BRB No. 92-1577

DANIEL COYNE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
REFINED SUGARS, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
STATE INSURANCE FUND	)	
	)	
Employer/Carrier-Respondents	)	DECISION AND ORDER

Appeal of the Decision and Order - Denying Benefits of Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

Philip J. Rooney (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

Richard A. Cooper (Fischer Brothers), New York, New York, for employer/carrier.

Before: DOLDER, Acting Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and SHEA, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Decision and Order (91-LHC-266) of Administrative Law Judge Gerald M. Tierney denying benefits 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 which 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 worked at employer's sugar refining facility adjacent to the Hudson River. Raw sugar would be delivered to employer's facility by ship. The sugar was unloaded and placed in a warehouse. The sugar would then be refined at the facility through a process which included cleaning, filtering, evaporation, drying, mixing with different additives, and packaging.

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(1988).

After the sugar had been refined and packaged, claimant would unload the bags of sugar from a conveyor belt and either send the bags to a warehouse for later shipment, or load the bags onto a truck for immediate surface transportation. The parties do not dispute that claimant sustained a work-related injury to his back on February 21, 1990. The sole contested issue in this case is whether there is coverage under the Act. Claimant received benefits under the New York workers' compensation law.

The administrative law judge found that claimant, who did not come into contact with the sugar at the plant until it was completely refined and bagged, was not a covered employee under the Act. 33 U.S.C. §902(3). The administrative law judge further noted that claimant, a member of the Sugar Refining Workers' Division of the International Longshoremen's Association, was prohibited from unloading raw sugar from the ships. Thus, the administrative law judge denied benefits on this basis, and he did not address the issue of whether claimant's injury occurred on a covered situs, 33 U.S.C. §903(a).

On appeal, claimant contends that the administrative law judge erred in finding that claimant's duties were not covered under the Act and also contends that the site of the injury was a covered location. Employer responds, urging affirmance of the administrative law judge's Decision and Order as it is supported by substantial evidence.

Initially, we reject claimant's contention that the administrative law judge erred in failing to apply the Section 20(a), 33 U.S.C. §920(a), presumption to the coverage issues and to resolve doubtful questions of law and fact in favor of claimant. The Section 20(a) presumption does not apply to the legal interpretation of the jurisdictional provisions of the Act, *George v. Lucas Marine Construction,* ____ BRBS ____, BRB No. 93-1612 (Sept. 28, 1994), and the "true doubt" rule is inapplicable as it conflicts with Section 7(c), 5 U.S.C. §556(d), of the Administrative Procedures Act. *Director, OWCP v. Greenwich Collieries*, _U.S. _, 114 S.Ct. 2251, 28 BRBS 43 (CRT)(1994). Moreover, the administrative law judge did not find that there were any doubtful questions of fact in this case.

We also reject claimant's contention that the administrative law judge erred in finding that claimant's duties were not covered under the Act. 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). *See Northeast Marine Terminal Co., Inc. v. Caputo,* 432 U.S. 249, 6 BRBS 150 (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 ship-breaker....

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.

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); *Childs v. Western Rim Co.*, 27 BRBS 208 (1993).

Claimant contends that workers are covered at any of the intermediate steps between the loading and unloading of ships and the final consignment of the cargo to land transportation. While this contention states a valid general legal principle consistent with *Ford*, it does not aid claimant in this case. Claimant's theory would have us hold that raw materials received at a manufacturing plant by ship remain in the chain of off-loading steps until processed and ready for further shipment. This is simply not correct. Where raw materials are unloaded from a ship at a manufacturing plant and are then refined or used in a manufacturing process, loading activities are complete upon the delivery of the goods to the plant. Thus, the Board has held that where a claimant's duties are integral to employer's manufacturing process rather than to longshoring activities, they are not covered under the Act. *Garmon v. Aluminum Company of America-Mobile Works*, 28 BRBS 46 (1994).

In *Garmon*, bauxite was delivered to the employer, unloaded from ships, and stored in a building until it was needed for manufacturing. The claimant would bulldoze bauxite on the floor of employer's storage facility when it was needed for production and did not flow freely through the floor openings. The Board affirmed the administrative law judge's finding that the bulldozing activities performed by the claimant involved the movement of bauxite as part of the process for manufacturing aluminum, rather than as part of the process of unloading the bauxite from a vessel, as the unloading process was complete when the bauxite was received for storage. Thus, the claimant's duties were insufficient to confer coverage under the Act. *Garmon*, 28 BRBS at 49.

Claimant also cites *Prolerized New England Co. v. Benefits Review Board*, 627 F.2d 30, 12 BRBS 808 (1st Cir. 1980), *cert. denied*, 452 U.S. 938 (1981), as support for the contention that a claimant injured while working in a manufacturing process can be covered under the Act. However, the court in *Prolerized* held that while the claimant's duties as an equipment repairman at the Prolo Mill, which changed the composition of scrap metal, would be considered a manufacturing operation, and thus not be covered under the Act, a portion of his duties were spent at the Shear, which merely changed the shape of scrap steel to prepare it for shipment by ship. *Prolerized*, 627 F.2d at 37, 12 BRBS at 815. Thus, the court affirmed the Board's holding that the Shear was an integral part of the loading operation, and affirmed the finding that the claimant was engaged in covered employment on this basis. *Id.* Thus, it is clear that if the manufacturing process is also integral to loading or unloading, it is a covered activity. Mere involvement in a manufacturing operation in which the raw material arrives by ship or the finished product leaves by ship is insufficient to confer coverage under Section 2(3).

In the present case, the administrative law judge found that the refined sugar that claimant worked with had been "manufactured" by cleaning, filtering, evaporation, drying and mixing with

different additives, subsequent to the raw sugar's transportation to the plant by and unloading from a ship. Claimant unloaded this manufactured product from a conveyor belt to trucks for land transportation, and did not unload the raw sugar from the ships delivering sugar to the plant. Although claimant is a member of the International Longshoremen's Association, it is not disputed that claimant could not board the ships, nor assist in their unloading, under the terms of his employment. While the Supreme Court has 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, *Ford*, 444 U.S. at 69, 11 BRBS at 320, claimant in the instant case is involved with the movement of a finished manufactured product from the plant to land transportation. *See generally Odness v. Import Dealers Service Corp.*, 26 BRBS 165 (1992). Thus, as claimant's duties are not integral to the loading or unloading of ships, we affirm the administrative law judge's finding that claimant is not covered under the Act.[1] *See Garmon*, 28 BRBS at 49.

Accordingly, the Decision and Order - Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge

[1]Inasmuch as we affirm the administrative law judge's finding that claimant has not met the status requirement under the Act, we need not address claimant's contention regarding whether the injury occurred on a covered situs.