

BRB No. 92-1640

WANDA L. WAITS)
(Widow of DARRELL L. WAITS))
)
 Claimant-Petitioner)
)
 v.)
)
 INGALLS SHIPBUILDING,)
 INCORPORATED) DATE ISSUED:
)
 Self-Insured)
 Employer-Respondent) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits for Lack of Jurisdiction of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Bobby G. O'Barr, Biloxi, Mississippi, for claimant.

Paul B. Howell (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits for Lack of Jurisdiction (91-LHC-2051) of Administrative Law Judge C. Richard Avery 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 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant's husband (decedent) was employed as an ultrasonic inspector for employer. During the week of January 9, 1989, decedent and several colleagues were sent by employer to Norfolk, Virginia to inspect welds on a Navy ship that was docked at the Norfolk Naval Shipyard. After working all day on the ship, decedent and his colleagues would return to their rooms at a Ramada Inn, which was located approximately 13 to 15 miles from the shipyard, to write their reports. On the evening of January 13, 1989, decedent, while returning from a convenience store located across the street from the Ramada Inn, was fatally struck by an automobile while crossing the street.

The sole issue before the administrative law judge was whether decedent's accident occurred

on a situs covered under the Act. 33 U.S.C. §903(a). In his Decision and Order, the administrative law judge concluded that the situs requirement of Section 3(a) had not been satisfied. The administrative law judge determined that, since the Ramada Inn was located at least 13 miles from the shipyard in an area where no maritime activity took place and that location was not near navigable water, decedent was not exposed to maritime hazards and, therefore, his accident did not occur on an "adjoining area" under Section 3(a). Accordingly, the administrative law judge denied the claim for lack of coverage under the Act.

On appeal, claimant contends that the administrative law judge erred in finding that decedent's death did not occur on a covered situs. Specifically, claimant argues that, since decedent's activities at the hotel were an integral part of employer's ship repairing operation, the area where the decedent's death occurred had a continuous, direct involvement with maritime activities; additionally, claimant contends that since decedent's death occurred in the course and scope of his employment, the situs requirement was met. Employer responds, urging affirmance of the administrative law judge's Decision and Order.¹

In order to be covered under the Act, a claimant must satisfy both the status requirement under Section 2(3) of the Act, 33 U.S.C. §902(3), and the situs requirement under Section 3(a). *See Northeast Marine Terminal Co., Inc. v. Caputo*, 432 U.S. 249, 6 BRBS 150 (1977). Section 3(a) provides that:

Compensation shall be payable under this Act . . . only if the disability or death results from an injury occurring on 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)(1988)(emphasis added). An injury occurring in travel on a public road to or from a job site is covered under the Act only if the location of the injury constitutes an "adjoining area" under Section 3(a). *See Humphries v. Director, OWCP*, 834 F.2d 372, 20 BRBS 17 (CRT)(4th Cir. 1987), *cert. denied*, 485 U.S. 1028 (1988); *Brady-Hamilton Stevedore Co. v. Herron*, 568 F.2d 137, 7 BRBS 409 (9th Cir. 1978). Factors to be considered in determining whether a site is an "adjoining area" under this test include: the particular suitability of the site for the maritime uses referred to in the statute; whether adjoining properties are devoted primarily to uses in maritime commerce; the proximity of the site to the waterway; and whether the site is as close to the waterway as is feasible given all the circumstances in the case. *See Herron*, 568 F.2d at 139, 7 BRBS at 411; *Anastasio v.*

¹We note that claimant additionally contends that the site of decedent's death was within a "zone of special danger." The "zone of special danger" doctrine, however, applies only to cases arising under the District of Columbia Workmen's Compensation Act and the Defense Base Act, and not to cases arising under the Longshore and Harbor Workers' Compensation Act; thus, we will not address claimant's contentions regarding that doctrine. *See McConnell v. Bethlehem Steel Corp.*, 25 BRBS 1, 2 n.1 (1991).

A.G. Ship Maintenance, 24 BRBS 6 (1990).

In a case similar to the instant case, the United States Court of Appeals for the Fourth Circuit, in whose jurisdiction this case arises,² affirmed the Board's decision that the injury in the case did not occur on a covered situs where claimant, while in the course of his employment, was struck by a car and seriously injured coming from a restaurant "well over a mile from the terminal, along a public highway which did not connect any portions of employer's operations or traverse continuous or contiguous terminal areas." *Humphries*, 834 F.2d at 376, 20 BRBS at 24 (CRT). The restaurant was separated from the river and the nearest maritime terminal by a residential neighborhood. The court held that while a broad interpretation of the maritime situs requirement is warranted on statutory and policy grounds, the facts in this case "militate against any description of the accident scene as a maritime situs." *Id.*

The Board has additionally held that the breadth of the requirements of a claimant's employment does not enlarge situs under the Act; an employee injured while working off a covered situs is not covered by Section 3(a) even if the injury occurs within the course of his employment. *See Beachler v. National Lines Bureau, Inc.*, 23 BRBS 438, 440 (1990); *Alford v. MP Industries of Florida, Inc.*, 16 BRBS 261 (1984). Therefore, the specific employment requirements concerning the use of public streets do not automatically bring the location of claimant's accident on a public street within the coverage of Section 3(a). Rather, the situs inquiry looks to the relationship of the place of the accident to navigable waters. *See Beachler*, 23 BRBS at 441. The Board has therefore previously rejected the argument made by claimant that coverage under the Act should be extended. In so doing, the Board has repeatedly noted that Congress, when amending the Act in 1972, did not eliminate the Section 3(a) requirement that the injury or death occur on a maritime situs. *See Cabaleiro v. Bay Refractory Co., Inc.*, 27 BRBS 72 (1993); *Beachler*, 23 BRBS at 441; *Alford*, 16 BRBS at 264.

In the instant case, the administrative law judge, citing to *Humphries*, concluded that claimant failed to satisfy the situs requirement since the street where decedent was struck by an automobile lacked both proximity to navigable waters and a maritime nexus. Specifically, the administrative law judge found that decedent was not exposed to maritime hazards since the site of decedent's accident was at least 13 miles from the shipyard, was not near navigable waters, and was located in an area in which no maritime activities took place. Claimant's contention that decedent's employment activities at the Ramada Inn constituted maritime employment does not eliminate the requirement that decedent's accident occur on a site with a nexus to navigable water. A review of the record reveals no evidence which could support a determination that the area surrounding the Ramada Inn is a "maritime area." *See, e.g., Cabaleiro*, 27 BRBS at 72; *McConnell*, 25 BRBS at 1. Rather the uncontroverted evidence indicates that the area surrounding the Ramada Inn has no maritime nexus, but contains nightclubs, banks, service stations and restaurants. *See Tr.* at 22-24;

²Contrary to claimant's assertion, the instant case arises within the appellate jurisdiction of the United States Court of Appeals for the Fourth Circuit, since decedent's accident and death occurred in the Commonwealth of Virginia. *See* 33 U.S.C. §921(c).

Emp. Ex. 14. As the record contains no evidence that the site of decedent's accident was an area adjoining navigable waters used by an employer for traditional maritime activities involving loading, unloading, building or repairing vessels, we affirm the administrative law judge's finding that decedent's accident did not occur on a covered situs. See *Humphries*, 834 F.2d at 372, 20 BRBS at 17 (CRT); *Cabaleiro*, 27 BRBS at 72; *McConnell*, 25 BRBS at 1.

Accordingly, the Decision and Order Denying Benefits for Lack of Jurisdiction of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge