

BRB No. 04-0407
Case No. 2002-LHC-00659
OWCP No. 02-0130074

LORRAINE MORGANTI)
(Widow of ROCCO MORGANTI))
)
Claimant-Respondent)
)
v.)
)
LOCKHEED MARTIN CORPORATION)
)
and)
) DATE ISSUED: Feb. 17, 2004
ACE AMERICAN INSURANCE)
COMPANY)
)
Employer/Carrier-)
Petitioner)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) ORDER

Employer has filed a timely appeal of the Decision and Order (2002-LHC-00659) of Administrative Law Judge Paul H. Teitler awarding benefits on remand on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.* 33 U.S.C. §921(a); 20 C.F.R. §802.205. This appeal is assigned BRB No. 04-0407. 20 C.F.R. §802.210. All correspondence concerning this appeal should bear this number. Employer also has filed a Motion for Expedited Summary Decision. Employer represents that counsel for claimant and for the Director, Office of Workers' Compensation Programs, consent to the issuance of an expedited summary decision. 20 C.F.R. §802.219.

In its decision in *Morganti v. Lockheed Martin Corp.*, 37 BRBS 126 (2003), the Board reversed the administrative law judge's finding that decedent was not an employee covered by Section 2(3) of the Act, 33 U.S.C. §902(3). Specifically, the Board held that decedent's work aboard the *Paganelli* and the *Little Toot* was work on the navigable waters of Cayuga Lake, and that, as this work comprised 30 percent of decedent's time, decedent's presence on navigable waters was not transient. *Morganti*, 37 BRBS at 130-132. The Board further reversed the administrative law judge's finding that decedent was excluded from the Act's coverage by virtue of the clerical exclusion at Section 2(3)(A), 33 U.S.C. §902(3)(A). *Id.* at 132-133. Thus, as decedent's death occurred on navigable waters in the course of his employment on those waters, he was a covered employee. *Id.*; see *Director, OWCP v. Perini North River Associates*, 459 U.S. 297, 15 BRBS 62(CRT) (1983). The Board remanded the case to the administrative law judge for consideration of any issues remaining between the parties.

On remand, the parties entered into stipulations regarding the remaining issues, and the administrative law judge issued a decision awarding claimant death benefits pursuant to the stipulations, 33 U.S.C. §909, with a credit to employer for amounts claimant received under the New York workers' compensation statute. 33 U.S.C. §903(e). On appeal, employer does not challenge these findings. Rather, employer seeks to have the Decision and Order on remand summarily affirmed so that it may perfect an appeal which is currently pending before the United States Court of Appeals for the Second Circuit. See 33 U.S.C. §921(c); 20 C.F.R. §802.410. Thus, as employer raises no issues with regard to the administrative law judge's award of benefits on remand, and as the Board's previous decision on the issues raised constitutes the law of the case, see, e.g., *Boone v. Newport News Shipbuilding & Dry Dock Co.*, 37 BRBS 1 (2003); *Ravalli v. Pasha Maritime Services*, 36 BRBS 91 (2002), *denying recon. in* 36 BRBS 47 (2002), we grant employer's motion for summary decision. 20 C.F.R. §802.303(b).

Accordingly, employer's Motion for Expedited Summary Decision is granted, and the administrative law judge's Decision and Order awarding benefits is affirmed. The district director is requested to transmit to the Board the official case record so that it may be forwarded to the Court of Appeals. 20 C.F.R. §§802.209, 802.411.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge