BRB Nos. 00-0953
and 00-0953A

LAURA PATRICIA BIANCO	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
GEORGIA PACIFIC CORPORATION	)	DATE ISSUED: June 20, 2001
	)	
	)	
Self Insured	)	
Employer-Respondent	)	
Cross-Petitioner	)	DECISION and ORDER

Appeals of the Decision and Order of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Ralph R. Lorberbaum (Zipperer & Lorberbaum, P.C.), Savannah, Georgia, for claimant.

John P. Reale and Robert L. Welch (Drew, Eckl & Farnham, L.L.P.), Atlanta, Georgia, for self-insured employer.

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

PER CURIAM:

Claimant appeals, and employer cross-appeals, the Decision and Order of Administrative Law Judge Richard T. Stansell-Gamm 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 if they 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).

Employer operates a Gypsum Products Plant in Brunswick, Georgia, where it processes gypsum into two finished products: sheet-rock (wallboard) and gypcrete (a raw

material used by floor finishers).[1] Specifically, gypsum is delivered by ship to the Lanier Dock on the East River at the Port of Brunswick, where it is off-loaded first into a hopper and then onto a conveyor belt and shipped to Transfer House No. 2. At the transfer house, the gypsum is diverted onto employer's conveyor belt which takes the gypsum to its production facility. All of the facilities and equipment used in the unloading process up to and including the transfer house are owned by Glynn County and the City of Brunswick and are operated by the Brunswick Port Authority. Employer thereafter takes control of the gypsum as evidenced by the fact that its conveyor belt is operated by one of its own employees. Once at the production facility, the gypsum is poured off of the conveyor belt into the rock shed where it is stored until it is needed for further processing. From the rock shed, the gypsum is crushed, screened, baked and then transported either to the gypcrete or wallboard production departments, where it is either bagged to be sold as gypcrete, or used in the manufacturing of wallboard. In either case, the finished product is transported from the plant by truck.

Claimant began working at employer's facility on June 1, 1977, and has, over the course of time, held a variety of jobs.[2] On May 10, 1993, while working as a knife operator in the wallboard production plant, claimant sustained injuries to her right ankle and right knee. In the two years preceding her 1993 injury, claimant testified that she worked about 30 percent of the time painting and/or sandblasting the conveyor belt system, and that she also spent time as a crusher in the wallboard plant, and as a supply operator and paper hanger.

Upon her return to work for employer following the 1993 injury, claimant was assigned to the electric shop. At some point thereafter she worked as a sweeper operator cleaning up debris all over the plant including under the conveyor system. In addition, she operated a front end loader placing rejected material and rocks that had fallen off the belts back onto the conveyor system, ran the crusher, operated conveyor belts, and on at least one

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[1]Employer's facility is located on the banks of the Turtle and East Rivers; however, it is separated from these waterways by county and city property.

[2]Claimant testified that her jobs for employer included: (1) laborer, (2) pre-decker, (3) cleaner in wet end, (4) paper hanger, (5) bundle operator, (6) riser, (7) supply operator, (8) crusher operator, (9) ship unloader, (10) utility person in the yard and the gypcrete area, (11) truck unloader, and (12) painter/sandblaster. Hearing Transcript (HT) at 116-117.

occasion helped unload the belt at the rock shed. She testified that following the 1993 accident, she spent about 25 percent of her time on the conveyor belts and the crusher and another 15 percent of her time in the reclaim area. On July 28, 1995, claimant injured her right arm while operating a palletizer in the gypcrete department.

The parties stipulated to numerous facts regarding claimant's injuries and the resulting claims, but could not reach agreement on the issue of whether claimant's employment with employer is covered by the Act. Thus, the primary issue before the administrative law judge was whether claimant met both the situs requirement of Section 3(a), 33 U.S.C. §903(a), and the status requirement of Section 2(3), 33 U.S.C. §902(3).

In his decision, the administrative law judge determined that claimant did not establish the situs requirement of the Act, 33 U.S.C. §903(a), for either her May 10, 1993, or July 28, 1995, work-related injuries as employer's wallboard and gypcrete production departments, where the injuries respectively occurred, are not maritime facilities. Accordingly, the administrative law judge concluded that claimant's injuries are not covered under the Act. The administrative law judge, however, also considered the issue of status, and determined that claimant established status under Section 2(3) of the Act, 33 U.S.C. §902(3), with regard to her May 10, 1993, accident, but not with regard to her July 28, 1995, accident.

On appeal, claimant challenges the administrative law judge's finding that she did not meet the situs requirement of Section 3(a). Employer responds, urging affirmance. On cross-appeal, employer challenges the administrative law judge's finding that claimant met the status requirement of Section 2(3) with regard to her May 10, 1993, work-related injury. Claimant responds, urging affirmance of the administrative law judge's finding.

Claimant contends that contrary to the administrative law judge's finding, employer's entire facility qualifies as an "adjoining area" so as to satisfy the "situs" test of the Act. Specifically, claimant asserts that employer's facility either directly adjoined navigable waters or adjoined the property of the Brunswick Port Authority which directly adjoined navigable waters.[3] Moreover, claimant argues that the administrative law judge erroneously divided employer's property into maritime and non-maritime portions, and avers that since some of the property is maritime then all of it must be, for to hold otherwise would allow workers to walk in and out of coverage depending upon where they are on a certain day. For a claim to be covered by the Act, a claimant must establish that her injury occurred upon the

[3]Claimant does not challenge the administrative law judge's finding that she did not meet the status requirement with regard to her July 28, 1995, work-related injury, and thus, that finding is affirmed. Consequently, we note that even if claimant could establish situs for that injury, she would not be entitled to compensation under the Act. 33 U.S.C. §902(3).

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 an exclusion contained in the Act. 33 U.S.C. §§902(3), 3(a), (b); *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); *Brooker v. Durocher Dock & Dredge*, 133 F.3d 1390, 1392, 31 BRBS 212, 213-214(CRT) (11th Cir.), *cert. granted*, 524 U.S. 982, *cert. dismissed*, 525 U.S. 957 (1998). Thus, in order to demonstrate that coverage exists, a claimant must satisfy the "situs" and the "status" requirements of the Act. *Id.*

Coverage under Section 3(a) is determined by the nature of the place of work at the time of injury. *Stroup v. Bayou Steel Corp.*, 32 BRBS 151 (1998); *Melerine v. Harbor Construction Co.*, 26 BRBS 197 (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."[4] 33 U.S.C. §903(a); *Stratton v. Weedon Engineering Co.*, 35 BRBS 1 (2001). An "adjoining area" therefore must have a maritime use, but it need not be used exclusively or primarily for maritime purposes. *See Texports Stevedore Co. v. Winchester*, 632 F.2d 504, 12 BRBS 719 (5th Cir. 1980) (*en banc*), *cert. denied*, 452 U.S. 905 (1981); *Stratton*, 35 BRBS at 4. In *Winchester*, the Fifth Circuit took a broad view of "adjoining area," refusing to restrict it by fence lines or other boundaries.[5] *Winchester*, 632 F.2d at

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[4]Section 3(a) of the Act, 33 U.S.C. §903(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).

[5]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 the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981)(*en banc*). As such, *Winchester* remains controlling precedent in the Eleventh

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* 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 but 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). Using these guidelines, the Fifth Circuit held in *Winchester* that an administrative law judge properly found that a gear room located five blocks from the nearest dock constituted a covered situs because it was in the vicinity of the navigable waterway, it was as close to the docks as feasible, and it had a functional nexus to maritime activity in that it was used to store gear which was used in the loading process. *Winchester*, 632 F.2d at 514-516, 12 BRBS at 726-729.

In *Stroup*, the Board held that a worker injured in a warehouse shipping bay at a steel manufacturing plant was not injured on a covered situs. *Stroup*, 32 BRBS at 155. The Board stated that the shipping bay, which was used to store finished steel products and to load trucks, which then transported the steel overland or carried it to barges or rails for further shipment, did not serve a maritime function, affirming the administrative law judge's finding that "there is nothing inherently maritime about storing and loading steel onto trucks. . . ." *Stroup*, 32 BRBS at 154. Specifically, the situation in *Stroup* involved the point at which the manufacturing process ends and the maritime process begins. Thus, loading finished steel products onto a truck, bound for a barge or any other destination, constitutes the last step in the manufacturing process at the steel plant. The maritime process, therefore, did not begin in *Stroup* until the steel reached the docks and was readied for loading onto a barge. The lack of a maritime function in the shipping bay of the plant, in conjunction with its distance from the employer's dock facility where loading and unloading occurred, which was a notably separate and distinct facility, led the Board to affirm the administrative law judge's finding that the injury in the shipping bay, even while

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Circuit. *See generally Brooker,* 133 F.3d at 1392, 31 BRBS at 213-214 (CRT); *Stratton,* 35 BRBS at 4 n. 7.

loading a truck with steel bound for a barge, did not occur on a covered situs because it met neither the geographic nor the functional criterion of *Winchester*. *Stroup*, 32 BRBS at 154-155.

Similarly, in *Jones v. Aluminum Company of America* [*Jones II*], BRBS , BRB Nos. 00-696/A (Apr. 9, 2001), the Board considered situs in the context of an employer whose operations contained both manufacturing facilities and areas used in maritime work. The Board recognized that the portion of employer's facility where loading and unloading occurred constituted a maritime situs. *Id.,* slip op. at 9. In contrast, the Board acknowledged that employer's manufacturing plant (the plant therein manufactured aluminum oxide) is not a covered situs, as it lacks the requisite "functional" component. *Id.* Specifically, the Board observed that the plant was not an area used for the loading, unloading, repairing or building of vessels. *Id.* Additionally, the Board reiterated its recognition, in *Stroup*, that there is a point at which the maritime process ceases and the manufacturing process begins, and vice versa. *Jones II*, slip op. at 9, citing *Stroup*, 32 BRBS 151. Consequently, the Board held in *Jones II* that as employer's operation contains manufacturing facilities as well as areas used in maritime work, the entire site is not covered under Section 3(a); the plant itself lacks the functional nexus to be considered a covered area, and it cannot be brought into coverage simply because goods are shipped by water at another portion of the facility. *See Jones II,* slip op. at 10; *see also Jonathan Corp. v. Brickhouse*, 142 F.3d 217, 32 BRBS 86(CRT) (4th Cir. 1998), *cert. denied*, 525 U.S. 1040 (1998).

In contrast, in *Gavranovic,* 33 BRBS 1, the Board affirmed the administrative law judge's finding that two claimants, who were injured in buildings where finished fertilizer products were stored to await further transhipment, were injured on a covered situs. The Board observed that the buildings in question were adjacent to navigable waters and conveyor belts linked the buildings to areas from which vessels were loaded. *Gavranovic,* 33 BRBS at 4-5. Additionally, there was no contention that the claimants were injured in areas of employer's facility where only manufacturing took place. As they were injured in an area used as part of the shipping process, they were covered by the Act, regardless of the precise use of the pinpoint location of injury. *See also Uresti*, 34 BRBS at 130 (warehouse within the Port of Houston is covered).

In light of the holdings in *Jones II* and *Stroup*, we initially reject claimant's assertion that the administrative law judge's finding that employer's conveyor belt and rock shed are covered is sufficient to bring employer's entire facility within the situs requirement of Section 3(a). *Jones II*, slip op. at 9-10; *Stroup*, 32 BRBS at 154-155. Similarly, we hold that claimant's contention that the administrative law judge erred by dividing employer's manufacturing facility into maritime and non-maritime manufacturing sites is without merit. *Id*. Consequently, the issue of coverage in the instant case concerns whether claimant was injured while working at the maritime or manufacturing portion of

employer's facility. If it is the former, then claimant has met the situs requirement of Section 3(a), and if it is the latter than claimant has not met this requirement.

In the instant case, the administrative law judge determined that the gypsum remained a "shipped" cargo until it arrived at employer's rock shed. The administrative law judge explicitly found that the unloading process did not stop at the port authority's transfer house and instead continued along employer's conveyor belt until the gypsum fell into the rock shed for storage. *See Jones v. Aluminum Company of America* [*Jones I*], 31 BRBS 130 (1997). Consequently, the administrative law judge determined that employer's conveyor belt from the transfer house and the rock shed are integral parts of the ship unloading process, and thus concluded that each is a maritime situs. *Id.* The administrative law judge, however, next found, after consideration of the Board's decision in *Gavranovic*, 33 BRBS 1, that the remainder of employer's plant, and most notably the wallboard and gypcrete production departments, is not a maritime facility as overall it was not "customarily used for maritime purpose." In particular, the administrative law judge found that employer's sole maritime activity is the receipt of raw gypsum from a ship into a storage facility, and that its only link to the "sea" is the conveyor belt from the port authority's transfer house to its rock shed. In contrast, the administrative law judge determined that the rest of employer's plant was solely engaged in the manufacturing of wallboard and gypcrete. Thus, the administrative law judge concluded that as claimant's injuries occurred at employer's wallboard and gypcrete production departments, and not along employer's conveyor belt from the transfer house to the rock shed or at the rock shed itself, the situs requirement is not satisfied with regard to either the May 10, 1993, or the July 28, 1995, injury.

As in *Jones II* and *Stroup*, and unlike *Gavranovic,* the areas where claimant's injuries occurred in the instant case are within a separate facility and not a part of the Brunswick port itself. Moreover, insofar as the specific buildings where the injuries occurred are concerned, it is clear that they were used solely in the manufacturing process rather than as a step in the chain of unloading raw materials. As the administrative law judge properly found, the maritime activity of unloading the gypsum from the ships continued along employer's conveyor belt until it was received in the rock shed for storage. *See Jones I*, 31 BRBS 130; *see generally Garmon v. Aluminum Co. of America-Mobile Works*, 28 BRBS 46, 49 n.2 (1994), *aff'd on recon.*, 29 BRBS 15 (1995) (the unloading process is complete when the bauxite is received for storage as it is not stored for further transhipment, but has reached its consignee and is stored to await use in the manufacturing process); *Coyne v. Refined Sugars, Inc.*, 28 BRBS 372 (1994). The gypsum thereafter is used by employer in its manufacturing process either in the wallboard or gypcrete departments. As was the case in *Jones II*, employer's manufacturing plant herein, consisting of the wallboard and gypcrete departments, is not a covered situs, since, as the administrative law judge found, it is not an area used for traditional maritime activity but rather involves the manufacturing of products which are not used for maritime purposes. *Jones II*, slip op. at 9-10; *Stroup*, 32 BRBS 151; *Melerine*, 26

BRBS 197. We therefore affirm the administrative law judge's finding that claimant has not satisfied the situs test for coverage pursuant to Section 3(a) of the Act, and consequent conclusion that claimant is not entitled to benefits, as they are rational, supported by substantial evidence and in accordance with law. Moreover, in light of our affirmance of the administrative law judge's finding that the situs requirement is not met, we need not address employer's contentions on cross-appeal regarding status.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge