U.S. Department of Labor

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

BRB No. 15-0117

JAMES SCOTTY BOUDREAUX	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
OWENSBY & KRITIKOS, INCORPORATED	)	
	)	
and	)	
	)	
LOUISIANA WORKERS' COMPENSATION CORPORATION	)	DATE ISSUED: Dec. 21, 2015
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

Tonya R. Smith (Borne, Wilkes & Rabalais, L.L.C.), Lafayette, Louisiana, for claimant.

David K. Johnson (Johnson, Rahman & Thomas), Baton Rouge, Louisiana, for employer/carrier.

Rebecca J. Fiebig (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.
PER CURIAM:

Employer appeals the Decision and Order (2014-LHC-00489) of Administrative Law Judge Clement J. Kennington 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, 43 U.S.C. §1331 *et seq.* (the OCSLA). 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).

Claimant injured multiple body parts as a result of a car accident on August 3, 2012, that allegedly occurred in the course of his work, as an Advanced/Automated Ultrasonic Testing field supervisor, for employer.[1] Claimant's job required him to use specialized equipment to test tanks, on off-shore oil platforms located on the Outer Continental Shelf (OCS), for defects. In order to perform his work, claimant regularly traveled by personal car to specific locations at specific times to be transported to those offshore sites. HT at 52, 54. Claimant received mileage reimbursement and compensation for his travel time. *Id.* at 31-33. In the 52 weeks prior to his accident, claimant spent 89.2 percent of his time working offshore. *Id.* at 29. On the date of the accident, claimant, while traveling in his personal vehicle from his home in Church Point, Louisiana, to a designated pick-up area on a dock in Freshwater City, Louisiana, was struck by a driver who ran a stop sign. As a result of his injuries, claimant underwent seven surgeries, and was thereafter restricted to sedentary work in company offices at a significantly lower wage.

Employer voluntarily paid claimant temporary total disability benefits under the Act from August 3, 2012 through August 13, 2013, and ongoing temporary partial disability benefits thereafter. Claimant filed a claim seeking benefits under the Act, as extended by the OCSLA. Employer disputed claimant's position that he is covered by the OCSLA. The administrative law judge found, in accordance with the Supreme Court's decision in *Pacific Operators Offshore, LLP v. Valladolid*, 565 U.S. ___, 132 S.Ct. 680, 45 BRBS 87(CRT) (2012), that claimant established the requisite "substantial nexus" between his injuries and the extraction of natural resources on the OCS. He thus

[1]Employer provides non-destructive testing services for petrochemical refinery, pipeline and offshore customers, with most of the testing done in the oil production process. HT at 57, 68-69.

concluded that claimant's claim falls within the coverage of the Act. *See* 43 U.S.C. §1333(b).

On appeal, employer challenges the administrative law judge's finding that claimant's injury is covered under the OCSLA.[2] Claimant and the Director, Office of Workers' Compensation Programs (the Director), each respond urging affirmance of the administrative law judge's decision. Claimant's counsel also seeks an attorney's fee for work performed before the Board in defense of this appeal. Employer has not filed any objections to counsel's fee petition.

Employer contends that the administrative law judge erred in concluding that claimant's claim falls under the coverage of the OCSLA because it is based "upon a disjointed and incomplete" evaluation of the Supreme Court's decision in *Valladolid*, 132 S.Ct. 680, 45 BRBS 87(CRT). Employer maintains that the "substantial nexus" test espoused by the Supreme Court in *Valladolid* does not mean a "substantial nexus" between the injured worker's general job duties and the employer's operations on the OCS, but rather that the injury was actually "caused by" those operations. Applying this reasoning to the facts in this case, employer maintains that claimant's injuries, caused by a car accident in Louisiana, are not sufficiently related to operations it conducted on the OCS to warrant coverage under the Act.

Compensation is payable under the Act for those 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); *Offshore Logistics v. Tallentire*, 477 U.S. 207 (1986); *Rodrigue v.*

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[2]We note that employer's appeal is of a non-final order, in that the administrative law judge addressed only the coverage issue and neither awarded nor denied benefits to claimant. *See* 33 U.S.C. §919(c); *Gupton v. Newport News Shipbuilding & Dry Dock Co.*, 33 BRBS 94 (1999); 20 C.F.R. §702.348. The Board ordinarily does not accept interlocutory appeals addressing only issues of coverage. *See Arjona v. Interport Maintenance*, 24 BRBS 222 (1991). Nevertheless, the Board has the discretion to address appeals of non-final orders as it is not bound by formal rules of procedure. 33 U.S.C. §923(a); *see, e.g., L.D. [Dale] v. Northrop Grumman Ship Systems, Inc.*, 42 BRBS 1, *recon. denied*, 42 BRBS 46 (2008). In this case, the significance of the issue raised warrants the Board's consideration of employer's appeal. *See Hardgrove v. Coast Guard Exchange System*, 37 BRBS 21 (2003). Moreover, the parties appear to agree that claimant is entitled to the benefits he is currently receiving pursuant to the Act. *See* HT at 14-17; *see also Jackson v. Straus Systems, Inc.*, 21 BRBS 266 (1988). Nonetheless, piecemeal litigation of this sort is discouraged.

Aetna Casualty & Surety Co., 395 U.S. 352 (1969); *Demette v. Falcon Drilling Co., Inc.*, 280 F.3d 492, 35 BRBS 131(CRT) (5th Cir. 2002); *see also Diamond Offshore Co. v. A&B Builders, Inc.*, 302 F.3d 531 (5th Cir. 2002). 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 has held that an employee's activities are the "result of" these operations if they have 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;[3] denial of benefits reversed; case remanded to apply the substantial nexus test). To better comprehend the "substantial nexus" standard, we shall examine the analysis provided by the Supreme Court in *Valladolid*.

In *Valladolid*, the Supreme Court reviewed four interpretations of Section 1333(b). The Supreme Court rejected the interpretations put forth by the Third and Fifth Circuits, as well as that proffered by the Solicitor General, and, basing its decision on the plain language of the statute, the Court affirmed the holding of the United States Court of Appeals for the Ninth Circuit in *Valladolid v. Pacific Operations Offshore, L.L.P.*, 604 F.3d 1126, 44 BRBS 35(CRT) (9th Cir. 2010).

In *Curtis v. Schlumberger Offshore Service, Inc.*, 849 F.2d 805, 21 BRBS 61(CRT) (3d Cir. 1988), the United States Court of Appeals for the Third Circuit held that a claimant, injured on a highway in New Jersey on his way to a heliport to be transported to the OCS, was covered under the OCSLA. The court, in adopting a "but

[3]Specifically, the decedent in *Valladolid* was directed by his supervisor to use a forklift to clean up scrap metal debris at his employer's mainland plant. He was subsequently found lying on his back next to a plantain tree roughly ten feet from one of the service roads within the plant facility, with the forklift resting on his abdomen and chest. An accident report stated that it appeared that the decedent stood on top of the raised tines of the forklift to harvest fruit hanging from the plantain tree beyond the reach of a person on the ground. *See Valladolid v. Pacific Operations Offshore, L.L.P.*, 604 F.3d 1126, 44 BRBS 35(CRT) (9th Cir. 2010). Employer's attempts to draw a legal distinction between the facts in *Valladolid* and the facts in this case are futile, because it appears the parties to *Valladolid* settled the claim on remand. Thus, the coverage issue was not adjudicated further. *See Valladolid v. Pacific Operations Offshore*, 2005-LHC-00343 (Sept. 5, 2014) (Order of Judge Dorsey).

for" test, i.e., would the claimant have sustained injuries "but for" traveling for the purpose of conducting operations on the OCS, construed Section 1333(b) as extending Longshore Act coverage to all employees who sustain injuries while working to develop the mineral wealth of the OCS without regard to the place of injury. *Curtis*, 849 F.2d at 810, 21 BRBS at 70 (CRT). The Supreme Court held that while the Third Circuit's "but for" test is nominally based on causation, it would incorrectly extend coverage to all employees of a business engaged in the extraction of natural resources from the OCS, regardless of where they worked or what they were doing at the time they were injured. Noting that Congress extended the Act's coverage only to injuries "occurring as the result of operations conducted on the [OCS]," the Supreme Court stated that the focus should be on injuries that result from those "operations." The Supreme Court thus rejected the "but for" test, because it is incompatible with the plain meaning of Section 1333(b). *Valladolid*, 132 S.Ct. at 691, 45 BRBS at 92(CRT).

The Fifth Circuit, in *Mills v. Director, OWCP*, 877 F.2d 356, 22 BRBS 97(CRT) (5th Cir. 1989) (en banc), adopted a narrower interpretation than the Third Circuit, concluding that the Act extends coverage only to those employees who are engaged in extractive operations on the OCS at the time of injury. The Fifth Circuit concluded that the claimant, who was a land-based worker injured during construction on state land of an oil production platform destined for the OCS, did not qualify for benefits under the OCSLA because he did not satisfy the situs-of-injury requirement. The Fifth Circuit held that the OCSLA applies to those who "suffer injury or death on an OCS platform or the waters above the OCS" and whose injuries or deaths on the OCS would not have occurred "but for" the extractive operations on the shelf. *Mills*, 877 F.2d at 362, 22 BRBS at 102(CRT). In rejecting the Fifth Circuit's interpretation, the Supreme Court held that its "situs-of-injury" test is inapplicable to Section 1333(b) because the statute does not geographically limit OCSLA coverage in this manner. In this regard, the Supreme Court stated that Congress could have omitted the words "as the result of operations conducted," and the statute would extend coverage to the "disability or death of an employee resulting from any injury occurring on the [OCS]." *Valladolid*, 132 S.Ct. at 688, 45 BRBS at 90(CRT). Instead, the Supreme Court observed that the statute covers "disability or death of an employee resulting from any injury occurring *as the result of operations conducted* on the [OCS]." *Id.* (emphasis added). Consequently, because Congress did not specifically limit coverage geographically, the Supreme Court rejected the "situs-of-injury" test espoused by the Fifth Circuit in *Mills*.

Before the Supreme Court in *Valladolid*, the Solicitor General suggested a third status-based inquiry that would apply one test to on-OCS injuries and a different test to off-OCS injuries. In particular, this interpretation would have extended coverage for off-OCS injuries to those employees whose duties contribute to operations on the OCS and who perform work on the OCS itself that is substantial in both duration and nature. The Supreme Court, however, rejected the Solicitor General's interpretation because the

"occurring as the result of operations" language of Section 1333(b) plainly suggests that a causation element exists. *Id.*, 132 S.Ct. at 690, 45 BRBS at 91-92(CRT). The Supreme Court, therefore, refused to interpret the statute with a status-based test and ignore the causation-based test enacted by Congress. Having rejected the interpretations of the Solicitor General, and the Third and Fifth Circuits, the Supreme Court addressed the Ninth Circuit's "substantial nexus" test.

In its decision in *Valladolid v. Pacific Operations Offshore, L.L.P.*, 604 F.3d 1126, 44 BRBS 35(CRT) (9th Cir. 2010), the Ninth Circuit, in reversing the Board's decision holding that Section 1333(b) of the OCSLA contains a "situs-of-injury" test, held that Section 1333(b) may apply to injuries occurring outside the situs of the OCS, where the claimant establishes a "substantial nexus" between the injury and the extractive operations on the OCS. The Ninth Circuit clarified that to meet this standard, "the claimant must show that the work performed directly furthers [OCS] operations and is in the regular course of such operations." *Id.*, 604 F.3d at 1139, 44 BRBS at 43(CRT). The Ninth Circuit, however, added:

> An injury sustained during employment on the [OCS] itself would, by definition, meet this standard. However an accountant's workplace injury would not be covered even if related to [OCS], while a roustabout's injury in a helicopter en route to the [OCS] likely would be. We leave more precise line-drawing to the specific factual circumstances of later cases.

Id. The Ninth Circuit also acknowledged that its holding "is consistent with the *pre-Mills* Fifth Circuit interpretation of Section 1333(b), which we endorse."[4] *Id.*

[4]The Ninth Circuit observed that, prior to its en banc decision in *Mills*, the Fifth Circuit "had long held that [Section] 1333(b) applied to injuries occurring outside the [OCS]." *Valladolid*, 604 F.3d at 1139, 44 BRBS at 43(CRT). The Ninth Circuit stated that the Fifth Circuit "required a more direct connection than simple 'but for' causation." *Id.* The court noted that this was exemplified by the Fifth Circuit's decisions distinguishing coverage of helicopter crashes where the employees' work had furthered the operations of fixed rigs on the OCS, from uncovered cases where the accident would have occurred regardless of whether the employer had the OCS rigs. *Id.* (citing *Herb's Welding, Inc. v. Gray*, 766 F.2d 899, 17 BRBS 127(CRT) (5th Cir. 1985)). In *Herb's Welding*, the claimant was injured on an oil-producing fixed platform in state waters. Pipelines connected this rig to a rig on the OCS. The Fifth Circuit held that the claimant's injury was not covered by the OCSLA because the injury was not related to extractive operations on the OCS; his injury occurred on a platform that produced oil from the territorial seabed. *Herb's Welding*, 766 F.2d at 900, 17 BRBS at 129(CRT).

In adopting the Ninth Circuit's substantial nexus standard, which "require[s] the injured employee to establish a significant causal link between the injury that he suffered and his employer's on-OCS operations conducted for the purpose of extracting natural resources from the OCS," the Supreme Court stated that:

> Although the Ninth Circuit's test may not be the easiest to administer, it best reflects the text of 1333(b), which establishes neither a situs-of-injury nor a "but for" test. We are confident that ALJs and courts will be able to determine whether an injured employee has established a significant causal link between the injury he suffered and his employer's on-OCS extractive operations. Although we expect that employees injured while performing tasks on the OCS will regularly satisfy the test, whether an employee injured while performing an off-OCS task qualifies -- like Valladolid, who died while tasked with onshore scrap metal consolidation -- is a question that will depend on the individual circumstances of each case.

Valladolid, 132 S.Ct. at 691, 45 BRBS at 92(CRT). Thus, in reaching this conclusion, the Supreme Court left adjudicators considerable discretion to give meaning to the substantial nexus standard. Moreover, contrary to employer's contention, this holding clearly and unambiguously anticipates that "an employee injured while performing an off-OCS task" for employer, may be covered by the OCSLA.[5]

In this case, the administrative law judge reviewed claimant's and employer's contentions concerning the scope of OCSLA coverage in conjunction with the facts of claimant's employment and the injury-causing traffic accident. The administrative law judge concluded, based on the Supreme Court's analysis in *Valladolid*, that claimant established a substantial nexus between his injury and employer's extractive operations on the OCS.[6] Decision and Order at 6. Specifically, the administrative law judge found

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[5]In its decision in *Valladolid*, the Ninth Circuit cited *Black Hills Aviation, Inc. v. United States*, 34 F.3d 968 (10th Cir. 1994), for the proposition that an injury "as a result of" OCS operations requires more than just "a connection with" OCS operations. *Valladolid*, 604 F.3d at 1126, 44 BRBS at 43(CRT). Employer's citation of *Black Hills*, however, does not support its contention that injuries occurring on the mainland are not covered by the Act.

[6]The administrative law judge explicitly stated, consistent with the Supreme Court's holding, that to meet the "substantial nexus" standard claimant "must show that the work performed directly furthers OCS operations and [that it] was in the course and scope of such operations." Decision and Order at 6. Thus, contrary to employer's assertion, the administrative law judge's analysis comports with the Supreme Court's decision in *Valladolid*, 132 S.Ct. at 691, 45 BRBS at 92(CRT).

that claimant's work testing the tanks on offshore rigs was directly related to OCS operations because it involved safely removing various chemicals, including oil and gas and other fluids, from the OCS. The administrative law judge also found that, at the time of the accident, 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 employer paid claimant mileage and wages during this activity. The administrative law judge thus concluded that claimant was in the course of his employment at the time of the accident and that there was a significant nexus between claimant's injuries and employer's on-OCS extractive operations. Decision and Order at 6.

As the administrative law judge found, there is no dispute that claimant's duties examining off-shore facility storage tanks for defects was in the "regular course of" and "directly furthered" operations at the off-shore facility.[7] *Demette*, 280 F.3d 492, 35 BRBS 131(CRT); *see generally Kirkpatrick v. B.B.I., Inc.*, 38 BRBS 27 (2004); *Ryan v. Alaska Constructors, Inc.*, 24 BRBS 65 (1990). As discussed, it is clear that workers in the offshore extractive industries who are injured while working onshore may receive benefits under the OCSLA if they can show a "substantial nexus" between their injuries and employer's extractive operations on the OCS.[8] *Valladolid*, 132 S.Ct. at 691, 45 BRBS at 92(CRT). In this regard, the administrative law judge found that claimant's injury occurred while he was in route to the OCS facility to perform his job duties and that he received payment from employer for such trips. The record supports the

[7]Claimant's testimony regarding his work duties while on board the oil platform establishes, as the administrative law judge found, that an essential component of his job was to make sure that these rigs were operationally safe. HT at 22-26.

[8]In *Baker v. Gulf Island Marine Fabricators, LLC*, 49 BRBS 45 (2015), the Board affirmed the administrative law judge's conclusion that the claimant, a marine carpenter hired by employer to fabricate topside living quarters to be incorporated onto a tension leg oil platform, did not satisfy the coverage requirements of the OCSLA. In reaching its conclusion, the Board stated that, pursuant to *Valladolid*, 132 S.Ct. 680, 45 BRBS 87(CRT), the claimant's on-shore work at employer's shipyard facility was not the "result of" OCS operations because it was "geographically, temporally, and functionally distant from" extracting operations on the OCS. Specifically, the quarters were not unique to OCS operations, there was not yet a completed or operating rig, and the employer would not have a role in installing or operating the rig on the OCS. *Baker*, 49 BRBS at 50. The Board thus affirmed the administrative law judge's finding that the claimant's work did not have a substantial nexus to OCS operations. *Id.*

administrative law judge's findings. Specifically, claimant stated that "most of the time" he started his work day "for the offshore jobs" from his home, that on the day of the accident his work day started when he left his house and headed "straight to the dock" as he already had his work gear with him, and that employer regularly "pay[s] my mileage for my vehicle that I drive." CX 4 at 5-6; *see also* HT at 31, 32, 33-34, 48. John Lavergne, Project Manager for employer, and James Mackey, employer's Operations Manager and claimant's second-line supervisor, both stated that they were, like claimant, paid by employer for mileage and travel time, although their mileage was paid "from the [onshore] office to the [dock] location" based on employer's "chart." HT at 58-59, 66, 72-74, 86-88, 91.

Nevertheless, employer maintains that claimant is not covered under the OCSLA because he was not injured on employer's premises, nor was he performing any work for employer at the time of the car accident. Employer thus asserts that claimant is not covered because he was not within the course and scope of his employment at the time of his injury and thus, his injury had only a tenuous connection to extractive operations conducted on the OCS.

We reject employer's contention that claimant's injury did not occur in the course and scope of his employment. Generally, while injuries sustained by employees on their way to or from work are not compensable, as traveling to and from work is not within the course of the employee's employment, i.e., the "coming and going" rule, *see, e.g., Sawyer v. Tideland Welding Service*, 16 BRBS 344, 345 (1984), several exceptions to this "coming and going" rule have been recognized in situations where "the hazards of the journey may fairly be regarded as the hazards of the service." *Cardillo v. Liberty Mutual Ins. Co.*, 330 U.S. 469, 479 (1947). The exceptions to the "coming and going" rule include situations where: (a) the employer pays the employee's travel expenses, wages for travel time, or furnishes the transportation; (b) the employer controls the journey; or (c) the employee is on a special errand for the employer. *See, e.g., Cardillo*, 330 U.S. at 480; *Perkins v. Marine Terminals Corp.*, 673 F.2d 1097, 1103, 14 BRBS 771, 775 (9th Cir. 1982); *Broderick v. Electric Boat Corp.*, 35 BRBS 33, 34-35 (2001). Substantial evidence supports the administrative law judge's findings that claimant was compensated by the mile and for his travel time to the job site on the OCS on the date of his injury. HT at 32-34, 38, 58-59, 66, 72-74, 86. Thus, the trip-payment exception to the coming-and-going rule applies. *See Cardillo*, 330 U.S. 469 (accident while leaving work in personal car where employer pays expenses); *Perkins*, 673 F.2d 1097, 14 BRBS 771 (accident while driving home in personal car; employer paid wages for travel time); *Sawyer*, 16 BRBS 344 (1984) (travel expenses paid; injury on access road to marine facilities); *Owens v. Family & Homes Services, Inc*., 2 BRBS 240 (1975) (after leaving work, employee is hit by automobile while walking to bus stop; employer paid transportation expenses). The scope of claimant's on-OCS employment is thus, by virtue of the trip-payment exception to the coming-and-going rule, extended to cover his

travel time. *Cardillo*, 330 U.S. 469; *Perkins*, 673 F.2d 1097, 14 BRBS 771; *Broderick*, 35 BRBS 33. Moreover, claimant's automobile trip involved the transporting of the equipment he used in his on-OCS employment. The administrative law judge rationally relied on the testimony of Mr. Mackey that, generally speaking, claimant's ability to arrive at a job site with his equipment, whether he leaves from employer's office or his home, is an essential function of his job. HT at 81. Because 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, the administrative rationally found claimant covered under the "substantial nexus" test.

We reject employer's contention that the administrative law judge's conclusion rests on the discredited *Curtis* "but for" test. The circumstances of claimant's injury are indeed akin to those sustained by claimant Curtis. Curtis, a well-logging operator who worked on an OCS platform, was injured in a car accident while driving to meet a helicopter that would take him to the OCS platform. *Curtis*, 849 F.2d 805, 21 BRBS 61(CRT). However, the Supreme Court said nothing about whether Curtis would have prevailed under the substantial nexus test. In contrast, the Supreme Court criticized the "but for" test, not because Curtis prevailed, but because it "could reasonably be interpreted to cover land-based *office* employees whose jobs have virtually nothing to do with extractive operations." *Valladolid*, 132 S.Ct. at 690, 45 BRBS at 92(CRT) (emphasis added). Instead, the Supreme Court stated that Section 1333(b) should be interpreted in a manner that focuses on injuries that result from OCS operations, and it expressed confidence that administrative law judges could make the requisite determinations depending on "the individual circumstances of each case." *Id.*, 132 S.Ct. at 691, 45 BRBS at 92(CRT).

We also reject employer's contention that the administrative law judge erroneously referred to cases where the employees were killed in helicopter crashes on the high seas over the OCS on their way to rigs. *See Barger v. Petroleum Helicopters, Inc.*, 692 F.2d 337 (5th Cir. 1983); *Stansbury v. Sikorski Aircraft*, 681 F.2d 948 (5th Cir. 1982), *cert. denied*, 459 U.S. 1089 (1982). The Fifth Circuit held in these case that the Act provided the exclusive remedy for the deaths because the employees' work furthered the rigs' extractive operations and the deaths, therefore, occurred "as a result of operations" on the OCS. Employer suggests that injuries sustained while in transit to an offshore site on a helicopter or vessel are covered because those modes of travel are inherently more risky than travel by car. However, there is nothing in the substantial nexus test which requires the fact-finder to use a risk-based assessment of the circumstances surrounding a claimant's injury in order to find coverage. Such a test, requiring the quantification of risks posed by various aspects of a claimant's work, would, as the Director suggests, add unnecessary and unwarranted complexity to the substantial nexus test, and could negate the Act's no-fault scheme. *See* Dir. Br. at 11 n.4.

In light of the broad discretion afforded the administrative law judge in applying the substantial nexus test, and as the administrative law judge's finding that the evidence establishes a significant causal link between claimant's injuries and employer's on-OCS extractive operations is supported by substantial evidence, we affirm the administrative law judge's conclusion that claimant's claim falls under the coverage of the OCSLA. *Valladolid*, 132 S.Ct. 680, 45 BRBS 87(CRT). We remand the case for the administrative law judge to address any remaining issues. 33 U.S.C. §919(e); *Gupton v. Newport News Shipbuilding & Dry Dock Co.*, 33 BRBS 94 (1999).

Claimant's counsel has filed an application for an attorney's fee, seeking $2,525 for services rendered before the Board in defense of employer's appeal in this case, representing 10.1 hours of attorney time at $250 per hour. Employer has not responded to the attorney's fee petition. Claimant is entitled to an attorney's fee payable by employer for successfully defending employer's appeal. *See Canty v. S.E.L. Maduro*, 26 BRBS 147 (1992); 20 C.F.R. §802.203(a). The fee requested by counsel is reasonable for the work performed. 20 C.F.R. §802.203(e). We, therefore, award claimant's counsel a fee of $2,525, payable directly to counsel by employer. 33 U.S.C. §928; 20 C.F.R. §802.203.

Accordingly, the administrative law judge's Decision and Order is affirmed. We remand the case for consideration of any remaining issues. Claimant's counsel is awarded a fee of $2,525 for work performed before the Board in this appeal, to be paid directly to claimant's counsel by employer.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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GREG J. BUZZARD
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge