BRB No. 98-0583

ELEANOR NANCY PARKER	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
BATH IRON WORKS CORPORATION	)	
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Janmarie Toker (McTeague, Higbee, MacAdam, Case, Watson & Cohen), Topsham, Maine, for claimant.

Joseph M. Hochadel and Carol Ford (Monaghan, Leahy, Hochadel & Libby, LLP), Portland, Maine, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (96-LHC-2047) of Administrative Law Judge Jeffrey Tureck denying benefits 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 worked for employer between 1980 and 1990, first as a blueprint helper, then as a blueprint machine operator, and lastly as a blueprint chief, in an office building located about fifty yards from the water. Claimant testified that her work for employer was similar in all three positions and consisted primarily of copying master blueprints and maintaining the blueprint machine, which included clearing paper jams, fixing simple mechanical problems, stacking paper and changing ammonia bottles. The blueprints were copied, placed into folders and then put in mail slots for delivery to other shops in employer's yards. On rare occasions, claimant would deliver the blueprints to shops in the yard. As a result of her work for employer, claimant sustained a gradual injury to both knees. The parties ultimately agreed as to causation and the extent of permanent impairment sustained as a result of claimant's injuries.

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)(1994), as her duties with employer involved purely clerical work. Accordingly, benefits were denied. On appeal, claimant challenges the administrative law judge's finding that she is not covered under Section 2(3) of the Act. Employer responds, urging affirmance.

Claimant argues that, contrary to the administrative law judge's determination, her position with employer meets the status requirement of the Act. Claimant asserts that although her duties with employer may have required non-maritime skills, her work was nonetheless integral to employer's maritime business, as the production of blueprints is an essential part of its shipbuilding operation. In addition, claimant avers that the administrative law judge erroneously relied on the Board's decision in *Williams v. Newport News Shipbuilding & Dry Dock Co.*, 28 BRBS 42 (1994), in rendering his finding regarding jurisdiction, as that decision was subsequently overturned on appeal by the United States Court of Appeals for the Fourth Circuit.

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); *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.[1] *Id.*; *see also Crapanzano v. Rice Mohawk, U.S. Const. 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. 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 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, e.g., Daul v. Petroleum Communications, Inc.*, 32 BRBS 47 (1998); *King v. City of Titusville*, 31 BRBS 187 (1997); *Stone*, 30 BRBS at 209. Contrary to claimant's contention, work which is pertinent, and even integral, to the shipbuilding

[1]The administrative law judge did not address the issue of whether claimant met the situs requirement as set out in Section 3(a) of the Act, 33 U.S.C. §903(a).

process is excluded if the work is exclusively clerical and office-oriented. *Ladd v. Tampa Shipyards, Inc.*, 32 BRBS 228 (1998); *Stone*, 30 BRBS at 213; *Sette v. Maher Terminals, Inc.*, 27 BRBS 224 (1993).

In the instant case, the administrative law judge's findings that claimant's duties are purely clerical in nature, that her work is performed in an office setting, and that claimant's infrequent delivery of blueprints to shops in the yards is insufficient to turn claimant's position into one which is covered under the Act, are rational and supported by substantial evidence. Additionally, although the administrative law judge relied on the Board's decision in *Williams*, 28 BRBS at 42, and, as claimant suggests, that decision was subsequently vacated by the Fourth Circuit, such reliance does not demonstrate reversible error in the instant case.

In its decision in *Williams*, the Board reversed an administrative law judge's finding of coverage. The claimant was a reproduction clerk whose duties involved copying documents and drawings using a blueprint machine. Citing its decision in *Bergquist v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 131 (1989), wherein the Board held that a key punch operator was excluded from the Act's coverage under the clerical exception, the Board held that the claimant in *Williams* was not covered as she ||was employed exclusively to reproduce documents in an office environment.= *Williams*, 28 BRBS at 45. In its unpublished opinion, the Fourth Circuit vacated the Board's decision. The court held that although the Board correctly highlighted the critical inquiry concerning the clerical exclusion, it nevertheless erred in failing to remand the case to the administrative law judge to make necessary factual findings as to whether claimant's duties were exclusively clerical and performed exclusively in a business office. *Williams v. Newport News Shipbuilding & Dry Dock Co.*, 47 F.3d 1166 (table), 29 BRBS 75 (CRT) (4th Cir. 1995). In short, the Fourth Circuit did not attack the logic of the Board's decision on the merits, but rather held that the Board exceeded the scope of its review and engaged in improper fact finding by concluding that the office clerical exclusion applied. *Id.*

In the instant case, while relying on the Board's decision in *Williams,* the administrative law judge nonetheless rationally determined that claimant's employment as the operator of a blueprint machine in an office falls under the clerical exception of Section 2(3)(A), and that her rare delivery of blueprints does not confer coverage. As the administrative law judge's decision comports with applicable law, *Ladd*, 32 BRBS at 228 (office production clerk excluded; forays

outside office are merely extension of office work); *Stone*, 30 BRBS at 209; *Sette*, 27 BRBS at 224 (delivery clerk who processed papers necessary to release cargo to outbound truck drivers excluded as his work was performed in an office setting); *Hall v. Newport News Shipbuilding & Dry Dock Co.,* 24 BRBS 1 (1990) (keypunch operator excluded); *Bergquist,* 23 BRBS at 131, his finding that claimant is precluded from coverage under the Act and thus is not entitled to benefits is affirmed.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge