BRB No. 91-1622

JAMES CHILDS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WESTERN RIM COMPANY	)	
	)	
and	)	DATE ISSUED:
	)	
INDUSTRIAL INDEMNITY COMPANY	)	
	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Ellin M. O'Shea, Administrative Law Judge, United States Department of Labor.

Bill H. Parrish (Law Offices of Bill Parrish), San Francisco, California, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (90-LHC-1607) of Administrative Law Judge Ellin M. O'Shea rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq*. (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On May 26, 1989, claimant sustained an injury to his left arm while in the course of his employment for employer. Claimant, one of four ILWU Local 10 longshoremen who were employed at Pier 50 by employer, primarily stripped in-bound containers, although claimant at times loaded out-bound ocean-going containers as well. *See* Transcript at 56.[1] Claimant testified that his employment duties involved writing down the number of the container, breaking the seal, checking the cargo against the manifest or shipping report and, thereafter, unloading and sorting the contents of the container. *Id.* at 16-17, 20. At the time of his May 26, 1989, injury, claimant testified that he was unloading bags of coffee beans from a container.

In her Decision and Order, the administrative law judge initially accepted the parties' stipulations that claimant's injury occurred on a covered situs, that claimant was temporarily totally disabled from May 27, 1989, to January 1, 1990, and that claimant, having reached maximum medical improvement, sustained a thirteen percent permanent partial disability to his left arm. The administrative law judge then ruled on the contested issue and determined that claimant's activities met the status requirement of Section 2(3) of the Act, 33 U.S.C. §902(3). The administrative law judge thus awarded claimant temporary total and permanent partial disability compensation pursuant to the parties' stipulations. 33 U.S.C. §908(b), (c)(1), (19). On appeal, employer contends that the administrative law judge erred in determining that claimant's work activities satisfy the status requirement of Section 2(3). Claimant has not responded to this appeal.

To be covered under the Act, a claimant must satisfy the "status" requirement of Section 2(3) of the Act, 33 U.S.C. §902(3)(1988), and the "situs" requirement of Section 3(a), 33 U.S.C. §903(a)(1988).[2] *See Northeast Marine Terminal Co., Inc. v. Caputo*, 432 U.S. 249, 6 BRBS 160 (1977). Section 2(3) of the Act provides, in pertinent part:

> 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 shipbreaker.

33 U.S.C. §902(3)(1988). In *Caputo*, 432 U.S. at 249, 6 BRBS at 150, the United States Supreme Court held that in order to be covered under the Act as a longshoreman, an employee must be engaged in work which is integral to the overall process of loading and unloading vessels. In this

[1]Of the cargo which is handled by employer, 85-90 percent is imported and destined for consignees in the area, *see* Transcript at 40-42; the remaining cargo is prepared for export by vessel. The cargo that is handled consists of 60-65 percent coffee and 20-25 percent cocoa; the balance is general cargo. *Id.* at 41. Employer's customers (or consignees) are coffee roasters and importers such as Folger's, Hills Brothers, MJB, and General Foods, the Guittard Chocolate Company, and other importers and brokers. *Id.*

[2]We note that the administrative law judge accepted the parties' stipulation that employer's Pier 50, where claimant sustained his work-related injury, constituted a covered situs.

regard, the Court rejected the "point of rest" theory, which would have limited coverage to cargo loading and unloading from the vessel to its initial point of rest on the pier. Subsequently, the Court explicitly held that coverage extends to workers who, although not actually loading and unloading vessels, are involved in the intermediate steps of moving cargo between ship and land transportation. *P.C. Pfeiffer Co., Inc. v. Ford*, 444 U.S. 69, 11 BRBS 320 (1979); *see also Chesapeake and Ohio Ry. Co. v. Schwalb*, 493 U.S. 40, 23 BRBS 96 (CRT)(1989).

Employer alleges that the employment duties performed by claimant were not integral to the loading and unloading process, asserting that the longshoring process was complete prior to claimant's beginning work and that his work is not unique to the maritime industry. Employer operates a container freight station and warehousing facility; specifically, employer's facility consists of two sheds located at Pier 50. *See* Transcript at 39. After being unloaded from vessels at other piers in the San Francisco bay area, containers arrive at employer's facility to be stripped and their contents checked against the accompanying manifests. The containers' contents are then sorted and stored in employer's warehouse until picked up by their respective consignees. *Id.* at 16-20. It is uncontroverted that claimant's employment duties entailed writing down the number of the container to be checked, breaking the container's seal, checking the container's contents against the manifest, and, ultimately, unloading and sorting the container's contents. Claimant is a member of the International Longshoreman and Warehouseman's Union.

After consideration of employer's arguments, we affirm the administrative law judge's conclusion that claimant meets the status requirement of Section 2(3). As the administrative law judge determined, the decisions of the Supreme Court establish that claimant's work checking and stripping containers is an integral part of the overall process of unloading a ship. *See Ford*, 444 U.S. at 69, 11 BRBS at 320; *Caputo*, 432 U.S. at 249, 6 BRBS at 160. In *Ford*, two claimants were injured while engaged in intermediate steps in moving cargo between ship and land transportation. In holding both claimants covered under the Act, the Court reasoned that if the moved goods had been taken directly from a ship to a train, or from a truck to a ship, claimants' activities would have been performed by longshoremen and that the only ground to distinguish claimants from those who do such "direct" loading would be the "point of rest" theory previously rejected in *Caputo*, 432 U.S. at 275-279, 6 BRBS at 166-169. In *Caputo*, which also addressed the status of two employees, claimant Blundo was injured while checking and marking containers which had been removed from a vessel at another pier facility and brought overland by an independent trucking company to the pier where claimant was employed. In holding claimant covered under the Act, the Court reasoned that the 1972 Amendments emphasized broader coverage and a decision to move that coverage shoreward brought about by the trend towards containerization. Consistent with this holding, the United States Court of Appeals for the Ninth Circuit, in whose jurisdiction this claim arises, has noted that checking and stripping containers constitutes longshoring work, in contrast to the work of a truck driver engaged in overland transportation of containers. *See Dorris v. Director, OWCP*, 808 F.2d 1362, 19 BRBS 82 (CRT)(9th Cir. 1987).

In the instant case, claimant clearly performed work checking and stripping containers similar to that of claimant in *Caputo.* We reject employer's contention that all longshoring

operations ceased once the containers in this case were loaded onto trucks for overland transportation to Pier 50 and that *Caputo* is distinguishable because claimant's work was performed at a different pier from that where the containers were actually removed from the ship. As we have discussed, the container at issue in the case of claimant Blundo in *Caputo* was similarly transported to a different pier for checking and stripping; employer's argument that *Caputo* is distinguishable is at odds with the facts of the case. Employer's theory is nothing more than a renewed attempt to revive a "point of rest" approach, cutting off coverage once the container has been moved to a different pier for checking and stripping. The Supreme Court's decisions in *Caputo* and *Ford* reject this limited view of coverage. In rejecting the notion that coverage ends at the "point of rest" after cargo is taken off a vessel, the Supreme Court found it too restrictive, as it would exclude from coverage those "engaged in loading and unloading the modern functional equivalents of the hold of a ship." *Caputo*, 432 U.S. at 270, 6 BRBS at 167. *See also Molee v. Novelties Distribution Corp.*, 15 BRBS 1 (1982), *aff'd*, 710 F.2d 992, 15 BRBS 168 (CRT) (3d Cir. 1983), *cert. denied*, 465 U.S. 1012 (1984); *Miller v. Prolerized New England Co.*, 14 BRBS 811 (1981), *aff'd*, 691 F.2d 450, 15 BRBS 23 (CRT) (1st Cir. 1982). Employer's argument here must be similarly rejected.

Employer additionally contends that claimant is not covered because his duties of loading and unloading could easily have been performed by a non-maritime employee such as a warehouse person and thus were not unique to the maritime industry. We disagree. There are few jobs which are uniquely maritime and are not performed in some form throughout the workplace. Thus, in order to be covered, it is not necessary that claimant's skills be unique to the maritime industry, but rather that the purpose of the work involve loading, unloading, building or repairing a vessel. *See, e.g., Schwalb*, 493 U.S. at 40, 23 BRBS at 96 (CRT); *Simonds v. Pittman Mechanical Contractors, Inc.*, BRBS , BRB No. 91-1319 (July 29, 1993).

In conclusion, inasmuch as claimant's employment duties constitute intermediate steps in the movement of cargo between ship and land transportation as contemplated by the Supreme Court in *Caputo* and *Ford*, we affirm the administrative law judge's determination that claimant is covered by Section 2(3) of the Act.

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

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge