BRB No. 02-0629

ARCHIE P. BATES, JR.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY	)	DATE ISSUED: APR 30, 2003
	)	
Self-Insured Employer-Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order of Richard E. Huddleston, Administrative Law Judge, United States Department of Labor.

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

Christopher R. Hedrick (Mason, Cowardin & Mason, P.C.), Newport News, Virginia, for self-insured employer.

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

PER CURIAM:

Employer appeals the Decision and Order (2001-LHC-0872) of Administrative Law Judge Richard E. Huddleston 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 which 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).

Claimant, a material supply clerk, worked for employer in Building 2, Warehouse 31, a warehouse containing solely materials used in the building of ships at employer=s shipyard. Claimant was required to wear a hard hat, safety glasses and steel-toed shoes when performing his job, the employment duties of

which consisted of filling the work-orders of the employees who worked on vessels in employer=s shipyard. Specifically, claimant and his supervisor testified that claimant=s duties consisted of receiving the orders for parts such as bolts, pumps, fasteners, valves and couplings requested by the tradesmen in employer=s shipbuilding program, filling those orders from the shelves located in employer=s warehouse, processing the required paperwork for inventory control purposes, and ultimately palletizing those orders so that they could be transported to the appropriate vessel under construction. On October 19, 2000, claimant sustained an injury to his back while lifting a box of bolts. Although employer paid benefits to claimant pursuant to the state workers= compensation statute, claimant filed a claim for benefits under the Act. Before the administrative law judge, employer agreed that if claimant established coverage under the Act, it would be liable to claimant for temporary total disability benefits during the periods of October 23, 2000, to October 26, 2000, and November 17, 2000, to February 11, 2001.

In his Decision and Order, the administrative law judge initially found that as the warehouse in which claimant worked and was injured is located within the fenced boundaries of employer=s shipyard, that warehouse meets the situs requirement for coverage under the Act. Next, the administrative law judge described claimant=s job duties, and determined that claimant=s work filling the orders for the parts needed by the tradesmen at the shipyard was directly connected to ship construction since the parts are essential to the shipbuilding process; pursuant to these findings, the administrative law judge found that the status requirement of the Act was satisfied. Accordingly, the administrative law judge awarded claimant temporary total disability compensation from October 23, 2000, through October 26, 2000, and from November 17, 2000, through February 11, 2001, as well as medical expenses. *See* 33 U.S.C. '908(b), 907.

On appeal, employer challenges the administrative law judge=s finding that the Section 2(3) status requirement was satisfied, arguing that the administrative law judge erred in finding that claimant=s work in its warehouse was a necessary ingredient to the shipbuilding process performed at employer=s facility. Claimant responds, urging affirmance of the administrative law judge=s status determination and his consequent award of benefits under the Act.

Section 2(3) provides that Athe term >employee= means any person engaged

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[1]Employer on appeal does not challenge the administrative law judge=s determination that employer=s warehouse meets the situs requirement for coverage under the Act; accordingly, that finding is affirmed.

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). In *Chesapeake & Ohio Ry. Co. v. Schwalb,* 493 U.S. 40, 23 BRBS 96(CRT)(1989), the Supreme Court stressed that coverage Ais not limited to employees who are denominated >longshoremen= or who physically handle cargo,@ 493 U.S. at 47, 23 BRBS at 99(CRT), and the Court held that Ait 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 [building or repairing] a vessel.@ 493 U.S. at 45, 23 BRBS at 98(CRT). *See Shives v. CSX Transportation, Inc.*, 151 F.3d 164, 32 BRBS 125(CRT) (4th Cir.), *cert. denied*, 525 U.S. 1019 (1998). To satisfy the status requirement, a claimant need only Aspend at least some of his time in indisputably longshoring operations.@ *Northeast Marine Terminal Co. v. Caputo,* 432 U.S. 249, 273, 6 BRBS 150, 165 (1977). In *White v. Newport News Shipbuilding & Dry Dock Co.,* 633 F.2d 1070, 12 BRBS 598 (4th Cir. 1980), the United States Court of Appeals for the Fourth Circuit, in whose jurisdiction this case arises, held that an employee=s activities affixing color codes to pipe and etching individual pieces of pipe for the purpose of identifying the pipe=s grade to the fabricators who actually constructed ships at the employer=s shipyard, constituted an Aintegral part@ and Anecessary ingredient@ of shipbuilding, and also caused him to be Adirectly involved@ in the shipbuilding process; accordingly, the court determined that the employee=s activities constituted the performance of maritime employment and thereby employee met the status requirement.

In the instant case, the administrative law judge fully considered the parties= contentions, the relevant caselaw, and the evidence of record relevant to the issue of whether claimant=s work was integral to employer=s ship construction process. He then concluded that claimant satisfied the Section 2(3) status requirement, stating:

> It is undisputed that Claimant works almost exclusively in a warehouse moving parts. It is also undisputed, however, that those parts are essential or a Anecessary ingredient@ in the ship building process. [cite omitted]. . . . Claimant=s duties are directly connected to the building of ships at Employer=s shipyard. All of the parts he handles and identifies are used in shipbuilding. His sorting of parts and recording of batch numbers and color codes are the Afirst step@ in transporting the correct parts to the tradesmen who actually build the ships. [cite omitted]. But for Claimant=s work, the tradesmen would not have the necessary parts to build the ships. Therefore, . . . , I find that Claimant has established the requisite status for coverage under the Act.

Decision and Order at 9.

After considering the arguments raised by employer on appeal, we affirm the administrative law judge=s finding that the Section 2(3) status requirement was satisfied, and his consequent finding that claimant is a covered employee, as the uncontroverted evidence of record supports his conclusion that claimant=s work identifying, gathering and preparing parts for transfer to the tradesmen in employer=s shipyard was essential to employer=s shipbuilding process. *See Schwalb,* 493 U.S. at 47, 23 BRBS at 99(CRT); *White,* 633 F.2d at 1074, 12 BRBS at 605-606. The uncontradicted record evidence in this case establishes that in the course of claimant=s work in employer=s warehouse, claimant identified the parts and materials requested by employer=s shipbuilders, gathered those parts and materials, and prepared them for delivery to the employees who performed the actual ship construction work. Tr. at 18-24. Walter Green, claimant=s supervisor, concurred with claimant=s testimony regarding his employment duties as a material supply clerk; specifically, Mr. Green acknowledged that claimant was required to wear a hard hat, safety glasses and steel-toed shoes while working for employer, that claimant=s recording of controlled materials was necessary so that those materials could be traced if necessary, and that the materials prepared for delivery by claimant were used solely for the building of ships in employer=s shipbuilding program. Tr. at 37-41.

In challenging the administrative law judge=s finding that claimant satisfied the status requirement for coverage under the Act, employer avers that the facts of this case do not support a finding that claimant=s work is a necessary ingredient to, or an integral part of, employer=s ship construction process. Specifically, employer asserts that claimant=s position is no different than that of a position in a warehouse located in any other part of the United States, that claimant merely supplies the raw materials requested by tradesmen who perform the actual construction of the ships at employer=s facility, and that, accordingly, the case at bar is distinguishable from *White,* 633 F.2d 1070, 12 BRBS 598, in that claimant does not affect a physical change to any of the parts or materials that he is preparing for transfer to employer=s shipbuilders. We reject employer=s allegations of error.

Initially, the argument that a claimant is not covered because his job is no different from that of any workers performing similar tasks in non-maritime settings was specifically rejected in *Schwalb*, 493 U.S. 40, 23 BRBS 96(CRT); with regard to the railroad employees engaged in equipment maintenance in that case, the Court stated:

> It makes no difference that the particular kind of repair [claimant] was doing might be considered traditional railroad work or might be done by railroad employees wherever railroad cars are unloaded. The determinative consideration is that the ship loading process could not continue unless the [equipment] was operating properly.

Id., 493 U.S. at 48, 23 BRBS at 99(CRT). Prior to *Schwalb*, early Board decisions relying on the rationale asserted by employer as a basis for denying coverage were reversed in several circuits. *See, e.g., Graziano v. General Dynamics Corp.,* 13 BRBS16 (1980), *rev=d*, 663 F.2d 340, 14 BRBS 52 (1st Cir. 1981); *Miller v. Central Dispatch, Inc.*, 12 BRBS 793 (1980), *rev=d*, 673 F.2d 773, 14 BRBS 757 (5th Cir. 1982); *White v. Newport News Shipbuilding & Dry Dock Co.,* 9 BRBS 495 (1978), *rev=d,* 633 F.2d 1070, 12 BRBS 598 (4th Cir. 1980). *See also Jackson v. Atlantic Container Corp.,* 15 BRBS 473 (1983)(Board will no longer rely on this rationale in denying coverage). Thus, the fact that claimant=s employment duties as a material supply clerk were similar to non-longshore warehouse workers does not remove those duties from the Act=s coverage where they are necessary to employer=s shipbuilding operation.

Moreover, while claimant did not physically alter the parts he handled, his work identifying, sorting and preparing parts for transport to the other areas of the shipyard for use involves the same initial processing role performed in *White*. Employer=s own witness, Mr. Green, testified that the parts and materials contained within employer=s warehouse where claimant worked are there to support employer=s shipbuilding program, and that claimant=s work thus involved only parts and materials used in vessel construction. *See* Tr. at 40-42. This evidence, credited by the administrative law judge, supports his conclusion that claimant=s work involves the Afirst step@ in transporting the correct parts to the tradesmen who actually build the ships, that but for the transfer of these parts and materials to the tradesmen those workers would not have the necessary parts to build the ships, and that accordingly claimant=s work was integral to employer=s shipbuilding operations. *See Sumler v. Newport News Shipbuilding & Dry Dock Co.,* 36 BRBS 97 (2002) (administrative law judge properly determined that claimant=s work changing filters was integral to employer=s shipbuilding and ship repair process); *Ruffin v. Newport News Shipbuilding & Dry Dock Co.,* 36 BRBS 52 (2002) (claimants failure to perform their janitorial duties would eventually impede the shipbuilding process, pursuant to *Schwalb*); *Watkins v. Newport News Shipbuilding & Dry Dock Co.,* 36 BRBS 21 (2002) (same). In contrast, employer presented no evidence that claimant=s work filling the orders of employer=s shipbuilding tradesmen was not necessary to the building of ships at employer=s shipyard or that such shipbuilding activities could

continue if claimant failed to perform his employment duties. To the contrary, the record supports the administrative law judge=s finding that, but for claimant=s work processing the work orders for parts requested by employer=s tradesmen, those tradesmen would not have the necessary parts to build the ships. Accordingly, as the evidence of record supports the conclusion that claimant=s employment duties in employer=s warehouse were integral to employer=s shipbuilding operations, the administrative law judge=s finding of coverage under Section 2(3), and his consequent award of benefits to claimant, is affirmed. *See Schwalb*, 493 U.S. at 48, 23 BRBS at 99(CRT); *White,* 633 F.2d at 1074, 12 BRBS at 606; *Sumler,* 36 BRBS at 101-102; *Ruffin*, 36 BRBS at 55; *Watkins*, 36 BRBS at 23-24.

Accordingly, the administrative law judge=s finding that claimant satisfied the status test of Section 2(3), and his consequent award of disability benefits to claimant, is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge