

BRB No. 06-0371

DONALD EVANS, SR.)	
)	
Claimant-Respondent)	
)	
v.)	
)	
PALMETTO BRIDGE CONSTRUCTORS,)	
INCORPORATED)	
)	
and)	
)	
ST. PAUL FIRE & MARINE INSURANCE)	DATE ISSUED: 11/20/2006
COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

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

E. Paul Gibson (Riesen Law Firm, L.L.P.), Charleston, South Carolina, for
claimant.

J. Marshall Allen and Sean D. Houseal (Buist Moore Smythe McGee,
P.A.), Charleston, South Carolina, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order (2005-LHC-0720) 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 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant injured his right knee on June 13, 2003, while working for employer on its Arthur Ravenel, Jr., Bridge project. In particular, claimant stated that he slipped and twisted his right knee while traversing between two barges which were each afloat on the Cooper River. After a few hours, claimant returned to full-time work and continued in that capacity until he sought treatment for ongoing right knee problems from Dr. Caldwell on August 4, 2003. Dr. Caldwell diagnosed a right knee sprain superimposed on pre-existing degenerative arthritis, prescribed physical therapy, and limited claimant to sedentary work for an initial period of three weeks. Employer subsequently assigned claimant to light-duty work which he successfully performed until he was terminated in February 2004. Claimant later worked for TIC as a pile driver until August 11, 2004. Meanwhile, he filed a claim seeking benefits under the Act.

In his decision, the administrative law judge found that claimant's injury occurred on navigable waters while in the course of his employment and thus concluded, pursuant to *Director, OWCP v. Perini North River Associates (Perini)*, 459 U.S. 297, 15 BRBS 62(CRT) (1983), that claimant's employment was covered under the Act. He then awarded claimant temporary total disability benefits for the periods from August 4, 2003, until August 24, 2003, and from August 11, 2004, until January 18, 2005, as well as medical benefits under Section 7 of the Act, 33 U.S.C. §907.

On appeal, employer challenges the administrative law judge's finding that claimant is covered under the Act, and alternatively, disputes the compensation rate employed by the administrative law judge to calculate claimant's temporary total disability benefits for the period between August 11, 2004, and January 18, 2005. Claimant responds, urging affirmance of the administrative law judge's finding of coverage. Claimant, however, joins employer in seeking modification of the administrative law judge's decision with regard to the compensation rate for the period in question.

Employer first argues that the administrative law judge erred in finding coverage under the Act. Employer contends that claimant, a bridge builder, does not satisfy the status requirement for coverage and that the administrative law judge erred by finding that claimant's injury on actual navigable waters confers coverage.

Prior to the enactment of the 1972 Amendments to the Act, in order to be covered by the Act, claimant had to establish that his injury occurred upon the navigable waters of the United States, including any dry dock. See 33 U.S.C. §903(a)(1970)(amended 1972 and 1984). In 1972, Congress amended the Act to add the status requirement of Section 2(3), 33 U.S.C. §902(3), and to expand the sites covered under Section 3(a) landward. In *Perini*, the Supreme Court of the United States determined that Congress, in amending the Act to expand coverage, did not intend to withdraw coverage from workers injured on navigable waters who were covered by the Act before 1972. 459 U.S. at 315-316, 15 BRBS at 76-77(CRT). Thus, the Court held that when a worker is injured on actual navigable waters while in the course of his employment on those waters, he is a maritime employee under Section 2(3). Regardless of the nature of the work being performed,

such a claimant satisfies both the situs and status requirements and is covered under the Act, unless he is specifically excluded from coverage by another statutory provision. *Id.*, 459 U.S. at 323-324, 15 BRBS at 80-81(CRT). See also *Walker v. PCL Hardaway/Interbeton*, 34 BRBS 176 (2000); *Ezell v. Direct Labor, Inc.*, 33 BRBS 19 (1999); *Caserma v. Consolidated Edison Co.*, 32 BRBS 25 (1997). With regard to bridge workers specifically, prior to 1972, employees injured on navigable waters while engaged in bridge work were held covered by the Act. See *Davis v. Dept. of Labor*, 317 U.S. 249 (1942); *Peter v. Arrien*, 325 F.Supp. 1361 (E.D. Pa. 1971), aff'd, 463 F.2d 252 (3d Cir. 1972); *Dixon v. Oosting*, 238 F.Supp. 25 (E.D. Va. 1965).

In this case, the administrative law judge initially found that employer conceded the situs issue, Decision and Order at 13, and thus turned to consideration of the status requirement. In this regard, he reviewed the relevant case law, including the *Perini* decision, and then considered and rejected employer's contentions that claimant did not establish the status requirement in this case. In particular, the administrative law judge found that "as claimant was injured in the course of his employment on a barge afloat on actual navigable waters," he has established, under *Perini*, the situs and status requirements under the Act. Decision and Order at 16. It is undisputed that claimant's injury occurred as he stepped from one barge to another, Claimant's Exhibit (CX) 10 at 34, Employer's Exhibit 14 at 6-8, that he spent a large part of his work day performing various tasks on these barges, CX 10, at 17-18, and that these barges were all afloat on the Cooper River.¹ See Joint Stipulation # 13. Thus, it is undisputed that claimant's injury occurred while he was performing his job on navigable water.²

The administrative law judge's analysis of the coverage issue pursuant to *Perini* is rational, supported by substantial evidence, and in accordance with law. *Perini*, 459 U.S.

¹ In particular, the administrative law judge explicitly acknowledged that the "parties stipulated that the barge on which claimant sustained his work-related injury was located on navigable waters." Decision and Order at 3, 16.

² Employer's contention that "the record is devoid of evidence demonstrating that the bridge construction project on which claimant was working when injured is designed to aid navigation" is meritless. First, where claimant is injured on navigable waters, such evidence is not necessary to establish coverage. Moreover, as the administrative law judge found, employer "conceded" the navigability of the Cooper River. Decision and Order at 3, 16. In any event, it is indisputable that the Cooper River is navigable water, see generally *Stevens v. Metal Trade, Inc.*, 22 BRBS 319 (1989) (Board notes that the Cooper River is "a major navigable channel"), and the primary purpose for the Ravenel Bridge project was to "aid navigation" for the Port of Charleston. See www.port-of-charleston.com (the Ravenel Bridge project "crosses the main shipping channel, replacing two older bridges and opening [the port of] Charleston to larger vessels with higher and wider clearance.").

at 315-316, 15 BRBS at 76-77(CRT). Therefore, his finding that claimant is covered under the Act is affirmed. *Walker*, 34 BRBS 176. As the administrative law judge's finding that claimant's injury occurred on navigable waters is sufficient to confer coverage under *Perini*, there is no need for us to consider the remaining status arguments raised by employer in this appeal. *See Harwood v. Partredereit AF 15.5.81*, 944 F.2d 1187 (4th Cir. 1991), cert. denied, 503 U.S. 907 (1992); *see also Zapata Haynie Corp. v. Barnard*, 933 F.2d 256, 24 BRBS 160(CRT) (4th Cir. 1991); *Walker*, 34 BRBS 176.

Employer is joined by claimant in urging the Board to modify the administrative law judge's decision to reflect a compensation rate for the period between August 11, 2004, and January 18, 2005, based on the stipulated average weekly wage of \$1,025.50. As the parties agree "that there was an error in the stipulations as to the compensation rate," Claimant's Response Brief at 1, for that period of total disability, we modify the administrative law judge's decision to reflect a compensation rate of \$683.67, as calculated pursuant to the parties' stipulation as to claimant's average weekly wage, in lieu of the \$996.54 compensation rate previously employed by the administrative law judge, for the period of temporary total disability spanning August 11, 2004, to January 18, 2005.

Accordingly, the administrative law judge's finding that claimant is covered under the Act is affirmed. The administrative law judge's finding that claimant is entitled to temporary total disability for the period between August 11, 2004, and January 18, 2005, is modified to reflect a compensation rate of \$683.67, rather than \$996.54. In all other regards, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge