

MARTHA W. WILLIAMS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
NEWPORT NEWS SHIPBUILDING)	DATE ISSUED:
AND DRY DOCK COMPANY)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Robert E. Walsh (Rutter & Montagna), Norfolk, Virginia, for claimant.

Shannon T. Mason, Jr. (Mason and Mason), Newport News, Virginia, for self-insured employer.

Before: DOLDER, Acting Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (91-LHC-1645) of Administrative Law Judge Richard K. Malamphy 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 if they are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On May 20, 1985, claimant was injured while in the course of her employment as a reproduction clerk at employer's shipbuilding facility. Claimant's job duties required that she work in an office on employer's premises, where she reproduced or made copies of various documents or drawings by operating bluelining machinery, camera equipment, or a photocopying machine. Claimant also manually opaqued negatives, loaded film and/or paper into the machines, and folded by hand or machine the documents which she produced.

Subsequent to her injury, employer paid claimant compensation pursuant to the state workers' compensation statute and has furnished medical treatment. Thereafter, claimant filed a claim for benefits under the Act. At the formal hearing, the parties stipulated that claimant worked on a maritime situs at the time of her injury, *see* 33 U.S.C. §903(a). Thus, the sole issue presented for determination at the formal hearing was whether claimant has established that she is an employee covered under Section 2(3) of the Act, 33 U.S.C. §902(3)(1988).

In his Decision and Order, the administrative law judge determined that claimant's employment duties as a reproduction clerk were an essential and integral part of employer's shipbuilding process, "without which the construction and repair of ships would be greatly delayed." Decision and Order at 4. Based upon this finding, the administrative law judge concluded that claimant satisfies the status test necessary for coverage under Section 2(3), and accordingly awarded benefits.

On appeal, employer challenges the administrative law judge's finding that claimant's employment duties are covered under Section 2(3) of the Act. Claimant responds, urging affirmance of the administrative law judge's Decision and Order.

Employer contends that the administrative law judge erred in determining that claimant's employment as a reproduction clerk meets the status requirement for coverage under the Act. Employer alleges that claimant, as an office clerical worker, is specifically excluded by Section 2(3)(A) of the Act. Section 2(3) of the Act provides in pertinent part:

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, shipbuilding, and ship-breaker, but such term does not include -

(A) individuals employed exclusively to perform office clerical, secretarial, security, or data processing work;

* * *

if individuals described in [this clause] are subject to coverage under a State workers' compensation law.

33 U.S.C. §902(3)(1988).¹

¹The Act, as amended in 1984, is applicable to the instant case, as claimant was injured on May 20, 1985. *See* Longshore and Harbor Workers' Act Amendments of 1984, Pub.L. No. 98-426, §2(a), 28(c), 98 Stat. 1639, 1655. *See also Caldwell v. Universal Maritime Service Corp.*, 22 BRBS 398 (1989).

The United States Supreme Court has held that a claimant is covered under the Act if she spends "at least some of [her] time" in indisputably covered activities. See *Northeast Marine Terminals Co., Inc. v. Caputo*, 432 U.S. 249, 6 BRBS 150 (1977). Moreover, the Board has noted that, although Section 2(3) of the Act provides broad inclusive language in defining an "employee" as "any person engaged in maritime employment," Congress saw fit, when amending the Act in 1984, to provide specific exclusions from the term "employee" for persons falling within the categories enumerated in subsections (A) through (H). Specifically, in *Powell v. International Transportation Services*, 18 BRBS 82 (1986), the Board stated that:

Section 2(3) has been amended to exclude certain employees whose "activities and occupations either lack a substantial nexus to maritime navigation and commerce or do not expose employees to the types of hazards normally associated with longshoring, shipbuilding, and harbor work." Cong. Rec. S11622-23 (September 20, 1984)(statement of Senator Hatch).

18 BRBS at 84 n.5. Thus, the Board has held that while a claimant's duties may arguably fall within the broad language of Section 2(3) as an employee engaged in maritime employment, such a claimant may nonetheless be specifically excluded from coverage by the specific exceptions to coverage.² *Bergquist v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 131 (1989).

In *Bergquist*, 23 BRBS at 131, an office-based key punch operator who occasionally went into employer's parts warehouse argued that while computerization put her job of material control into an office setting, her work remained integrally involved in the material allocation, inventory, and control process, and thus covered under the Act. The Board disagreed, holding that while claimant's duties may arguably fall within the broad language of Section 2(3), her work as an office clerical worker placed her within the exclusion adopted by Congress in 1984. Similarly, in *Sette v. Maher Terminals, Inc.*, BRBS , BRB No. 91-1920 (November 19, 1993), the Board affirmed an administrative law judge's determination that claimant, a delivery clerk who worked in employer's office and processed paperwork necessary for the release of cargo to outbound truck drivers, was excluded from coverage under the Act pursuant to Section 2(3)(A).

²The exclusion of clerical workers is not a wholly new concept added in 1984. In *Caputo*, addressing the 1972 Amendments, the Supreme Court stated that "purely clerical employees whose jobs do not require them to participate in the loading or unloading of cargo" are not covered under the Act, 432 U.S. at 273, 6 BRBS at 165, relying on the legislative history of the 1972 Amendments.

In the instant case, claimant's employment duties as a reproduction clerk in employer's office are not in dispute. Claimant testified that she reproduced or made copies of various documents or drawings by operating blueline and photocopying machines. Claimant would also reduce and/or enlarge drawings by using camera equipment, manually opaque negatives, load film or paper into the machines as needed, and fold by hand or machine the produced documents. *See* Transcript at 10-16. Claimant's employment duties did not require her to leave employer's office, and the completed documents were either picked up at the office by other employees or delivered through employer's mail system. *Id.* at 10, 28-29, 33.

In his decision, the administrative law judge concluded that claimant's employment duties reproducing documents constituted an integral part of employer's shipbuilding process, without which the construction and repair of ships would be greatly delayed. Based upon this finding, the administrative law judge concluded that claimant's employment duties satisfied the status test necessary for coverage under the Act. Although claimant's employment duties in this case may further employer's shipbuilding and repairing operations, those undisputed duties also place claimant within a specifically enumerated category of persons excluded from coverage by Congress pursuant to the 1984 Amendments. *See Bergquist*, 23 BRBS at 131; *Powell*, 18 BRBS at 82.

Claimant was employed exclusively to reproduce documents in an office environment. These duties are purely clerical and, in fact, did not require her to leave the office. Claimant was thus not exposed to the hazards normally associated with a shipbuilding operation. If workers such as claimant are not excluded by Section 2(3)(A), it is difficult to conceive of any employee who would be excluded. As employer notes, no employer hires employees whose duties do not further their business concerns. We therefore hold that, as claimant's employment duties were exclusively clerical in nature and were performed only in an office environment, claimant is within the exclusion adopted by Congress in 1984. We therefore reverse the administrative law judge's determination that claimant's employment as a reproduction clerk is covered under the Act as amended in 1984, and the resulting award of benefits.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is reversed.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge