BRB No. 06-0658

ANTHONY J. SCALIO	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CERES MARINE TERMINALS, INCORPORATED	)	DATE ISSUED: 04/30/2007
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of William S. Colwell, Administrative Law Judge, United States Department of Labor.

Myles R. Eisenstein , Baltimore, Maryland, for claimant.

Lawrence P. Postol (Seyfarth Shaw LLP), Washington, D.C., for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (2005-LHC-00589) of Administrative Law Judge William S. Colwell 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 alleges that he sustained an injury to his left thumb in a work-related accident on September 18, 2004, while he was working as a groundsman for employer at the CSX Railhead Terminal. In his Decision and Order, the administrative law judge initially addressed the issues of whether claimant's employment came within the Act's status and situs coverage provisions. 33 U.S.C. §§902(3), 903(a). He found that neither provision was satisfied. Decision and Order at 8-12. In addition, the administrative law

judge found that claimant did not establish either element of his *prima facie* case, and that therefore he is not entitled to invocation of the Section 20(a) presumption. 33 U.S.C. §920(a). Accordingly, the administrative law judge denied claimant benefits.

On appeal, claimant contends only that the administrative law judge erred in finding that claimant did not establish the elements of his *prima facie* case which would entitle him to invocation of the Section 20(a) presumption. Employer responds, urging affirmance of the administrative law judge's decision, noting that claimant has not contested the administrative law judge's findings that the Act's coverage provisions are not satisfied.

We need not address claimant's contentions of errors with regard to the causation issues, because claimant has not raised any contentions with regard to the administrative law judge's finding that claimant's employment is not covered by the Act. Indeed, claimant mistakenly states that the parties stipulated to coverage. Cl. Br. at 5. In fact, employer raised the status and situs issues in its pre-hearing statement, ALJX 5, the attorneys discussed these contested issues at the hearing, Tr. at 7-10,[1] and both parties addressed status and situs in their post-hearing briefs. Thus, as the administrative law judge's findings in this regard are not appealed, we affirm the administrative law judge's finding that claimant lacks coverage under the Act. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). As coverage under the Act is a prerequisite to any award of benefits, *Morrissey v. Kiewit-Atkinson-Kenny*, 36 BRBS 5 (2002); *Mellin v. Marine World-Wide Services*, 32 BRBS 271 (1998), *aff'd mem.*, No. 00-2463 (4th Cir. Aug. 14, 2001), the lack thereof obviates the Board's need to address the arguments regarding causation. Accordingly, we affirm the administrative law judge's denial of benefits.

[1] The parties stipulated that claimant filed a timely notice of injury, that employer filed a timely notice of controversion, and that claimant's average weekly wage is $1,302.11. Tr. at 14; Decision and Order at 2.

Accordingly, we affirm the administrative law judge's Decision and Order Denying Benefits.

SO ORDERED.

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NANCY S. DOLDER
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge