BRB No. 05-0779

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| TERRY W. HUDSON | ) | |
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| Claimant-Respondent | ) | |
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| v. | ) | |
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| COASTAL PRODUCTION SERVICES, INCORPORATED/FOREST OIL CORPORATION | ) | DATE ISSUED: 06/22/2006 |
| | ) | |
| and | ) | |
| | ) | |
| ACE AMERICAN INSURANCE COMPANY | ) | |
| | ) | |
| Employer/Carrier-Petitioners | ) | DECISION and ORDER |

Appeal of the Decision and Order – Awarding Benefits of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Arthur J. Brewster, Metairie, Louisiana, for claimant.

Ped C. Kay, III, and Hal J. Broussard (Broussard & Kay, L.L.C.), Lafayette, Louisiana, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order – Awarding Benefits (2004-LHC-0492) of Administrative Law Judge Richard D. Mills 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 was injured on a fixed oil and gas production platform located in the Saturday Island Field in Plaquemines Parish, Louisiana, on Barataria Bay.[1] Jt. Ex. 1; Tr. at 9. Claimant testified that he was employed by Coastal Production Services in January 2001, and was subcontracted to Forest Oil (herein collectively referred to as "employer") to work on the platform. He worked a seven-days-on-and-seven-days-off shift, usually with one other person. The platform, which was accessible only by boat, helicopter, or sea plane, consisted of oil tanks, saltwater tanks, living quarters, pipelines attaching it to a number of satellite wells, and a holding barge.[2] Tr. at 19-21, 54. The holding barge, which was surrounded by pilings, also acted as a docking area for crew and supply boats and tug-drawn barges that collected and transported crude oil from the holding barge tanks.[3] Tr. at 27, 65, 84-85.

Claimant's duties required him to perform daily inspections of and maintenance to the platform and the holding barge, including checking gauges, inspecting pipelines for leaks, and cranking motors. He would also inspect and maintain a sunken production barge, the MAGNOLIA, and the satellite wells, which required him to travel by boat, and he would facilitate the "dropping" of oil from the platform tanks to the holding barge tanks.[4] Tr. at 27, 46-49. Additionally, if the holding barge tanks were full, claimant or his partner would call for the transport barge to carry the crude oil away from the platform. When the barge arrived, claimant testified he would perform, assist with, or witness the following: placing the walk-board between the transport barge and the holding barge, monitoring the tank levels, filling out paperwork, hooking up pipelines and hoses to transfer the oil, manning the emergency shut-off switch, disconnecting and reconnecting the pipelines as the holding tanks emptied, recording the amount transferred, and unhooking the hoses and pipelines when the transfer was complete. Tr. at 27-29. The transfer took between two and four hours. There were 19 transfers between January 2001 and August 2001, four of which were signed by claimant. Emp.

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[1]The parties agree that Barataria Bay is state water. Tr. at 10.

[2]The holding barge is called the CHEROKEE. Although it was formerly a mobile barge, Forest Oil surrendered the Certificate of Documentation to the Coast Guard when the CHEROKEE became permanently fixed to the platform, prior to claimant's employment. Tr. at 84-85.

[3]These barges, referred to by the administrative law judge as "customer barges," will be referred to herein as "transport barges."

[4]"Dropping" oil is the release of oil from the tanks on the platform via pipeline down to the tanks on the holding barge. Claimant testified that this is a two-person job and that it occurred every day. Tr. at 49-50.

Ex. 2. However, claimant testified he took part in many, if not all, of the transfers that occurred while he was working. Tr. at 46, 49-51, 65, 90-92. Regardless of whether a transfer was to occur, claimant testified he spent some time every day on the holding barge inspecting the pipelines, hoses, and other equipment, and making repairs as needed. Tr. at 32, 36-37.

On August 11, 2001, claimant was attempting to crank the saltwater pump, in an area on the platform away from the holding barge, when the pump blew up and caught on fire. Claimant suffered burns to his face, hands and chest, imbedded metal on his forearm and hip, and a hip and back injury when he was thrown against the saltwater skid. Cl. Ex. 2a; Jt. Ex. 1; Tr. at 40-42, 54-55. Claimant filed a claim for benefits under the Act.[5]

The administrative law judge found that claimant was a "maritime employee" who was injured on a covered situs, 33 U.S.C. §§902(3), 903(a). Decision and Order at 12. He distinguished the instant case from the fixed platform cases in *Herb's Welding, Inc. v. Gray*, 470 U.S. 414, 17 BRBS 78(CRT) (1985), *Thibodeaux v. Grasso Prod. Mgmt., Inc.*, 370 F.3d 486, 38 BRBS 13(CRT) (5th Cir. 2004), and *Munguia v. Chevron U.S.A., Inc.*, 999 F.2d 808, 27 BRBS 103(CRT), *reh'g en banc denied*, 8 F.3d 24 (5th Cir. 1993), *cert. denied*, 511 U.S. 1086 (1994), and he found that the fixed platform herein satisfies the Act's situs requirement because it has a docking area which is customarily used to load transport barges with oil, which is a maritime activity. 33 U.S.C. §903(a). The administrative law judge rejected employer's assertion that the perimeter of coverage should end at the holding barge. Decision and Order at 8-9. With regard to claimant's status as a maritime employee, the administrative law judge found that claimant's duties included the upkeep of the holding barge tanks and docking facility, which were essential to the loading process, and the loading of crude oil onto transport barges. Decision and Order at 11; 33 U.S.C. §902(3). Employer appeals the administrative law judge's decision, challenging his findings on both status and situs. Claimant responds, urging affirmance.

For a claim to be covered by the Act, a claimant must establish that the injury occurred upon the navigable waters of the United States, including any dry dock, or that it occurred on a landward area covered by Section 3(a), and that the employee's work is maritime in nature and is not specifically excluded by 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

[5]Claimant originally received disability benefits under the Act, which were later converted to state compensation benefits, and he received medical benefits. Jt. Ex. 1; Tr. at 42.

demonstrate that coverage under the Act exists, a claimant must satisfy the "situs" and the "status" requirements of the Act. *Id.*; *see also Crapanzano v. Rice Mohawk, U.S. Constr. Co., Ltd.*, 30 BRBS 81 (1996).

**Status**

Employer argues that claimant is not a maritime employee. The administrative law judge found that claimant was a covered employee by virtue of his loading activities. Employer contends that either those activities are not maritime because they furthered the purpose of the oil production platform and they would be the same as if claimant worked on land, or those activities were so minimal as to be insignificant and not a regular part of claimant's duties. It is well established that workers on fixed offshore platforms whose work involves oil production are not maritime employees under the Act. *Herb's Welding*, 470 U.S. 414, 17 BRBS 78(CRT); *Munguia*, 999 F.2d 808, 27 BRBS 103(CRT). To be covered, therefore, claimant's employment must be distinguishable from the employment of the workers in those cases. On the facts of this case, we hold that the administrative law judge properly found that claimant's job is covered, as it included distinct loading duties which the claimants in *Herb's Welding* and *Munguia* did not perform, and we affirm the administrative law judge's finding that claimant was a maritime employee.

Section 2(3) of the Act provides:

> The term 'employee' means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker. . . .

33 U.S.C. §902(3). A claimant satisfies the "status" requirement if he is an employee engaged in work which is integral to the loading, unloading, constructing, or repairing of vessels. *Chesapeake & Ohio Ry. Co. v. Schwalb*, 493 U.S. 40, 23 BRBS 96(CRT) (1989). To satisfy this requirement, he need only "spend at least some of [his] time in indisputably [covered] operations." *Caputo*, 432 U.S. at 273, 6 BRBS at 165; *Boudloche v. Howard Trucking Co.*, 632 F.2d 1346, 12 BRBS 732 (5th Cir. 1980), *cert. denied*, 452 U.S. 915 (1981). Although an employee is covered if some portion of his activities constitutes covered employment, those activities must be more than momentary or incidental to non-maritime work. *Id.*; *Coleman v. Atlantic Container Service, Inc.*, 22 BRBS 309 (1989), *aff'd*, 904 F.2d 611, 23 BRBS 101(CRT) (11th Cir. 1990).[6]

[6]Under the law of the United States Court of Appeals for the Fifth Circuit, within whose jurisdiction this case arises, a claimant may also satisfy the status requirement on the basis that he was performing maritime work at the moment of injury. *See Universal*

The administrative law judge found that claimant's work included the upkeep of the holding barge, as well as the loading of the transport barges. Decision and Order at 10. He also found that this work could not occur absent claimant's participation, as the facility's manuals detailed the procedure for transferring the crude oil to barges and listed, as part of claimant's duties, the inspection and maintenance of the holding barge. Thus, the administrative law judge found that claimant's work was essential to the loading of oil onto the transport barges. *Id.* Additionally, the administrative law judge found that claimant's loading-related activities were not extraordinary or discretionary but were tasks to which claimant was regularly assigned. *Id.* at 11. The administrative law judge then calculated that claimant spent 9.7 percent of his time in activities related to the loading process and found that this is sufficient to convey coverage. *Id.*

We reject employer's argument that claimant's work does not satisfy the status test. It is well settled that maintaining equipment necessary to the loading process is maritime employment. *Schwalb*, 493 U.S. 40, 23 BRBS 96(CRT); *Ford*, 444 U.S. 69, 11 BRBS 320; *Prolerized New England Co. v. Miller*, 691 F.2d 45, 15 BRBS 23(CRT) (1st Cir. 1982); *Stroup v. Bayou Steel Corp.*, 32 BRBS 151 (1998); *Jones v. Aluminum Co. of America*, 31 BRBS 130 (1997); *Lewis v. Sunnen Crane Service, Inc.*, 31 BRBS 34 (1997). Moreover, loading oil onto a vessel via pipelines also constitutes covered work.[7]

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*Fabricators, Inc. v. Smith*, 878 F.2d 843, 22 BRBS 104(CRT) (5th Cir. 1989), *cert. denied*, 493 U.S. 1070 (1990); *Thibodaux v. Atlantic Richfield Co.*, 580 F.2d 841, 8 BRBS 787 (5th Cir. 1978), *cert. denied*, 442 U.S. 909 (1979); *Scott v. Tug Mate, Inc.*, 22 BRBS 164 (1989); *Clophus v. Amoco Prod. Co.*, 21 BRBS 261 (1988). The "moment of injury" test does not narrow but broadens coverage under the Act. *See McGoey v. Chiquita Brands Int'l*, 30 BRBS 237 (1997); *Thornton v. Brown & Root, Inc.*, 23 BRBS 75 (1989). Therefore, the fact that claimant herein was injured during the course of performing non-maritime work is insufficient in and of itself to deny him coverage. *See Caputo*, 432 U.S. at 273, 6 BRBS at 165 (a claimant cannot be excluded because of activities performed at the time of injury as the "status" test is occupational in nature); *Jones v. Aluminum Co. of America*, 31 BRBS 130 (1997).

[7]Although claimant Munguia loaded and unloaded personal tools and equipment he needed to service the oil production wells, and he used boats to get to the wells, the court held that his work loading and unloading the boats, like Gray's, was related to the mission of servicing the oil wells and was unrelated to maritime commerce. *Munguia*, 99 F.2d at 812-813, 27 BRBS at 107(CRT); *see also Herb's Welding*, 470 U.S. at 425, 17 BRBS at 83(CRT). To the contrary, claimant in this case assisted in loading cargo, crude oil, onto barges for transport away from the fixed platform. Such loading work is covered when performed on the platform as it is at a shoreside loading facility.

*See generally Peter v. Hess Oil Virgin Islands Corp.*, 903 F.2d 935, *reh'g denied*, 910 F.2d 1179 (3d Cir. 1990), *cert. denied*, 498 U.S. 1067 (1991); *Schilhab v. Intercontinental Terminals, Inc.*, 35 BRBS 118 (2001); *see also Turk v. Eastern Shore Railroad, Inc.*, 34 BRBS 27 (2000) ("cargo" can be any freight carried by a transport vessel); *Kennedy v. American Bridge Co.*, 30 BRBS 1 (1996) (same). Thus, the administrative law judge properly found that claimant's work loading the oil onto the transport barges and maintaining the pipes and equipment necessary to the loading process is maritime employment.

We also reject employer's assertion that claimant participated in maritime work only one or two percent of his time because maintenance of the equipment on the holding barge should be excluded. Employer argues that much of the equipment on the holding barge is used for the process of dropping the oil from the fixed platform to the holding barge and not loading the oil onto the transport barge. However, there is no evidence of record to support this assertion. Rather, the administrative law judge rationally computed the amount of time claimant spent in covered activities using claimant's testimony and the platform records. Cl. Ex. 3; Tr. at 27-29, 32, 36-39. The administrative law judge found that claimant worked in maritime employment 9.7 percent of his time, satisfying the *Caputo* requirement of "at least some time," *see McGoey v. Chiquita Brands, Int'l*, 30 BRBS 237 (1997), and comprising more than mere incidental time. *Compare with Kilburn v. Colonial Sugars*, 32 BRBS 3 (1998) (repair of longshore equipment, totaling 13 hours the previous year, was outside the normal course of decedent's employment as a mechanic). The record contains substantial evidence supporting the administrative law judge's conclusion that claimant's job transferring oil to the transport barges was a "regularly assigned" task, as claimant testified he participated in all the transfers that occurred while he was working. He also found that claimant regularly maintained the loading equipment on the holding barge. As the administrative law judge credited claimant's testimony and found that claimant's maritime work was not extraordinary or discretionary, he properly concluded that claimant worked in maritime employment "at least some of the time" and, therefore, that he meets the status requirement of Section 2(3). *Schwalb*, 493 U.S. 40, 23 BRBS 96(CRT); *Caputo*, 432 U.S. 249, 6 BRBS 150; *Boudloche*, 632 F.2d 1346, 12 BRBS 732. We affirm this finding.

**Situs**

Section 3(a) of the Act 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). Coverage under Section 3(a) of the Act is determined by the nature of the place of work at the moment of injury. *Stroup*, 32 BRBS 151; *Melerine v. Harbor Constr. Co.*, 26 BRBS 197 (1992). To be considered a covered situs, a site must have a maritime nexus, 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 1980) (*en banc*), *cert. denied*, 452 U.S. 905 (1981); *Melerine*, 26 BRBS 197. An area can be considered an "adjoining area" within the meaning of the Act if it is in the vicinity of navigable waters, or in a neighboring area, and it is customarily used for maritime activity. *Winchester*, 632 F.2d 504, 12 BRBS 719; *see also Brady-Hamilton Stevedore Co. v. Herron*, 568 F.2d 137, 7 BRBS 409 (9th Cir. 1978). The Fifth Circuit takes a broad view of "adjoining area," refusing to restrict it by fence lines or other boundaries; however, the area must have a functional nexus with maritime activities and a geographical nexus with navigable waters. *Sisson v. Davis & Sons, Inc.*, 131 F.3d 555, 31 BRBS 199(CRT) (5th Cir. 1998); *Winchester*, 632 F.2d 504, 12 BRBS 719.

In this case, the entire facility is surrounded by navigable waters and a portion of the facility uses those waters for loading vessels. Although the purpose of the facility as a whole is to collect and process crude oil, the administrative law judge found that this case is distinguishable from *Herb's Welding* and *Munguia* because in those cases the sole purpose of the fixed platforms was to produce oil whereas in this case the platform also served the maritime purpose of loading cargo, crude oil, onto transport barges. Decision and Order at 8. Based on the Fifth Circuit's reasoning, the administrative law judge found that the entire platform is covered because it contains "facilities that render it useful for the maritime activity of loading cargo." Decision and Order at 8-9.

The Fifth Circuit has held that a fixed oil production platform built on pilings over marsh and water, and inaccessible from land, is not a covered situs. *Thibodeaux*, 370 F.3d 486, 38 BRBS 13(CRT). In *Thibodeaux*, the claimant was a pumper/gauger on a fixed oil and gas platform injured when he attempted to repair a leaking line under the deck of the platform. In holding that the platform is neither a "pier" nor "an adjoining area" under Section 3(a), the court rejected as overly broad the United States Court of Appeals for the Ninth Circuit's "appearance" definition of a "pier" espoused in *Hurston v. Director, OWCP*, 989 F.2d 1547, 26 BRBS 180(CRT) (9th Cir. 1993). Instead, it reaffirmed its own "functional approach" which was first pronounced in *Jacksonville Shipyards, Inc. v. Perdue*, 539 F.2d 533, 4 BRBS 482 (5th Cir. 1976), *vacated and remanded in part sub nom. Director, OWCP v. Jacksonville Shipyards, Inc.*, 433 U.S. 904 (1977) *and P.C. Pfeiffer Co. v. Ford*, 433 U.S. 904 (1977), *reaff'd*, 575 F.2d 79 (5th Cir. 1978), *cert. denied*, 440 U.S. 967 (1979), *overruled on other grounds*, *Textports Stevedore Co. v. Winchester*, 632 F.2d 504, 12 BRBS 719 (5th Cir. 1980), *cert. denied*, 452 U.S. 905

(1981); *see Thibodeaux*, 370 F.3d at 489, 38 BRBS at 14-15(CRT),[8] and it stated that "it would be incongruous to extend [the Act] to cover accidents on structures serving no maritime purpose." *Thibodeaux*, 370 F.3d at 491, 38 BRBS at 16(CRT). Thus, relying on the Supreme Court's comments in *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352 (1969),[9] and *Herb's Welding*,[10] and considering its own decision in *Munguia*,[11] the Fifth Circuit held that the oil production platform in that case was not a covered situs. *Thibodeaux*, 370 F.3d at 493-494, 38 BRBS at 18(CRT).

Employer contends the administrative law judge erred in failing to apply *Thibodeaux* to deny coverage. Specifically, it argues that: 1) the platform is in state, not federal, waters; 2) the docking facility does not change the fundamental nature of the platform's operations, as all fixed platforms have docking facilities; and, 3) claimant was injured away from the holding barge in an area where no loading occurred.[12]

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[8]The Fifth Circuit noted that "[d]espite its troubled history," *Perdue* remains controlling law on the proposition of using the "functional approach" to determine a situs. *Thibodeaux*, 370 F.3d at 489 n.3, 38 BRBS at 14 n.3 (CRT).

[9]In *Rodrigue*, the Supreme Court held that the remedy for an injury on "artificial island drilling rigs" located on the Outer Continental Shelf (OCS) is found under the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §1301 *et seq*., and the law of the adjacent state. It also reiterated its opinion that the fixed structures are "artificial islands" that are not within admiralty jurisdiction. *Rodrigue*, 395 U.S. at 355, 359-360.

[10]In *Herb's Welding*, the Supreme Court denied coverage holding that the claimant lacked status because offshore drilling is not a maritime activity. *Herb's Welding*, 470 U.S. at 422, 425, 17 BRBS at 81, 83(CRT).

[11]In *Munguia*, the Fifth Circuit held that the use of boats for servicing and maintaining production facilities, and the maintenance of fixed platforms and pipelines, do not further a maritime purpose; therefore, a pumper/gauger injured on the platform (in state water) was not engaged in maritime employment. The court did not address the situs issue. *Munguia*, 999 F.2d at 813-814, 27 BRBS at 107-108(CRT).

[12]Employer also argues that the holding barge is no longer a vessel and it is erroneous to conclude otherwise so as to convey coverage. The administrative law judge did not conclude, and claimant does not argue, that the holding barge is a vessel. The parties agree it is a permanent fixture connected to the platform. Moreover, the holding barge need not be a "vessel" to be considered a covered situs under the Act, if it is an area encompassed by Section 3(a). 33 U.S.C. §903(a).

We reject employer's first argument. That the platform sits in state water is alone insufficient to preclude coverage under the Act. Section 3(a) of the Act requires only that the water be "navigable waters of the United States[.]" The shipyards and ports that circle the nation sit on the shorelines in state waters and satisfy the Act's situs requirement. *See, e.g., Universal Fabricators, Inc. v. Smith*, 878 F.2d 843, 22 BRBS 104(CRT) (5th Cir. 1989), *cert. denied*, 493 U.S. 1070 (1990); *Newport News Shipbuilding & Dry Dock Co. v. Graham*, 573 F.2d 167, 8 BRBS 241 (4th Cir.), *cert. denied*, 439 U.S. 979 (1978); *Blanding v. Oldam Shipping Co.*, 32 BRBS 174 (1998), *rev'd on other grounds sub nom. Blanding v. Director, OWCP*, 186 F.3d 232, 33 BRBS 11(CRT) (2d Cir. 1999). Moreover, employer's reliance on *Herb's Welding* as support for its argument that a fixed oil platform in state water cannot be a covered site is misplaced. *Herb's Welding* addressed the status element, rather than the situs element, under the Act, and the Supreme Court held that claimant Gray's employment was not maritime because his welding duties were "far removed from traditional LHWCA activities," as there is "nothing inherently maritime about" building and maintaining oil pipelines and platforms.[13] *Herb's Welding*, 470 U.S. at 425, 17 BRBS at 83(CRT).

Next, employer argues that the existence of the docking facility on the platform does not change the nature of the purpose of the platform to collect and process oil. Based on the facts of this case, we disagree. It is evident from a review of similar cases that the platforms therein had docking facilities – an invaluable aspect in light of the fact that the facilities are unreachable by land – and that those facilities were used by various types of boats. *See Rodrigue*, 395 U.S. at 353-354; *Thibodeaux*, 370 F.3d at 488, 38 BRBS at 13-14(CRT); *Munguia*, 999 F.2d at 809-810, 27 BRBS at 103-104(CRT). Nevertheless, the facts of those cases demonstrate only that loading and unloading of supplies or personal tools occurred at those docks and that such activity was not covered because it was related to or necessary for oil production. *Id.*; *Herb's Welding*, 470 U.S. at 425, 17 BRBS at 83(CRT). In the instant case, however, the facts found by the administrative law judge include that the docking facility was regularly used by transport barges onto which the crude oil was loaded. Although the Fifth Circuit has held that a fixed oil and gas production platform itself is not an "adjoining area" covered by Section 3(a) of the Act, *Thibodeaux*, 370 F.3d 486, 38 BRBS 13(CRT), the discussion in

[13]By inference, the argument employer may be attempting to make is that because the fixed platform in this case is in state water, claimant is not covered under the Act as extended by the OCSLA. To the extent this is employer's argument, it is correct. If a claimant is injured on the OCS and satisfies the OCSLA status and situs requirements, he is entitled to benefits under the Longshore Act. *Kirkpatrick v. B.B.I., Inc.*, 38 BRBS 27 (2004). As the platform in question does not sit on the OCS, the OCSLA is not applicable. Thus, the issue here is whether the fixed platform satisfies the situs requirement of the Longshore Act, alone.

*Thibodeaux* does not preclude a holding that a fixed platform where the loading and unloading of cargo, or other maritime activities, occurred could be covered. Following its discussion of *Herb's Welding*, *Rodrigue*, and *Munguia*, the Fifth Circuit stated:

> Thibodeaux has pointed to no connection Garden Island Bay platform No. 276 has with maritime commerce that distinguishes it from the platforms in those cases. *Oil is not shipped from the platform.* Although personal gear and supplies are unloaded at docking areas on the platform, the purpose of the platform is to further drilling for oil and gas, which is not a maritime purpose.

*Thibodeaux*, 370 F.3d at 494, 38 BRBS at 18(CRT) (emphasis added; footnote omitted). As fixed platforms are akin to islands, *Rodrigue*, 395 U.S. at 355, 359-360, and as cargo shipped from a loading facility on an island would render that facility covered as an "adjoining area," *see, e.g., Cooper v. Offshore Pipelines Int'l, Inc.*, 33 BRBS 46 (1999), we reject employer's argument that the existence of the docking facility from which oil is loaded onto transport barges in this case is irrelevant. The docking area herein, where transport barges are loaded, distinguishes this case from *Thibodeaux*.

Finally, employer argues that, if the loading facility herein distinguishes this case from *Thibodeaux*, then only the docking area should be covered. Claimant responds, arguing that the entire platform should be covered.[14] Case precedent permits

[14]Claimant asserts that his job entails traversing the entire platform on a daily basis and, by establishing a coverage perimeter, he would be walking in and out of coverage regularly. Although one of the main concerns of Congress in amending the Act in 1972 was to avoid the problem of having a worker walk in and out of coverage, *Schwalb*, 493 U.S. 40, 23 BRBS 96(CRT); *Herb's Welding*, 470 U.S. at 427, 17 BRBS at 84(CRT), that issue was resolved by adding Section 2(3) and amending Section 3(a) of the Act. In expanding coverage, Congress sought to treat like workers equally so that the longshoreman off-loading a ship would be covered whether he was on the ship, on the gangplank or on the pier, and his status would not change merely because of where he stood. *Id.*; *see Bianco v. Georgia Pacific Corp.*, 304 F.3d 1053, 36 BRBS 57(CRT) (11th Cir. 2002); *see, e.g. Kennedy v. American Bridge Co.*, 30 BRBS 1, 3-4 (1996). Because oil platform workers are, generally, outside the coverage of the Act by virtue of their lack of maritime duties, there typically is no concern with "resurrect[ing] the evil" of having workers walk in and out of coverage. *Thibodeaux*, 370 F.3d at 492, 38 BRBS at 17(CRT); *see also Herb's Welding*, 470 U.S. at 427 n.13, 17 BRBS at 84 n.13 (CRT). As we have held that claimant meets the status requirement, we are now concerned with whether the site of his injury is covered, and the "walking in and out of coverage" concept is not applicable.

manufacturing facilities to be apportioned into covered and non-covered areas. For example, in *Jones v. Aluminum Co. of America*, 35 BRBS 37 (2001) (decision after remand), the decedent was exposed to asbestos when he worked as a millwright welder and general mechanic at the employer's facility, which converted bauxite into aluminum oxide used to produce aluminum. The facility, which adjoins a navigable waterway, had an area which was customarily used for loading and unloading materials to and from barges, and that portion of the facility was held to be a maritime situs. *Jones*, 35 BRBS at 43; *see Winchester*, 632 F.2d 504, 12 BRBS 719. The Board held that the manufacturing plant on the same facility, however, was not a covered situs. *Jones*, 35 BRBS at 43; *see also Maraney v. Consolidation Coal Co.*, 37 BRBS 97 (2003) (waste pond at a coal processing plant was used solely for disposal of coal waste and was geographically separate from the employer's loading and unloading area); *Dickerson v. Mississippi Phosphates Corp.*, 37 BRBS 58 (2003) (phosphoric acid plant, located in a port facility, was not functionally or geographically connected to the port's or the employer's loading operations); *Stroup*, 32 BRBS 151 (warehouse shipping bay at steel manufacturing plant used to store steel for loading onto trucks was not covered); *Melerine*, 26 BRBS 197 (same).[15] Thus, the entire facility was not covered despite its having a portion covered. *Jones*, 35 BRBS at 43. As it was unknown whether the decedent had been exposed to asbestos on the covered portion of the facility, the case was remanded for further findings. *Jones*, 35 BRBS at 43-44.

In a similar situation, in *Bianco v. Georgia Pacific Corp.*, 304 F.3d 1053, 36 BRBS 57(CRT) (11th Cir. 2002), the United States Court of Appeals for the Eleventh Circuit held that a claimant who was injured in the production departments of a gypsum production plant, adjacent to the navigable Turtle and East Rivers, is not covered by the Act. The court rejected the claimant's arguments that the entire facility should be considered covered because maritime activity occurred in another area of the plant where the raw gypsum was unloaded from vessels. The court declined to expand coverage, concluding that, were it to hold the entire facility covered, "irrespective of what [the employer] does at different areas therein[,]" it "would effectively be writing out of the statute the requirement that the adjoining area "be customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel." *Bianco*, 304 F.3d at 1060, 36 BRBS at 62(CRT). Thus, the Eleventh Circuit, citing *Winchester*, followed the

[15]*Compare* these cases *with Uresti v. Port Container Industries*, 33 BRBS 215 (Brown, J., dissenting), *aff'd on recon.*, 34 BRBS 127 (2000) (Brown, J., dissenting) (employer's storage facility was in the Port of Houston, and the entire port is a covered situs). Although the phosphoric acid plant in *Dickerson* was within the Port of Pascagoula, Mississippi, it was functionally and geographically separate from the docks. *Dickerson*, 37 BRBS at 62.

Fifth Circuit's functional approach to situs. *See also Thibodeaux*, 370 F.3d 486, 38 BRBS 13(CRT).

Under these cases, a site used for manufacturing purposes is not covered in its entirety merely because it contains separate loading facilities. By analogy, if the oil production area of this artificial island were separate and distinct from the loading area, then claimant's injury could be said to have occurred outside the covered area. However, based on the specific facts regarding the nature of the platform with its connected pipelines, we conclude that the administrative law properly found that the entire facility must be viewed as a covered site.

On the specific facts of this case, it is analogous to *Gavranovic v. Mobil Mining & Minerals*, 33 BRBS 1 (1999). In *Gavranovic*, the claimants worked as operators for a fertilizer manufacturer. Both claimants were injured while working in a building used to store fertilizer. From this particular building, which was adjacent to navigable water and in close proximity to the docks, fertilizer was either transferred to another building, from which it was transported by conveyor belt to barges at the dock, or it was loaded onto trucks or railcars. The administrative law judge found that the building and the dock were not "separate and distinct" areas and concluded it was an "adjoining area." The Board affirmed the administrative law judge's determination that the building was a covered situs, holding that the building wherein Gavranovic was injured was distinctly maritime and was not separate and distinct from the loading areas. *Gavranovic*, 33 BRBS at 2, 4-5.

In *Dickerson*, the Board held that a phosphoric acid plant, although located within a port facility, was not an "adjoining area" under the Act because it was geographically and functionally separate from the docks. That is, it was not connected to the docks by conveyor belt or any other means, and it was solely used in the manufacturing process and had no relationship to customary maritime activity. *Dickerson*, 37 BRBS at 62. The Board distinguished *Gavranovic* from *Dickerson* because the building wherein Gavranovic was injured was used to store fertilizer products awaiting transshipment by vessel, the building was near navigable water, and the building was connected to the docks by conveyor belts. *Dickerson*, 37 BRBS at 63; *see also Uresti*, 34 BRBS 127 (warehouse located in port and used to store cargo after it was unloaded from ships prior to entering stream of land transportation). Because the plant in *Dickerson* was not connected to the docks and did not house products destined for vessels, it was not a covered situs. *Dickerson*, 37 BRBS at 63.

In the instant case, the entire fixed platform, the purpose of which is to produce oil, is a configuration of connecting pipelines. Cl. Ex. 2. The platform is in the middle of navigable waters, and the pipelines are used as the means by which the oil flows through the process from collection to storage to loading to transshipment by barge. Series of

pipelines run from the wells to the platform tanks to the holding barge tanks, and more pipelines convey the oil in the holding barge tanks to the transport barges. Because the system is interconnected, we conclude there is no loading area that is "separate and distinct" from the oil collection area. Once the oil is extracted, it begins moving through pipelines, with its ultimate destination being the transport barges.[16] The pipelines herein thus are akin to the conveyor belts connecting the building in *Gavranovic* to the dock area. *Gavranovic*, 33 BRBS at 2, 4-5. As claimant's injury occurred on the platform, which is an adjoining area customarily used for loading a vessel, his injury occurred on a covered situs. We affirm the administrative law judge's finding that the entire platform in this case is covered, and, thus, we affirm his award of benefits under the Act.

Accordingly, the administrative law judge's Decision and Order – Awarding Benefits is affirmed.[17]

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

[16] There is no specific point at which a "manufacturing area" can be separated and a line drawn. The distance from the saltwater pump where claimant was injured to the holding barge used as dock area was only 40 feet. Emp. Br. at 9, citing Tr. at 59. Moreover, the Supreme Court has rejected the argument that coverage is limited to the area seaward of cargo's first, or last, point of rest. *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 277-278, 6 BRBS 150, 168-169 (1977).

[17] Because we have affirmed the administrative law judge's award of benefits, we reject employer's argument that claimant's counsel is not entitled to an attorney's fee award.