* are clearly distinguishable on this basis from the facts in this case, and we therefore reject employer's contention that the Board should hold, pursuant to *Fear*, that claimant's injuries arose from an activity that was purely personal in nature.¹²

Employer also argues that there was nothing unique or different about the bathroom in claimant's apartment in Israel that contributed to or caused his injury while

Kuwait. *Id.* at 143. The Board therefore held that the zone of special danger doctrine did not apply and, consequently, the claim was not compensable under the DBA. *Id.*

¹² In citing various portions of claimant's testimony to support its position that claimant's reason for showering was personal in nature, employer essentially is seeking a reweighing of the evidence, which the Board is not empowered to do. *See Del Monte Fresh Produce v. Director, OWCP*, 563 F.3d 1216, 1219, 43 BRBS 21, 22-23(CRT) (11th Cir. 2009). The administrative law judge thoroughly and accurately appraised the evidence relevant to this issue. *See* Decision and Order at 5, 8-9, 13, 24-25, 27. Moreover, the administrative law judge specifically considered those portions of claimant's testimony cited by employer, including testimony that claimant took showers even on days he did not work, that showering helped him to sleep, and that he was not aware of any written rule requiring daily showers. *See* Decision and Order at 27; Tr. at 119-123. The administrative law judge rejected employer's contention that these portions of claimant's testimony establish that his injury arose from an entirely personal activity, and, rather, relied on other portions of claimant's testimony, as well as the personal hygiene provision of claimant's employment contract, to find that his employment conditions and obligations made bathing a necessity. *See* Decision and Order at 27-28. Notable in this regard is claimant's testimony that the environmental conditions and the gear he carried at work caused him to sweat and that he showered after work because he was sweaty and dirty. *See id.* at 5, 27; Tr. at 71-119. The administrative law judge's finding also is supported by claimant's testimony as to his perceptions regarding employer's expectation of professionalism, which encompassed maintaining personal hygiene, particularly in conjunction with the requirement that he be on call at all times he was not at work (*i.e.*, be prepared to come to work at all times). *See* Decision and Order at 8-9; Tr. at 120, 153.

exiting the shower, and therefore claimant's employment did not create a zone of special danger out of which his injury occurred. *See* OA Tr. at 13-14, 41-42, 47-48, 62-65; Emp. Pet. for Rev. at 36-39. In its recent decision in *Jetnil*, however, the Board rejected the position that the zone of special danger doctrine does not encompass risks that might also be present in locations other than the particular site of the employee's injury, noting that similar arguments had been rejected by the First Circuit in the *DiCecca* case. *Jetnil*, 49 BRBS at 59. The following statement made by the *DiCecca* court, cited in *Jetnil, id.*, is relevant to this case as well:

Although the requisite "special danger" covers risks peculiar to the foreign location or risks of greater magnitude than those encountered domestically, the zone also includes risks that might occur anywhere but in fact occur where the employee is injured. "Special" is best understood as "particular" but not necessarily "enhanced."

DiCecca, 792 F.3d at 220, 49 BRBS at 60(CRT). Thus, contrary to employer's argument, the bathroom in which claimant was injured need not have presented unique risks for the zone of special danger doctrine to apply.¹³ *Id.*; *Jetnil*, 49 BRBS at 59.

The Board's review authority "is limited to ensuring that the [administrative law judge's] decision is supported by substantial evidence and based on correct legal standards." *Del Monte Fresh Produce v. Director, OWCP*, 563 F.3d 1216, 1219, 43 BRBS 21, 22(CRT) (11th Cir. 2009). In this case, the administrative law judge's legal

¹³ In this regard, we reject employer's reliance on *Ford Aerospace & Communications Corp. v. Boling*, 684 F.2d 640 (9th Cir. 1982) as support for its contention. *See* OA Tr. at 64-65. In *Ford Aerospace*, the United States Court of Appeals for the Ninth Circuit upheld the Board's affirmance of the administrative law judge's application of the zone of special danger doctrine in a case in which the deceased employee suffered a heart attack while off duty in barracks provided by his employer in Greenland. The administrative law judge found the claim compensable on the basis that the obligations and conditions of the decedent's employment required him to live in the employer-provided barracks, the layout of the barracks prevented a stretcher from being taken to the decedent's room, and having to walk to the stretcher contributed to the decedent's death. The court affirmed the administrative law judge's finding that the layout of the barracks constituted a zone of special danger from which the decedent's injury arose. However, the fact that the foreign housing in *Ford Aerospace* presented a "unique" or "increased" danger to the employee in that case does not mandate the existence of such conditions as a prerequisite for application of the zone of special danger doctrine. *DiCecca*, 792 F.3d at 220, 49 BRBS at 60(CRT). "The question, then, is which 'ubiquitous' activities are covered. And the answer is a case-specific determination of foreseeable, reasonable incidence to the foreign employment," left largely to the administrative law judge. *Id.*, 792 F.3d at 223 n.2, 49 BRBS at 62 n.2(CRT).

analysis fully comports with the Supreme Court's seminal decision in *O'Leary* and its progeny. See Decision and Order at 27-29. Consistent with the *O'Leary* line of cases, the administrative law judge specifically considered whether "the obligations or conditions of employment created the zone of special danger out of which the injury arose" and whether claimant's injury resulted from "one of the risks of the employment, an incident of the service, foreseeable, if not foreseen." *Id.* The administrative law judge provided a comprehensive summary of all of the evidence relevant to the zone of special danger analysis and a cogent explanation of his evaluation of the evidence. See generally *Del Monte Fresh Produce*, 563 F.3d at 1219-1220, 43 BRBS at 23(CRT). He found that the conditions and obligations of claimant's employment created a zone of special danger, on the basis of substantial evidence of record, which included evidence that claimant was continuously on-call, that he was required to live in the furnished apartment provided by employer, that he worked in a hot, sandy environment wearing 100 pounds of gear, that he showered after work because he was sweaty and dirty, and that the terms of his employment contract required that he maintain good hygiene and a professional appearance. See Decision and Order at 27-28. Having found that these employment conditions and obligations made bathing a necessity, the administrative law judge rationally determined that slipping while getting out of the shower was a foreseeable risk of claimant's employment. *Id.*

We therefore affirm, as supported by substantial evidence, the administrative law judge's determination that the obligations and conditions of claimant's employment created a zone of special danger out of which his injury arose. *O'Leary*, 340 U.S. at 507; *DiCecca*, 792 F.3d at 221, 49 BRBS at 61(CRT); *Jetnil*, 49 BRBS at 59. Consequently, as the administrative law judge's conclusion that claimant's injury is compensable under the DBA pursuant to the zone of special danger doctrine is rational, supported by substantial evidence and in accordance with law, it is affirmed. *O'Keefe*, 380 U.S. 359; *O'Leary*, 340 U.S. 504.

Accordingly, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge