

BRB No. 00-0766

DOROTHY J. BOONE)
)
 Claimant-Petitioner)
)
 v.)
)
 NEWPORT NEWS SHIPBUILDING) DATE ISSUED: April 24, 2001
 AND DRY DOCK COMPANY)
)
 Self-Insured)
 Employer-Respondent) DECISION and ORDER

Appeal of the Decision and Order of Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

John H. Klein (Montagna, Klein & Camden, L.L.P.), Norfolk, Virginia, for claimant.

Jonathan H. Walker (Mason, Cowardin & Mason, P.C.), Newport News, Virginia, for self-insured employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (99-LHC-1828) of Administrative Law Judge Fletcher E. Campbell, Jr., 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, while working for employer as a materials supply clerk, sustained an injury to her right knee on July 10, 1998. As a materials supply clerk, claimant would remove

invoices attached to individual boxes and containers of materials¹ upon their arrival on trucks to employer's warehouse and then place a numerical code on each invoice to denote its destination within employer's shipyard. She also would take the numerical code to a data entry clerk, who records the arrival of the materials and creates a receipt. Claimant testified that she is not required to open the cartons to check the materials or to move them, as that duty is performed by checkers, nor is she involved in the process of loading or unloading materials. Moreover, she stated that her job is limited to the receiving area of employer's warehouse, and that at no time is she required to enter any of the construction or repair areas or to go on board ships in order to perform her job. At the time of her injury, claimant was kneeling on a pallet in the receiving area, assigning numbers to various materials as they were being unloaded from the truck when she slipped from the pallet and hurt herself.

In his decision, the administrative law judge determined that claimant is excluded from coverage under Section 2(3)(A) of the Act, 33 U.S.C. §902(3)(A), because the evidence does not show that she is a "maritime employee" under the Act. Specifically, the administrative law judge found that claimant's work is exclusively clerical in nature, and that claimant's duties, handling and marking invoices in exchange for receipts, while important to the overall scheme of the shipyard's business, is not essential or integral to the building or repairing of ships. Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's finding that she did not meet the status test. In particular, citing *White v. Newport News Shipbuilding & Dry Dock Co.*, 633 F.2d 1070, 12 BRBS 598 (4th Cir. 1980), claimant asserts that the administrative law judge erred in concluding that her duties were not an integral part of the shipbuilding process, as she was responsible for identifying and tagging materials which were then used in the shipbuilding process.² Employer responds, urging affirmance.

¹The materials in question were generally nuts, bolts, elbows, screws, pipes, valves, ropes, wires, and/or chains.

²Claimant reliance on three decisions issued at the administrative law judge level, however, is misplaced as administrative law judge decisions have no precedential value before the Board.

For a claim to be covered by the Act, a claimant must establish that her injury occurred upon the navigable waters of the United States, including any dry dock, or that her injury occurred on a landward area covered by Section 3(a) and that her work is maritime in nature and is not specifically excluded by the Act. 33 U.S.C. §§902(3), 903(a); *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); *Ladd v. Tampa Shipyards, Inc.*, 32 BRBS 228 (1998); *Stone v. Ingalls Shipbuilding, Inc.*, 30 BRBS 209 (1996); *Kennedy v. American Bridge Co.*, 30 BRBS 1 (1996). Thus, in order to demonstrate that coverage exists, a claimant must satisfy the “situs” and the “status” requirements of the Act.³ *Id.*; *see also Crapanzano v. Rice Mohawk, U.S. Constr. Co., Ltd.*, 30 BRBS 81 (1996).

Generally, a claimant satisfies the status requirement if she 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, she need only “spend at least some of [her] time” in indisputably maritime activities. *Caputo*, 432 U.S. at 273, 6 BRBS at 165. Although an employee is covered if some portion of her activities constitute covered employment, those activities must be more than episodic, momentary or incidental to non-maritime work. *Stone*, 30 BRBS 209; *Coleman v. Atlantic Container Service, Inc.*, 22 BRBS 309 (1989), *aff’d*, 904 F.2d 611, 23 BRBS 101 (CRT) (11th Cir. 1990). In 1984, Congress amended Section 2(3) to specifically exclude certain employees from coverage. 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* [if such persons are covered by State workers' compensation laws];

33 U.S.C. §902(3)(A) (1994) (emphasis added). The legislative history explains that the

³The parties stipulated and the administrative law judge found that claimant meets the situs requirement of Section 3(a) of the Act, 33 U.S.C. §903(a). Decision and Order at 2.

excluded activities and occupations either lack a substantial nexus to maritime navigation and commerce or do not expose those employees to the hazards normally associated with longshoring, shipbuilding and harbor work. H.R. Rep. No. 570, 98th Cong., 2d Sess. (1984), *reprinted in* 1984 U.S.C.C.A.N. 2735. 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 explicitly excluded from coverage by the specific exceptions to coverage. *See Daul v. Petroleum Communications, Inc.*, 32 BRBS 47 (1998), *aff'd* 196 F.3d 611, 33 BRBS 193 (CRT)(5th Cir. 1999); *King v. City of Titusville*, 31 BRBS 187 (1997); *Ladd*, 32 BRBS 228; *Stone*, 30 BRBS 209. Moreover, work which is pertinent, and even integral, to the shipbuilding process still may be excluded if the work is exclusively clerical and office-oriented. *Stone*, 30 BRBS at 213; *Sette v. Maher Terminals, Inc.*, 27 BRBS 224 (1993).

In *White*, 633 F.2d 1070, 12 BRBS 598, the United States Court of Appeals for the Fourth Circuit held that the claimant's functions of affixing a color code to and etching individual pieces of pipe for the purpose of identifying their respective grades to the ship fabricators, as well as his occasional cutting of the pipe for ship construction, constituted an "integral part" and "necessary ingredient" of the shipbuilding process. *White*, 633 F.2d at 1074, 12 BRBS at 606. Accordingly, the Fourth Circuit held that claimant met the status test as he was a person engaged in maritime employment pursuant to Section 2(3) of the Act. 33 U.S.C. §902(3) (1982). In so holding, the Fourth Circuit explicitly recognized that the critical inquiry with regard to the status test was not whether the employee performed clerical duties, but rather whether the employee was engaged in maritime employment within the meaning of Section 2(3) of the Act. *Id.*

In *Bergquist v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 131 (1989), the Board noted that the Fourth Circuit's decision in *White* was decided prior to the enactment of the 1984 amendments to the Act and thus recognized that the court resolved the status issue without addressing the clerical exclusion. *Bergquist*, 23 BRBS at 134-135. This, fact alone is significant enough to distinguish *White* from the instant case. The Board, however, also held that the claimant's duties in *White* were factually distinguishable from those in *Bergquist*. *Id.*, 23 BRBS at 135. Specifically, the Board observed that Bergquist's duties involved handling paper, rather than shipbuilding materials, and that while Bergquist also generated inspection stickers, the stickers were merely a different medium on which she typed words. *Id.* In contrast to the claimant in *White*, the Board stated that Bergquist did not engage in the actual inspection of parts or any other decision-making regarding cargo or shipbuilding.⁴ *Id.* The Board therefore held that the claimant's duties were purely clerical,

⁴The Board further noted that Bergquist's duties did not require her to even affix the

and thus that her claim was excluded from coverage under the Act.

labels that she generated. *Bergquist*, 23 BRBS at 135.

Similarly, in *Williams v. Newport News Shipbuilding & Dry Dock Co.*, 28 BRBS 42 (1994), *vacated mem.*, 47 F.3d 1166, 29 BRBS 75(CRT) (4th Cir. 1995)(table), the Board held that claimant's duties as a reproduction clerk, who copied documents and reduced and/or enlarged drawings, were exclusively clerical in nature and were performed only in an office environment, and that although those duties may further employer's shipbuilding and repairing operations, they also place claimant within a specifically enumerated category of persons excluded from coverage. The Board therefore held as a matter of law that claimant did not fall under the coverage of the Act by virtue of Section 2(3)(A).⁵

In the instant case, the administrative law judge, after reviewing claimant's testimony regarding her duties as a materials supply clerk, the job description for that position, and the case law relevant to the issue of status, determined that claimant was excluded from coverage pursuant to the clerical exception of Section 2(3)(A) of the Act. In rendering this finding, the administrative law judge appropriately considered the nature of claimant's work and found, as was the case in *Bergquist* and *Williams*, that she handled paperwork relating to the order and distribution of items later used in the shipbuilding process, but that claimant never used any of the materials or handled them in any way other than to procure an invoice receipt. *See e.g., Levins v. Benefits Review Board*, 724 F.2d 4, 16 BRBS 24(CRT) (1st Cir. 1984). Thus, the administrative law judge concluded that claimant's basic duties of handling and marking invoices in exchange for receipts were clerical in nature. Moreover, the administrative law judge observed that there is no evidence that claimant's work exposed her to the hazards normally associated with shipbuilding.

The administrative law judge's findings that claimant's work is clerical in nature, and that she was not, in the course of her work, exposed to the hazards normally associated with

⁵In so holding, the Board reversed the administrative law judge's decision that claimant was covered because her work reproducing documents was integral to shipbuilding. On appeal, the United States Court of Appeals for the Fourth Circuit agreed with the Board that the issue was whether claimant's duties were exclusively clerical and performed exclusively in a business office, but vacated the Board's decision because the administrative law judge did not make the necessary factual findings. In the present case, however, the administrative law judge did make the relevant factual findings.

shipbuilding are rational and supported by substantial evidence. As the administrative law judge's decision comports with applicable law, his finding that claimant, through application of the clerical exclusion set out at Section 2(3)(A), is precluded from coverage under the Act and thus is not entitled to benefits, is affirmed. *Ladd*, 32 BRBS 228; *Stone*, 30 BRBS 209; *Sette*, 27 BRBS 224; *Bergquist*, 23 BRBS 131.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge