BRB No. 09-0788

GALEN MITCHELL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CROWLEY MARITIME CORPORATION	)	DATE ISSUED: 05/27/2010
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Stuart A. Levin, Administrative Law Judge, United States Department of Labor.

Galen Mitchell, Jacksonville, Florida, *pro se*.

Mark K. Eckels (Boyd & Jenerette, P.A.), Jacksonville, Florida, for employer/carrier.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (2008-LHC-1191) of Administrative Law Judge Stuart A. Levin 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). In an appeal by a claimant who is not represented by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and are in accordance with law. If they are, they must be affirmed. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant commenced employment with employer as a truck driver in 2003. Claimant's employment duties involved delivering loads from employer's terminal facility to outside customers. On August 10, 2006, claimant injured his left shoulder and arm when he fell when exiting the cab of his truck while on the premises of the Sears warehouse, which is located in the Imeson area of Jacksonville. Florida. Claimant initially received compensation and medical benefits under the Florida state workers' compensation program, but he subsequently sought benefits under the Act.

The only issue presented to the administrative law judge for resolution was whether claimant was covered by the Act. In his Decision and Order, the administrative law judge found that claimant did not meet the status requirement as his employment duties as a truck driver did not involve the direct or intermediate loading or unloading process but, rather, entailed the moving of cargo between employer's terminal and landward destinations. In addition, the administrative law judge found that the Sears warehouse and the Imeson area where that warehouse is located have no functional relationship to either the nearby St. Johns River or maritime activity. Thus, the administrative law judge found that claimant's injury did not occur on a covered situs, and he denied benefits under the Act.

On appeal, claimant, representing himself, challenges the administrative law judge's decision. Employer responds, urging affirmance of the administrative law judge's decision as it is supported by substantial evidence and is in accordance with law.

For a claim to be covered by the Act, a claimant must establish that his injury occurred on site described in Section 3(a) and that he is a maritime employee under Section 2(3) 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). Thus, in order to demonstrate coverage under the Act, a claimant must satisfy both the "situs" and "status" requirements.

We affirm the administrative law judge's finding that claimant's injury did not occur 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); *see Brooker v. Durocher Dock & Dredge*, 133 F.3d 1390, 31 BRBS 212(CRT) (11th Cir.), *cert. granted*, 524 U.S. 982, *cert. dismissed*, 525 U.S. 957 (1998). Coverage under Section 3(a) is determined by the nature of the place of work at the moment of injury. *Charles v. Universal Ogden Services*, 37 BRBS 37 (2003); *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); *Stratton v. Weedon Engineering Co.*, 35 BRBS 1 (2001). In the present case, the Sears warehouse where the injury occurred is not on an enumerated site, and the administrative law judge found that neither it nor the Imeson area of Jacksonville is an "adjoining area" within the meaning of Section 3(a).

In addressing the term "adjoining area," the United States Court of Appeals for the Fifth Circuit in *Texports Stevedore Co. v. Winchester*, 632 F.2d 504, 12 BRBS 719 (5th Cir. 1980) (*en banc*), *cert. denied*, 452 U.S. 905 (1981), took a broad view of the term, refusing to restrict it by fence lines or other boundaries.[1] *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 stated that an area can be "adjoining" if it is "close to or in the vicinity of navigable waters, or in a neighboring area. . . ." *Winchester*, 632 F.2d at 514, 12 BRBS at 727. The perimeter of an "area" is to be defined by function; thus, it must be "customarily used by an employer in loading, unloading, repairing or building a vessel." *Winchester*, 632 F.2d at 515, 12 BRBS at 727; *see Bianco v. Georgia Pacific Corp.*, 304 F.3d 1053, 36 BRBS 57(CRT) (11th Cir. 2002); 33 U.S.C. §903(a). Moreover, an "area" is not limited to the pin-point site of the injury; rather, determination of whether an area is a covered situs requires an examination of both the site of the injury and the surrounding area, and the character of surrounding properties is one factor to be considered. *Winchester*, 632 F.2d at 513, 12 BRBS at 726; *see Stratton*, 35 BRBS at 4-5; *Uresti v. Port Container Industries, Inc.*, 34 BRBS 127 (2000) (Brown, J., dissenting), *aff'g on recon.* 33 BRBS 215 (2000) (Brown, J., dissenting); *Gavranovic v. Mobil Mining & Minerals*, 33 BRBS 1 (1999). Accordingly, the geographic area and function of the site are of the utmost importance in determining whether a location is a covered situs. *See Stratton*, 35 BRBS 1.

In the present case, the site of claimant's injury, the Sears warehouse, is located approximately one mile from the St. Johns River and 10 miles from employer's terminal.

[1] Decisions of the Fifth Circuit issued prior to close of business on September 30, 1981, are binding precedent in the Eleventh Circuit, wherein this case arises, unless specifically overruled by that court. *Bonner v. City of Pritchard*, 661 F.2d 1206 (11th Cir. 1981) (*en banc*). As such, *Winchester* is controlling precedent in the Eleventh Circuit.

The administrative law judge found that the Sears warehouse was separated from the St. Johns River by public streets, that it had no waterfront access, and that no maritime activity occurred along the nearby St. Johns River. In discussing the properties in the area surrounding the Sears warehouse, the administrative law judge found that they included Kelly Temporaries, a Honda warehouse and a Bacardi warehouse, and the administrative law judge found that there is no evidence that the businesses located in the Imeson area engaged in maritime activity. The administrative law judge rationally concluded that as no maritime activity had been established anywhere in the vicinity of the Sears warehouse, the Imeson area where the Sears warehouse is located could not be deemed an "adjoining area." Decision and Order at 15 – 17. The administrative law judge further found that while the Sears warehouse is a customer of employer, no evidence was presented to establish that it had any nexus to maritime activity; specifically, the Sears warehouse was not used to load, unload, repair, dismantle, or build vessels. *Id.* at 17 – 18.

We affirm the administrative law judge's conclusion that the Sears Warehouse is not a covered situs, as he rationally found it is not an "adjoining area" under Section 3(a) and this conclusion is supported by substantial evidence and in accordance with law. *See Sisson,* 131 F.3d 555, 31 BRBS 199(CRT); *Charles,* 37 BRBS 37. As claimant's injury did not occur on a covered situs, he cannot be covered under the Act, and we need not address the administrative law judge's finding that claimant also did not meet the status requirement. *See Bianco v. Georgia Pacific Corp.,* 35 BRBS 99 (2001), *aff'd,* 304 F.3d 1053, 36 BRBS 57(CRT) (11th Cir. 2002). Consequently, the denial of benefits is affirmed.

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge