U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 16-0140

ANTHONY GRABERT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BESCO TUBULAR	)	
	)	
and	)	
	)	
AMERICAN INTERSTATE INSURANCE COMPANY	)	DATE ISSUED: Sept. 22, 2016
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Larry W. Price, Administrative Law Judge, United States Department of Labor.

Harold J. Lamy (Foley, Lamy and Jefferson), New Orleans, Louisiana, for claimant.

Henry H. LeBas and F. Douglas Ortego (LeBas Law Offices), Lafayette, Louisiana, for employer/carrier.

Rebecca J. Fiebig (M. Patricia Smith, Solicitor of Labor; Maia Fisher, Acting Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BUZZARD, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2015-LHC-00925) of Administrative Law Judge Larry W. Price 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), as extended by the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §1331 *et seq*. We must affirm the administrative law judge's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

On August 1, 2014, claimant was injured in a car accident on his way to a crew boat that would transport him to work on an offshore platform on the Outer Continental Shelf (OCS). Decision and Order at 2. Claimant was dropped off at employer's land-based office by his wife. From there, claimant and two other employees were to be driven by claimant's supervisor, Timothy Whitten, in Mr. Whitten's personal vehicle, to the dock for transport to the OCS. The accident occurred on the way to the dock. Claimant has been temporarily totally disabled since the accident. Employer accepted the claim as compensable under the Louisiana workers' compensation statute. *Id*. The sole issue before the administrative law judge was whether the Act, as extended by the OCSLA, applies to claimant's claim.

The administrative law judge found that claimant's injuries while traveling in a vehicle to a crew boat for work on the OCS are not covered under the Act pursuant to *Pacific Operators Offshore, LLP v. Valladolid*, 566 U.S. ___, 132 S.Ct. 680, 45 BRBS 87(CRT) (2012), *aff'g* 604 F.3d 1126, 44 BRBS 35(CRT) (9th Cir. 2010). The administrative law judge found that the circumstances of claimant's injuries on land "are not substantially causally linked to Employer's on-OCS extractive operations." Decision and Order at 6. He thus concluded that, "[C]laimant's activities at the time he sustained his injuries were geographically, temporally and functionally distant from [OCS extractive operations]." *Id*. at 7. Accordingly, the administrative law judge denied the claim under the Act.

Claimant appeals the denial of the claim. Claimant contends that his injury had a "substantial nexus" to employer's OCS extractive operations such that his claim is within the Act's coverage. The Director, Office of Workers' Compensation Programs (the Director), responds in agreement with claimant's position, noting that the Board's decision in *Boudreaux v. Owensby & Kritikos, Inc.*, 49 BRBS 83 (2015) supports the contention that claimant is covered by the Act. In separate briefs, employer responds to claimant's petition and to the Director's brief. Claimant filed a reply brief.

Compensation is payable under the Act for disabled employees who meet the requirements of the OCSLA. 43 U.S.C. §1333(a)(1), (b); *Valladolid*, 132 S.Ct. 680, 45 BRBS 87(CRT); *Baker v. Director, OWCP*, ___ F.3d ____, 2016 WL 4427111 (5th Cir. Aug. 19, 2016), *aff'g Baker v. Gulf Island Marine Fabricators*, 49 BRBS 45 (2015); *Boudreaux*, 49 BRBS 83. The OCSLA covers injuries occurring "as the result of operations conducted on the [OCS] for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources . . . of the subsoil and seabed of the [OCS.]" 43 U.S.C. §1333(b). The Supreme Court held in *Valladolid* that an employee's injury is the "result of" these operations if it has a "substantial nexus" to OCS operations; that is, there must be "a significant causal link between the injury that [a claimant] suffered and his employer's on-OCS operations conducted for the purpose of extracting natural resources from the OCS." *Valladolid*, 132 S.Ct. at 691, 45 BRBS at 92(CRT) (off-shore OCS worker killed while working on-shore at his employer's oil processing plant; denial of benefits reversed; case remanded to apply the substantial nexus test). The Board's decision in *Boudreaux*, which was decided after the administrative law judge issued his decision in this case, fully discussed the history of OCSLA coverage leading to *Valladolid*, which need not be repeated here. *Boudreaux*, 49 BRBS at 85-86. In adopting the "substantial nexus" test, the Supreme Court clearly intended that off-OCS injuries could be covered by the Act, stating that the inquiry is fact-specific. *Valladolid*, 132 S.Ct. at 691, 45 BRBS at 92(CRT).

In *Boudreaux*, the claimant was injured in a car accident while driving to a dock for transport to the OCS. The administrative law judge determined, pursuant to *Valladolid*, that the claimant established a substantial nexus between his injury and extractive operations on the OCS. Specifically, the administrative law judge found that the claimant's work testing tanks on offshore rigs was directly related to OCS extractive operations because it involved safely removing various chemicals, including oil and gas and other fluids, from the OCS. The administrative law judge found that this work was in the "regular course of" and "directly furthered" extractive operations. The administrative law judge also found that, at the time of the accident, the claimant was transporting himself and his equipment from his home to the customer's boat dock from which he would be transported to the OCS to perform his testing work and that the employer paid claimant mileage and wages during this activity. *Boudreaux*, 49 BRBS at 86-87.

On appeal, the employer did not challenge the nature of the claimant's work while he was on the OCS. Rather, the employer alleged the claimant was not covered because he was not injured on the OCS and was not within the course and scope of his employment at the time of the accident. The Board held that the evidence, as applied to the "trip-payment exception to the coming-and-going rule," supported the administrative law judge's finding that claimant was in the course of his employment when he was injured in the car accident. *Boudreaux*, 49 BRBS at 87. Moreover, the Board affirmed the administrative law judge's finding that claimant was covered under the substantial

nexus test, "[b]ecause the injury occurred in the course of claimant's employment and claimant was traveling with his work equipment to meet a crew boat to be transported to his offshore duty station, where he performed work relating to extractive operations on the OCS." *Id*. at 88. The Board explicitly rejected the contention that affirmance of the finding of coverage resurrected the discredited "but for" test of *Curtis v. Schlumberger Offshore Service, Inc.*, 849 F.2d 805, 21 BRBS 61(CRT) (3d Cir. 1988). The *Valladolid* inquiry is not whether employer's extractive operations on the OCS caused the claimant's injury, but whether there is a "significant causal link" between the injury and on-OCS extractive operations. *Boudreaux*, 49 BRBS at 88.

The facts in this case are indistinguishable from those in *Boudreaux* and thus we reverse the administrative law judge's finding that claimant is not covered under the Act.[1] *See, e.g., Anderson v. Yusen Terminals, Inc.*, __ BRBS __ , BRB Nos. 16-0037/A (July 28, 2016); *Stroup v. Bayou Steel Corp.*, 32 BRBS 151 (1998) (Board follows its own precedent in factually indistinguishable cases); *see also Crawford v. Director, OWCP*, 932 F.2d 152, 24 BRBS 123(CRT) (2d Cir. 1991). In this case, it is not disputed that claimant was injured in the course of his employment.[2] Claimant testified on deposition that he worked as a tong operator on the OCS rigs,[3] and there is no contention that this work is not directly related to employer's extractive operations on the OCS.[4] *See* DT at

[1] In his decision, the administrative law judge disagreed with the reasoning of the administrative law judge in the *Boudreaux* decision, which was affirmed by the Board after the decision in the instant case was issued. *See* Decision and Order at 6.

[2] The administrative law judge found that the parties agree claimant was injured in the course of his employment. Claimant was paid for his travel time, and Mr. Whitten was paid an automobile allowance and wages for his travel time. *See* Decision and Order at 2, 6. Computer equipment used offshore was being transported in the vehicle. Claimant's Deposition Transcript (DT) at 26-27, 30.

[3] Claimant is part of a four-person crew that performs casing and tubing tasks. DT at 17-18. Claimant worked for employer as a tong operator. *Id*. at 18. Generally, claimant's job duties involve "run[ning] the compensator" and setting and monitoring "torque." *Id.* at 17-20. He testified at his deposition that, at the time of the car accident, he was working 90 percent of the time at offshore locations. *Id*. at 14. Claimant previously worked for employer at a job in Pennsylvania. *Id.*

[4] Employer avers there are no issues of fact requiring remand. Employer asserts the administrative law judge's decision should be affirmed because he rationally concluded that the accident on land does not have a "substantial nexus" to employer's extractive operations on the OCS. *See* Emp. Mem. in Opp. to Cl. Pet. for Rev. at 4-5; Emp. Reply Mem. at 4.

17-18. When injured, claimant was traveling by a personal vehicle with co-workers to meet a crew boat by which he was to be transported to his offshore duty station. The vehicle was also transporting work equipment. Pursuant to *Boudreaux*, this undisputed evidence satisfies the "substantial nexus" and "significant causal link" test of *Valladolid*.[5] Therefore, we reverse the administrative law judge's finding that the claim is not within the coverage of the Act, as extended by the OCSLA.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is reversed. We remand the case to the administrative law judge for entry of an award of benefits.

SO ORDERED.

_____
GREG J. BUZZARD
Administrative Appeals Judge

_____
RYAN GILLIGAN
Administrative Appeals Judge

_____
JONATHAN ROLFE
Administrative Appeals Judge

[5] The United States Court of Appeals for the Fifth Circuit's recent decision in *Baker v. Director, OWCP*, ___ F.3d ____, 2016 WL 4427111 (5th Cir. Aug. 19, 2016), *aff'g Baker v. Gulf Island Marine Fabricators*, 49 BRBS 45 (2015), is not to the contrary. In *Baker*, the claimant worked on land fabricating living quarters for a tension leg oil platform; he was not required to travel to the OCS at all. The employer was to have no role in moving the platform, or in installing or operating it once it was on the OCS. As the claimant's injury lacked a substantial nexus to extractive operations on the OCS, the court affirmed the Board's affirmance of the denial of benefits. *See Baker*, 49 BRBS at 50 (claimant's onshore work was "geographically, temporally, and functionally distant from" extractive operations on the OCS).