

EDMOND GUIDRY )  
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 Claimant-Respondent )  
 )  
 v. )  
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 E. J. FIELDS MACHINE WORKS, ) DATE ISSUED: FEB. 4, 2002  
 INCORPORATED ) )  
 )  
 and )  
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 LOUISIANA WORKERS' )  
 COMPENSATION CORPORATION )  
 )  
 Employer/Carrier- )  
 Petitioners ) DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

J. Paul Demarest and Seth H. Schaumburg (Favret, Demarest, Russo & Lutkewitte), New Orleans, Louisiana, for claimant.

Patricia H. Wilton (Egan, Johnson & Stiltner), Baton Rouge, Louisiana, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2000-LHC-1578) of Administrative Law Judge Clement J. Kennington 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S.

359 (1965).

Employer operates a facility in Morgan City, Louisiana, specializing in the repair, construction, and fabrication of marine parts such as rudders and shafts. Employer's Shop #2 is located on Front Street in Morgan City and is approximately 100 to 175 feet from the Atchafalaya River. Between Front Street and the river is a flood wall and a public park and wharf. The area to the sides of and behind employer's facility is comprised of a combination of marine and non-marine businesses and residential homes.

On August 24, 1999, claimant, who was employed by employer as a welder-fitter, sustained an injury to his back when, while working in employer's Shop #2, he caught a large propulsion bearing before it fell into a cleaning vat. Claimant immediately sought medical treatment and has undergone a surgical fusion as a result of this work incident.

Before the administrative law judge, the issues contested by the parties were three: whether claimant was injured on a covered situs, claimant's entitlement to interest and the amount of attorney's fees. In his Decision and Order, the administrative law determined that employer's Shop #2 is customarily used to repair and construct marine parts, that this facility is as close as is feasible to the Atchafalaya River, and that the area surrounding employer's facility houses a mixture of maritime and non-maritime businesses and residences. The administrative law judge thereafter concluded that claimant satisfied the situs requirement for jurisdiction under the Act. Accordingly, the administrative law judge awarded claimant disability compensation, medicals, and interest, payable by employer.

On appeal, employer challenges the administrative law judge's determination that claimant satisfied the situs requirement for jurisdiction under the Act. Claimant responds, urging affirmance of the administrative law judge's decision.

For a claim to be covered by the Act, a claimant must establish that his injury occurred upon the navigable waters of the United States, including any dry dock, or that his injury occurred on a landward area covered by Section 3(a) and that his work is maritime in nature and is not specifically precluded by a provision of 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); *Stratton v. Weedon Engineering Co.*, 35 BRBS 1 (2001). Thus, in order to demonstrate that coverage exists, a claimant must satisfy the "situs" and "status" requirements of the Act. *Id.* In the instant case, there is no dispute that claimant has met the status requirement. Thus, the only issue is whether claimant's injury occurred on a covered situs.

Section 3(a) states:

Except as otherwise provided in this section, compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel).

33 U.S.C. §903(a). Coverage under Section 3(a) is determined by the nature of the place of work at the moment of injury. *Stroup v. Bayou Steel Corp.*, 32 BRBS 151 (1998); *Melerine v. Harbor Constr. Co.*, 26 BRBS 97 (1992). To be considered a covered situs, a landward site must be either one of the sites specifically enumerated in Section 3(a) or an “adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel.” 33 U.S.C. §903(a). Therefore, to be a covered situs, a site must have a maritime nexus, but it need not be used exclusively or primarily for maritime purposes. *See Texports Stevedore Co. v. Winchester*, 632 F.2d 504, 12 BRBS 719 (5th Cir. 1980) (*en banc*), *cert. denied*, 452 U.S. 905 (1981); *Melerine*, 26 BRBS 97. The case at bar arises within the jurisdiction of the Fifth Circuit, which has adopted a broad view of the situs test, refusing to restrict a covered situs to areas contiguous to water or to limit an area by fence lines or other boundaries. *See Winchester*, 632 F.2d at 514-515, 12 BRBS at 726-727; *see also Sisson v. Davis & Sons, Inc.*, 131 F.3d 555, 31 BRBS 199 (CRT) (5th Cir. 1998). Specifically, the court in *Winchester* stated that the perimeter of an “area” is to be defined by function, and that the character of surrounding properties is but one factor to be considered. *See* 632 F.2d at 513, 12 BRBS at 726; *Gavranovic v. Mobil Mining & Minerals*, 33 BRBS 1 (1999). Thus, an area can be considered an “adjoining area” within the meaning of the Act if it is in the vicinity of navigable waters, or in a neighboring area, and it is customarily used for maritime activity. *Winchester*, 632 F.2d at 514-516, 12 BRBS at 726-729; *see also Brady-Hamilton Stevedore Co. v. Herron*, 568 F.2d 137, 7 BRBS 409 (9th Cir. 1978). Using these guidelines, the Fifth Circuit held that an administrative law judge properly found that a gear room located five blocks from the nearest dock constituted a covered situs because it was in the vicinity of the navigable waterway, it was as close to the docks as feasible, and it had a nexus to maritime activity in that it was used to store gear which was used in loading process. *Winchester*, 632 F.2d at 514-516, 12 BRBS at 726-729.

We hold that the administrative law judge’s finding that claimant satisfied the situs requirement under Section 3(a) is rational and supported by substantial evidence. In the instant case, employer’s Shop #2 is not a site specifically enumerated in Section 3(a); thus, in order for claimant’s injury to be covered under the Act, employer’s Shop #2 must constitute an other “adjoining area.” *See* 33 U.S.C. §903(a). Pursuant to the Fifth Circuit’s decision in *Winchester*, an area is an “adjoining area” which is covered under the Act if it is “close to or

in the vicinity of navigable waters” and is customary used for maritime purposes. In this case, Mr. Richard Romaine, employer’s president, testified that employer specializes in, but is not limited to, marine work, that a majority of employer’s business with shipyards and boat companies is maritime in nature, and that employer recognizes that the location of its facility provides employer with an advantage by being near its customers. *See* Tr. at 73-74, 87. Thus, the maritime function criterion is met since, contrary to employer’s assertion on appeal, a facility’s use need not be exclusively or primarily maritime in nature in order to be covered under the Act. *See Winchester*, 632 F.2d at 515, 12 BRBS at 727. Employer’s Shop #2 also meets the liberal geographic criterion developed by the Fifth Circuit, as the administrative law judge found that this facility is located approximately 100 to 175 feet from the Atchafalaya River. Although, as employer avers on appeal, there are non-maritime businesses and residences in the area of employer’s facility, the Fifth Circuit has stated that this fact does not conclusively establish that a site is not an “adjoining area.” *See Winchester*, 632 F.2d at 513, 12 BRBS at 726. In this regard, employer concedes that multiple maritime businesses are located in the vicinity of Shop #2. *See* Tr. at 75-76, 82-85; Cl. Ex. 1. Thus, as the record establishes that employer’s Shop #2, along with other marine businesses, is “within the vicinity” of the Atchafalaya River, a navigable waterway, and that this facility is used to repair, fabricate and construct marine parts, substantial evidence supports that administrative law judge’s finding that the situs requirement has been satisfied. *See Winchester*, 632 F.2d at 514-516, 12 BRBS at 726-729; *Stratton*, 35 BRBS 1; *Gavranovic*, 33 BRBS 1. We therefore affirm the administrative law judge’s finding that claimant’s injury occurred on a covered situs, and his consequent award of disability benefits to claimant.

Claimant’s counsel has filed a petition for an attorney’s fee for work performed before the Board; specifically, claimant’s counsel requests a total fee of \$3,188.98, representing 17.05 hours of work by Attorney Schaumburg at \$150 per hour, .75 hours of work by Attorney Demarest at \$175 per hour, and \$500.23 in costs. Employer objects to counsel’s fee petition, arguing that it is premature. As claimant has successfully defended his award of benefits on appeal, he is entitled to a fee reasonably commensurate with the work performed before the Board. *See Love v. Owens-Corning Fiberglas Co.*, 27 BRBS 148 (1993); *Canty v. S.E.L. Maduro*, 26 BRBS 147 (1996); 33 U.S.C. §928; 20 C.F.R. §802.203. We consider the hourly rates of \$175 and \$150 to be reasonable and customary for the geographic area in which this case arises. *See Doucet v. Avondale Industries, Inc.*, 34 BRBS 62 (2000). Moreover, the number the hours requested by Attorney Schaumburg are not unreasonable under the circumstances of this case. We reduce, however, the number of hours sought by Attorney Demarest by one-quarter, the amount of time requested on March 7, 2001, for correspondence regarding claimant’s medical reports, since that service cannot be deemed to have been related to counsel’s defense of the situs issue appealed to the Board. Similarly, we decline to award counsel the \$32 sought for the copying of claimant’s medical records on March 20, 2001, as this service is unrelated to claimant’s work before the Board.

Accordingly, as we affirm the administrative law judge's finding that claimant's injury occurred on a covered situs and his consequent award of benefits to claimant, we award claimant's counsel a fee of \$3,113.23, representing one-half hour of services performed at \$175 per hour, 17.05 hours of services performed at \$150 per hour, and \$468.23 in costs, payable directly to counsel by employer.

Accordingly, the Decision and Order Awarding Benefits of the administrative law judge is affirmed. Employer is liable for an attorney's fee for work performed before the Board in an amount of \$3,113.23, payable directly to claimant's counsel.

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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REGINA C. McGRANERY  
Administrative Appeals Judge