U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 18-0428

GARRICK SPAIN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	DATE ISSUED: 12/11/2018
	)	
EXPEDITORS & PRODUCTION SERVICE COMPANY, INCORPORATED	)	
	)	
and	)	
	)	
GRAY INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

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

Lawrence N. Curtis (Lawrence N. Curtis, Ltd.), Lafayette, Louisiana, for claimant.

Eric J. Waltner (Allen & Gooch), Lafayette, Louisiana, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2017-LHC-00300) 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 Longshore Act), as extended by the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §1333 *et seq*. We must affirm the administrative law judge's findings of fact

and conclusions of law if they are rational, supported by substantial evidence, and 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 started working for employer in 2013 as a shipping and receiving dispatcher at Anadarko Petroleum's facilities located at Port Fourchon, Louisiana, near the mouth of Bayou Lafourche. Tr. at 146, 149. Anadarko operates two facilities at the Port, C-Port-1 and C-Port-2, which service oil and gas rigs on the Outer Continental Shelf (OCS).[1] Claimant's land-based assignments were at C-Port-1, in service of two rigs on the OCS. He checked trucks coming into and leaving port areas to make sure that supplies for the oil rigs were received. He also supervised vessel loading and unloading by forklift and crane operators. *Id.* at 149-150. Claimant worked 12 hours per day from 6 p.m. to 6 a.m., 7 days on and 7 days off with a 24-hour on-call status. *Id.* at 159-160.

Personnel were required to live nearby in quarters located at both C-Port-1 and C-Port-2. Claimant lived initially for eight to ten months in trailers located at C-Port-1 but was later relocated to trailers at C-Port-2. Tr. at 164-165. The living quarters at C-Port-2 were about 1.5 miles from claimant's work station at C-Port-1, and claimant either drove down a public road or jogged in order to get to C-Port-1. *Id.* at 197-200. C-Port-1 and C-Port-2 are secured areas with controlled access such that access to the living quarters did not necessarily grant a person access to the loading areas. Tr. at 285-287. The living quarters at C-Port-2 are 500-600 feet from the bayou. *Id.* at 290.

On June 4, 2014, while living in a trailer at C-Port-2, claimant slipped and fell in a wet hallway, suffering injuries to his neck, back, pelvis, right hip, and shoulder. Tr. at 166-168. He has received numerous back injections and underwent hip surgery. His orthopedic surgeon has recommended that he undergo lower back surgery. *Id.* at 170-71. Claimant has not returned to work since his accident.

Claimant applied for benefits under the Longshore Act and the OCSLA.[2] The administrative law judge found that claimant testified credibly about his job duties and the circumstances of his accident. Decision and Order at 13. He found that claimant was injured at C-Port-2, which is a "marine terminal," an enumerated situs under Section 3(a) of the Longshore Act, 33 U.S.C. §903(a), because it has structures associated with the

[1] Employer's operations supervisor, Bernard Wiltz, testified that the vessels were necessary for oil and gas exploration on the OCS. Tr. at 99-100.

[2] Claimant received workers' compensation benefits under Louisiana's workers' compensation statute.

primary movement of cargo from vessel to shore and shore to vessel, including those devoted to receiving, handling, consolidating, and loading or delivery of waterborne shipments. *Id.* at 15. He further concluded that claimant's injury occurred at the marine terminal because the living quarters are within the boundaries of the area that is contiguous with navigable water. *See id.* In addition, he found, arguendo, that even if C-Port-2 was not an enumerated situs, it would still satisfy the situs requirement because it qualifies as an "adjoining area customarily used by an employer in the loading and unloading of a vessel." *See id.* (quoting 33 U.S.C. §903(a)). He noted that C-Port-2 is contiguous with Bayou Lafourche, thereby satisfying the geographic prong of the situs test, and that it is customarily used for loading and unloading of vessels, satisfying the functional prong of the situs test. *See id.* at 17-18. The administrative law judge also concluded that claimant met the status requirement as a maritime employee pursuant to Section 2(3) of the Longshore Act, 33 U.S.C. §902(3), such that his injury is covered by the Longshore Act. Decision and Order at 20.

The administrative law judge then addressed whether claimant is entitled to coverage under the OCSLA pursuant to *Pacific Operators Offshore, LLP v. Valladolid*, 565 U.S. 207 (2012). He noted that claimant's work of loading and unloading vessels formed an integral part of Anadarko's oil and gas extraction business on the OCS and found, therefore, that claimant established a substantial nexus between the injury he sustained in the course and scope of his employment and the extraction of natural resources from the OCS. Decision and Order at 21-22. The administrative law judge awarded claimant ongoing temporary total disability benefits under the Longshore Act. *Id.* at 27.

Employer appeals the administrative law judge's Decision and Order, challenging that claimant met the situs requirement of the Longshore Act and that there is coverage under the OCSLA. Claimant filed a response brief, urging affirmance, and employer filed a reply.

Situs Under the Longshore Act

It is undisputed that claimant was injured while in the living quarters located at C-Port-2. The administrative law judge found that the living quarters are located 500-600 feet away from the bayou and on the same side of the public road as C-Port-2. *See* Decision and Order at 15. He further found that claimant's injury occurred within the boundaries of C-Port-2 and that C-Port-2 is a "marine terminal" because it is the end of a transportation line from which products are moved in and out of the facility by vessels and has structures associated with the movement of cargo from vessel to shore and shore to vessel. Decision and Order at 15. He rejected employer's argument that the living quarters are separate from C-Port-2 because the Fifth Circuit has recognized that a covered facility may be

comprised of several distinct areas but "situs is not evaluated by reference to fences or labels alone." *Id.*

Employer does not contest the finding that C-Port-2 itself is a marine terminal.[3] Rather, it contends that the living quarters where claimant's injury occurred are not part of the marine terminal area and are not used for the maritime purposes of the Act. We reject employer's contention and affirm the administrative law judge's finding that claimant's injury occurred on a covered situs, as his finding that the living quarters are located within the boundaries of C-Port-2 is rational, supported by substantial evidence, and in accordance with law.

Section 3(a) of the Act covers injuries 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). The enumerated sites "are all land-based structures or areas which adjoin navigable waters and are typically used in maritime activities," such as the loading, unloading, building, or repairing of vessels. *Thibodeaux v. Grasso Prod. Mgmt. Inc.*, 370 F.3d 486, 490, 38 BRBS 13, 16(CRT) (5th Cir. 2004). If a site is not "enumerated," it can qualify as an "other adjoining area" if it satisfies: (1) a geographic component (the area must actually adjoin navigable waters) and (2) a functional component (the area must be customarily used for loading and unloading a vessel). *See New Orleans Depot Services, Inc. v. Director, OWCP [Zepeda]*, 718 F.3d 384, 47 BRBS 5(CRT) (5th Cir. 2013) (en banc).

The United States Court of Appeals for the Fifth Circuit, within whose jurisdiction this case arises, has stated that for purposes of coverage under the Longshore Act, an "other adjoining area" is not defined "according to fence lines and local designations." *Coastal Prod. Services, Inc. v. Hudson*, 555 F.3d 426, 433, 42 BRBS 68, 71(CRT), *reh'g denied*, 567 F.3d 752 (5th Cir. 2009). Rather, "[t]he test is whether the situs is within a contiguous [] area which adjoins the water." *Id.*, 718 F.3d at 393, 47 BRBS at 10(CRT) (quoting *Alabama Dry Dock & Shipbuilding Co. v. Kininess*, 554 F.2d 176, 178, 6 BRBS 229, 230

[3] Substantial evidence supports the administrative law judge's finding that C-Port-2 is the end of a transportation line with a structure whose primary purpose is the receiving, handling, and consolidating of waterborne cargo, and the loading and unloading of vessels. *See Victorian v. Int'l-Matex Tank Terminals*, 52 BRBS 35 (2018).

(5th Cir.), *cert. denied*, 434 U.S. 903 (1977)). "If a general area is customarily—not necessarily exclusively or predominantly—used for loading and unloading of vessels, all parts within it are a maritime situs," and it is necessary to look at both a particular part of a facility's "proximity and its interconnectedness to the loading and unloading location, along with its function" to determine if it is fair to designate a particular part of a facility as part of the situs. *Id.*, 555 F.3d at 435, 42 BRBS at 73(CRT).

The proximity, interconnectedness to the loading and unloading location, and the function of the living quarters justify the administrative law judge's determination that they are part of the maritime situs. Personnel working at C-Port-2, including shipping and receiving dispatchers such as claimant, are required to sleep and eat in the living quarters due to their work schedules of 12 hours per day with a 24-hour on-call status. While the living quarters are separated from C-Port-2 by a security fence and there is secured access to the loading operations at C-Port-2, the living quarters are designated for use only by people working at the port and are on the same side of the public road as the loading operations, which adjoin navigable waters. Employer's operations supervisor, Bernard Wiltz, testified that there is a fence along the exterior of all of C-Port-2 that encloses the loading operations, the living quarters, and the internal security fences. Tr. at 285-286.[4] Pictorial evidence indicates that the living quarters are not separated from the bayou or the loading operations by any other large structures. CXs 51 at 21; 52.

Substantial evidence thus supports the administrative law judge's conclusion that the living quarters, where claimant was injured, are located within the boundaries of C-Port-2, a marine terminal. *Kininess*, 554 F.2d at 178, 6 BRBS at 230 ("The test is whether the situs is within a contiguous shipbuilding area which adjoins the water. . . The lot [where the injury occurred] was part of the shipyard, and was not separated from the waters by facilities not used for shipbuilding.").[5] Moreover, the administrative law judge permissibly

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[4] Mr. Wiltz testified that the internal security fences are a requirement of the Department of Homeland Security. Tr. at 286.

[5] Employer cites *Kerby v. Southeastern Pub. Services Auth.*, 31 BRBS 6 (1997), *aff'd mem.*, 135 F.3d 770 (4th Cir. 1998), in which the Board held that the situs requirement was not satisfied where the claimants were injured at a power plant on shipyard property that was separated from the shipyard by a private railroad spur and a chain link fence. Employer's reliance on *Kerby* is unavailing; the facts are distinguishable. In *Kerby*, the power plant was found to be a separate and distinct parcel of land because it was separated from the shipyard by privately-owned railroad tracks and a chain-link fence. In addition, the power plant property did not adjoin the Elizabeth River or have a nexus with it. *Id.*, 31 BRBS at 11; *see also McCormick v. Newport News Shipbuilding & Dry Dock Co.*, 32 BRBS 207 (1998) (building where claimant was injured was not an "adjoining area"

concluded that the fences between the living quarters and the loading operations within C-Port-2 do not negate the finding that the entire contiguous area is a covered site. *Hudson*, 555 F.3d at 435, 42 BRBS at 73(CRT) ("every square inch of an area" need not be used for loading and unloading; otherwise, "we would have a game of hopscotch.").[6] Therefore, as claimant was injured on a situs enumerated by Section 3(a) of the Act, we affirm the award of benefits.[7]

Coverage Under the Outer Continental Shelf Lands Act

Coverage under the OCSLA, 43 U.S.C. §1331 *et seq.*, is separate from coverage under the Longshore Act. The OCSLA covers injuries occurring as a result of operations to explore for, develop, remove, or transport natural resources from the subsoil or seabed of the OCS. 43 U.S.C. §1333(b); *see Herb's Welding v. Gray*, 766 F.2d 898, 17 BRBS 127(CRT) (5th Cir. 1985). The United States Supreme Court has held that the OCSLA

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because it was separated from the shipyard by security fences and public roads which did not adjoin navigable water); *Griffin v. Newport News Shipbuilding & Dry Dock Co.*, 32 BRBS 87 (1998) (employer's parking lot was a separate and distinct parcel of land and not an "adjoining area" where it was separated from the shipyard by a public street and a security fence).

[6] Employer also contends that claimant was not injured on a covered situs because claimant was injured at a site, the living quarters at C-Port-2, that is separate from the marine terminal where he was assigned to work, C-Port-1. This argument is unavailing. Section 3(a) does not support a distinction between the marine terminal at which claimant was assigned to work versus the place of injury, as Section 3(a) refers to where the injury occurred. It is unclear if claimant had access to the loading operations at C-Port-2 since he was assigned to work at C-Port-1 but this is immaterial to the question of where claimant's injury took place. Employer does not challenge the administrative law judge's finding of status under the Act pursuant to Section 2(3) and the injury does not have to occur while claimant is actively engaged in maritime employment, as long as he spends "at least some of his time" in covered work. *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 6 BRBS 150 (1977). Moreover, employer does not dispute that claimant was injured in the course and scope of his employment.

[7] Because we affirm the finding that claimant was injured at a marine terminal, an enumerated situs under the Act, it is not necessary to address the administrative law judge's alternative finding that C-Port-2 also qualifies as an "other adjoining area customarily used by an employer in the loading and unloading of a vessel." Decision and Order at 15 (quoting 33 U.S.C. §903(a)).

covers an injury regardless of where it occurs as long as it has a "substantial nexus" to operations on the OCS. *Pacific Operators Offshore, LLP v. Valladolid*, 565 U.S. 207, 45 BRBS 87(CRT) (2012). A claimant is required 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." *Id.*, 565 U.S. at 222, 45 BRBS at 93(CRT).

The administrative law judge found that claimant's work loading and unloading vessels was an integral part of the work performed on the OCS such that Anadarko would be substantially hampered in performing oil and gas extraction without the vessels loaded with the requisite cargo. Decision and Order at 21. The administrative law judge concluded, therefore, that claimant established a substantial nexus between the injury he sustained in the course and scope of his employment and the extraction of natural resources from the OCS. *See id.* at 21-22.

On appeal, employer contends that, as in *Baker v. Gulf Island Marine Fabricators*, LLC, 49 BRBS 45 (2015), *aff'd sub nom. Baker v. Director, OWCP*, 834 F.3d 542, 50 BRBS 65(CRT) (5th Cir. 2016), claimant's work was "geographically, temporally, and functionally distant from" extractive operations on the OCS because he worked on land, did not directly perform extractive work, and was never required to travel to the OCS, and therefore the administrative law judge erred in finding a substantial nexus.

We disagree. An administrative law judge has broad discretion in applying the substantial nexus test of *Valladolid* to the facts of each case. *Boudreaux v. Owensby & Kritikos, Inc.*, 49 BRBS 83 (2015). The fact that claimant was injured on land is not dispositive. *See Valladolid*, 565 U.S. at 219-221 (rejecting a situs-of-injury test). In addition, *Baker* is distinguishable as it involved a claimant who worked as a marine carpenter on living quarters that, although destined for use on a tension leg oil platform, were not unique to OCS operations and there was no completed or operating oil rig at the time of claimant's injury. *Baker*, 49 BRBS at 50. In affirming the Board's decision, the Fifth Circuit noted that claimant Baker's job was located solely on land and his employer would not be involved in moving the oil platform to the shelf or operating it once it was installed there. *Baker*, 834 F.3d at 549, 50 BRBS at 68-69(CRT). The Fifth Circuit concluded that "Baker's job of constructing living and dining quarters is too attenuated from [the oil platform's] future purpose of extracting natural resources from the OCS." *Id.* Here, in contrast, the administrative law judge found that claimant's work had an immediate and direct effect on offshore work because he was responsible for ensuring that the supplies requested by the offshore rigs for ongoing extraction were in fact delivered to the proper rig. Tr. at 134-36, 149-159.

Employer also contrasts claimant's land-based work with *Boudreaux*, 49 BRBS 83, in which the Board affirmed coverage under the OCSLA for a claimant who actually worked on the OCS. In *Boudreaux*, the claimant was injured in a car accident on his way to a dock for transport to an oil platform located on the OCS where he worked testing equipment. 49 BRBS at 83-84. The Board affirmed the administrative law judge's finding of OCSLA coverage because the claimant was injured while transporting himself and his equipment to the dock from which he would be transported to the OCS to perform his job duties, which were directly related to extractive operations, and because the claimant received payment from employer for driving to the dock. *Id.* at 88.[8]

We reject employer's assertion that *Boudreaux* compels the conclusion that claimant's work in this case is not covered under the OCSLA. Although claimant was not required to travel to the OCS and performed his duties on land, substantial evidence supports the administrative law judge's finding that claimant's work was directly related to the extraction of resources from the OCS. Claimant supervised the loading and unloading of vessels that transported equipment and personnel to the offshore rigs. Tr. at 145-51. In addition, employer's operations manager, Eddie Byrd, and its operations supervisor, Mr. Wiltz, testified that claimant's work overseeing the supply and delivery vessels was an integral part of the extractive process. *Id.* at 110, 272. In other words, as the administrative law judge found, "[c]laimant has shown the work he performed directly furthered OCS operations and was in the regular course of such operations." Decision and Order at 22. Because the administrative law judge's conclusion that claimant's work had a substantial nexus to the extraction of resources from the OCS is supported by substantial evidence in the record, it is affirmed. *Valladolid,* 565 U.S. at 222, 45 BRBS at 93(CRT). We therefore affirm the administrative law judge's holding that claimant is covered by the OCSLA.

[8] Employer also cites the Board's decision in *Grabert v. Besco Tubular*, BRB No. 16-0140 (Sept. 22, 2016) (unpub.). In *Grabert*, the Board held that claimant was covered under the OCSLA, noting that the case was indistinguishable from *Boudreaux* because he was injured in the course of his employment while travelling to the dock for transportation to his offshore duty station.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge