U.S. Department of Labor

Office of Administrative Law Judges
90 Seventh Street, Suite 4-800
San Francisco, CA 94103-1516

(415) 625-2200
(415) 625-2201 (FAX)

ISSUE DATE: 20 APRIL 2015

OALJ CASE №: 2012-LHC-00343
OWCP CASE №: 14-152212
BRB CASE №: 13-0076 (formerly)

In the Matter of:

JEANENE M. DOWNEY-STAMMET,
Claimant,

vs.

CH2M HILL ALASKA, INC.,
formerly known as VECO ALASKA, INC.

Employer,

and

SEABRIGHT INSURANCE COMPANY,
administrator for AMERICAN MOTORIST INSURANCE COMPANY, successor by merger to EAGLE MARINE INSURANCE COMPANY,
Carrier.

DECISION AND ORDER

I. Background

The oil tanker *Exxon Valdez* struck Bligh Reef on March 24, 1989, spilling over 11 million gallons of crude oil into the waters of Prince William Sound, Alaska.[1] Exxon Corporation contracted Veco Alaska Inc. ("Veco")–now CH2M Hill Alaska Inc.–to clean up the oil spill.[2] Veco hired Jeanene Downey-Stammet during the summer of 1989[3] to clean crude oil from the beaches[4] in Prince William Sound.[5]

[1] Claimant's Brief in Support of Petition for Review at 1.
[2] Claimant's Brief in Support of Petition for Review at 1.
[3] Downey-Stammet Depo. at 10.
[4] Downey-Stammet Depo. at 15.

Veco housed its workers, including Ms. Downey-Stammet, on barges that served as floating hotels near the fouled beaches in rural Alaska.[6] She was ferried to the beach from the barge each work day in a large boat.[7] Once on the beach, she unloaded absorbent materials from supply boats to clean the beach.[8] Sometimes she helped pull booms onto the shore from the supply boat.[9] She set the booms not from the boat or the water, but from the beach.[10] Standing on the beach, Ms. Downey-Stammet used the cleanup supplies she had unloaded, such as pom-poms, to soak up oil.[11] At times she used steam hoses to wash oil from the rocks, so it could be collected.[12] She periodically took oil-sodden cleanup materials back to the supply boat to exchange for new materials.[13] She helped load any waste materials left on the beach into the boats at the end of the day.[14]

On the beach one day, she felt ill as she cleaned the beach,[15] after she had unloaded some absorbent materials.[16] She remembers she felt dizzy, her head ached, she vomited, and felt burning in her lungs; she was seen by a nurse.[17]

Now she asserts that she became ill due to inhalation of and exposure to diesel fuel, crude oil, or other chemicals.[18] Veco paid for immediate medical care stemming from whatever she may have inhaled, care that included examination and treatment at Veco's own health clinic for a period of several weeks after the injury.[19] Ms. Downey-Stammet does not recall returning to work for Veco thereafter.[20]

II. Procedural History

Ms. Downey-Stammet filed her claim against Veco in June 2009[21] under the Longshore and Harbor Workers' Compensation Act ("Act").[22] She seeks follow-up medical care with a physician of her choice to determine if there is a relationship between her symptoms today and exposure to injurious chemicals while employed

---

[5] Downey-Stammet Depo. at 18.
[6] Downey-Stammet Depo. at 19.
[7] Downey-Stammet Depo. at 26.
[8] Downey-Stammet Depo. at 25–26.
[9] Downey-Stammet Depo. at 27.
[10] Downey-Stammet Depo. at 17.
[11] Downey-Stammet Depo. at 25–32.
[12] Downey-Stammet Depo. at 25–32.
[13] Downey-Stammet Depo. at 25.
[14] Downey-Stammet Depo. at 28.
[15] Downey-Stammet Depo. at 34.
[16] Downey-Stammet Depo. at 35.
[17] C. Ex.-3 at 1; R. Ex.-1.2.
[18] Claimant's Brief in Support of Petition of Review at 6.
[19] R. Ex.-2.3–2.11.
[20] Downey-Stammet Depo. at 36, 41.
[21] Claimant's Brief in Support of Petition for Review at 2.
[22] 33 U.S.C § 901 et seq.

by Veco over twenty years ago.[23] Veco won't authorize the evaluation—it asserts her claim doesn't come within the Act's coverage.[24]

In an Order for Further Briefing on Coverage of October 3, 2012, I found Ms. Downey-Stammet's work on the beach took place at a covered situs.[25] Further briefing was required, however, to determine whether Ms. Downey-Stammet also had status as a maritime employee,[26] to bring her claim within the Act.[27] Respondents' motion for summary decision was granted.[28] Ms. Downey-Stammet offered no proof she had engaged in maritime employment that would qualify for coverage under the Act.[29]

When Ms. Downey-Stammet sought review at the Benefits Review Board ("Board"), she asserted she had been engaged in covered maritime employment as a matter of law.[30] Respondents cross-appealed on whether Ms. Downey-Stammet had worked at a covered situs.[31] The Board affirmed the finding that Ms. Downey-Stammet's beach cleanup work on land, and loading and unloading oil-absorbent materials from transport vessels to facilitate that work, was not maritime work the Act covered.[32]

The Board also determined, however, that I did not fully address whether Ms. Downey-Stammet was injured on navigable waters.[33] An injury on navigable water would bring her claim under the Act without regard to situs and status, given the U.S. Supreme Court's decision in *Director, OWCP v. Perini North River Associates*.[34] Because Ms. Downey-Stammet alleges her exposure to injurious chemicals occurred during the entirety of her work for Veco, including her time aboard vessels,[35] the Board vacated the summary adjudication. It remanded for a fuller examination into the nature of Ms. Downey-Stammet's trips aboard vessels on Prince William Sound, and whether she was exposed to injurious substances on those vessels in the course and scope of her employment.[36]

III. Legal Standards

A. *Prima Facie Case*

The claimant bears "the burden of proving the existence of an injury or harm and that a work-related accident occurred or that working conditions existed which

---

[23] Claimant's Brief in Support of Petition for Review at 2.
[24] Claimant's Brief in Support of Petition for Review at 2–3.
[25] 33 U.S.C § 903(a); Inclinations and Order for Further Briefing on Coverage at 2.
[26] 33 U.S.C § 902(3).
[27] Inclinations and Order for Further Briefing on Coverage at 1.
[28] Decision and Order Granting Summary Judgment for Employer at 1.
[29] Decision and Order Granting Summary Judgment for Employer at 4.
[30] Claimant's Brief in Support of Petition for Review at 3.
[31] Claimant's Brief in Support of Petition for Review at 3.
[32] Benefits Review Board Decision and Order at 6.
[33] Benefits Review Board Decision and Order at 4–5.
[34] *Dir., OWCP v. Perini North River Associates*, 459 U.S. 297, 15 BRBS 62 (CRT) (1983); Benefits Review Board Decision and Order at 4.
[35] Benefits Review Board Decision and Order at 4–5.
[36] Benefits Review Board Decision and Order at 5.

could have caused the harm, in order to establish a *prima facie* case."[37] The claimant must prove each of these elements with affirmative proof.[38] If she does, § 20(a) presumes the claim is one the Act covers.[39] Once raised, the presumption requires the employer to rebut it with substantial evidence.[40]

The presumption does not aid a claimant in proving her *prima facie* case, however.[41] It does nothing to help Ms. Downey-Stammet establish working conditions existed that could have caused the harm she claims.[42]

B. Coverage

Before 1972, the Act applied to any employee injured upon navigable waters in the course of employment; no inquiry was made into the type of work being done at the time of injury.[43] "Navigable waters" was defined narrowly, and only an employee working on actual navigable waters and dry-docks was covered.[44] Congress amended the Act in 1972 to expand its definition of "navigable waters" to include certain adjoining areas.[45] Simultaneously, Congress created a status requirement that mandates an employee be engaged in maritime employment to enjoy the Act's coverage.[46]

The 1972 amendments set two tests for a claim to be covered: a situs test to determine where the injury occurred,[47] and a status test to determine the character of the employee's work.[48] An employee must satisfy both to qualify for compensation by an employer[49] under the Act.[50] The situs requirement is met when an employee is injured[51] 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 employee in loading, unloading, repairing,

---

[37] *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71, 72 (1996) (citing *Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1990)).

[38] *Kooley v. Marine Indus. Northwest*, 22 BRBS 142, 145 (1989).

[39] 33 U.S.C. § 920(a).

[40] 33 U.S.C. § 920(a).

[41] *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); *Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989); *Mackey v. Marine Terminals Corp.*, 21 BRBS 129 (1988).

[42] *Mock v. Newport News Shipbuilding & Dry Dock Co.*, 14 BRBS 275 (1981); *Jones v. J. F. Shea Co.*, 14 BRBS 207 (1981); *Graham v. Newport News Shipbuilding & Dry Dock Co.*, 13 BRBS 336 (1981); *Sharp v. Marine Corps Exchange*, 11 BRBS 197 (1979).

[43] *Dir., OWCP v. Perini North River Associates*, 459 U.S. 297, 311 (1983).

[44] *Dir., OWCP v. Perini North River Associates*, 459 U.S. 297, 307 (1983).

[45] *Dir., OWCP v. Perini North River Associates*, 459 U.S. 297, 299 (1983).

[46] *Dir., OWCP v. Perini North River Associates*, 459 U.S. 297, 299(1983).

[47] 33 U.S.C. § 903(a).

[48] 33 U.S.C. § 902(3).

[49] An employer is defined under the Act as "any employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States . . . " 33 U.S.C. § 902(4).

[50] 33 U.S.C § 903(a); 33 U.S.C. § 902(3).

[51] An injury is defined under the Act as any accidental injury "arising out of and in the course of employment and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury . . . " 33 U.S.C. § 902(2).

dismantling, or building a vessel."[52] The status requirement is satisfied when the employee engages in maritime employment, such as working as a longshoreman or harbor-worker.[53]

In certain situations, these situs and status tests could disqualify a claimant who would have been covered by the pre-amendment Act. In *Perini*, the Court determined that Congress did not intend that result.[54] Congress meant to extend coverage to maritime workers injured on adjoining lands.[55] "Congress was concerned with injuries on land, and . . . state[d] explicitly that the 'maritime employment' requirement . . . was not meant 'to exclude other employees traditionally covered.'"[56] Accordingly, an employee injured upon actual navigable water is covered without regard to what she was doing at the time of injury (*i.e.*, without regard for the status test).[57] Employees injured on adjoining land, however, must meet both the situs and status tests. [58]

IV. Discussion

The Board affirmed that beach cleanup and the related loading and unloading activities Ms. Downey-Stammet described fail to satisfy the maritime status requirement.[59] They are not covered under the Act.[60]

Yet under *Perini*, if Ms. Downey-Stammet can establish she was injured while working upon actual navigable waters, the Act would cover her claim. Whether she engaged in maritime employment at the time wouldn't matter.[61] An injury sustained while working on the barges she lived on or on the vessels that ferried her to the beach would be covered.

Ms. Downey-Stammet alleged injury during the entirety of her employment, including while she lived on barges and was transported from barges to the beach.[62] Ms. Downey-Stammet says she inhaled volatile hydrocarbons aboard these vessels, which caused injury.[63] The "injury" is her current symptoms, which have no medical diagnosis. The § 20(a) presumption, does not aid Ms. Downey-Stammet in proving injurious working conditions existed,[64] a part of her *prima facie* case.[65]

---

[52] 33 U.S.C. § 903(a).
[53] 33 U.S.C. § 902(3).
[54] *Dir., OWCP v. Perini North River Associates*, 459 U.S. 297, 315 (1983).
[55] *Dir., OWCP v. Perini North River Associates*, 459 U.S. 297, 316–318 (1983).
[56] *Dir., OWCP v. Perini North River Associates*, 459 U.S. 297, 319 (1983).
[57] *Dir., OWCP v. Perini North River Associates*, 459 U.S. 297, 311 (1983).
[58] *Dir., OWCP v. Perini North River Associates*, 459 U.S. 297, 317–319 (1983).
[59] Benefits Review Board Decision and Order at 6.
[60] Benefits Review Board Decision and Order at 6.
[61] *Dir., OWCP v. Perini North River Associates*, 459 U.S. 297, 311 (1983).
[62] Claimant's Petition for Review at 14.
[63] Claimant's Petition for Review at 14.
[64] *Mock v. Newport News Shipbuilding & Dry Dock Co.*, 14 BRBS 275 (1981); *Jones v. J. F. Shea Co.*, 14 BRBS 207 (1981); *Graham v. Newport News Shipbuilding & Dry Dock Co.*, 13 BRBS 336 (1981); *Sharp v. Marine Corps Exchange*, 11 BRBS 197 (1979).
[65] *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981); *Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989); *Mackey v. Marine Terminals Corp.*, 21 BRBS 129 (1988).

Working conditions (crude oil) on the beach arguably could have caused Ms. Downey-Stammet to inhale volatile hydrocarbons. The Board affirmed that her work on the beaches was not covered under the Act.[66] Ms. Downey-Stammet now must show, with affirmative proof, how a work-related accident occurred or working conditions existed that could have injured her upon navigable waters. She has not.

Ms. Downey-Stammet's argument that a significant part of her injurious exposure occurred aboard vessels[67] is not evidence. No facts substantiate her claim.

Ms. Downey-Stammet recalls no details about the barges or the vessels that ferried her to the beach. She doesn't know the names of the barge(s) she lived on,[68] where the barges were located when she lived on them,[69] if the barges moved,[70] or how many barges she may have lived on.[71] She provided vague, general information during her deposition, but never mentioned that she was exposed to any injurious substance on the barges. She recalls the food was terrible, that there were close quarters, and that the barges were flat.[72] Ms. Downey-Stammet does remember seeing an oil spill platform on one of the barges, steep stairs, and a helicopter landing,[73] but she cannot say she lived on that barge.[74] At no time did Ms. Downey-Stammet discuss being exposed to injurious substances or inhaling fumes on a barge. She was able to recall, however, that the barges were purely living quarters—she did no work on them.[75]

While being treated by nurses on a barge, Ms. Downey-Stammet now recalls she smelled something funny.[76] A "funny smell" is not indicative of an injurious exposure, however, and Ms. Downey-Stammet hasn't claimed she was injured by this smell.[77] She could not identify this "funny smell" as crude oil, cleaning chemicals, or smells commonly associated with a medical facility.[78] Ms. Downey-Stammet mentions a "funny smell" only in association with being treated by nurses in a medical facility on the barge.[79] She cannot remember whether the barge she was treated on was the barge she lived on.[80] There is no other information or mention of any smells or working condition on the barges. "Some kind of funny smell . . . or something," on one specific instance in a medical setting is too general to constitute evidence of an injurious exposure.[81]

---

[66] Benefits Review Board Decision and Order at 6.
[67] Claimant's Petition for Review at 14.
[68] Downey-Stammet Depo. at 19.
[69] Downey-Stammet Depo. at 20.
[70] Downey-Stammet Depo. at 20.
[71] Downey-Stammet Depo. at 21.
[72] Downey-Stammet Depo. at 20.
[73] Downey-Stammet Depo. at 21–22.
[74] Downey-Stammet Depo. at 22.
[75] Downey-Stammet Depo. at 20, 24.
[76] Downey-Stammet Depo. at 25.
[77] Downey-Stammet Depo. at 25.
[78] Downey-Stammet Depo. at 25.
[79] Downey-Stammet Depo. at 25.
[80] Downey-Stammet Depo. at 21–24.
[81] Downey-Stammet Depo. at 25.

Similarly, Ms. Downey-Stammet cannot provide any significant information about the conditions on the vessels that ferried her from the barge to the beach. She recalls they were large (*i.e.*, they held many workers), and that she had no duties aboard those boats.[82] These boats carried none of the absorbent materials used to clean the beach.[83] No other information has been provided, and she never described or implied any injurious exposure occurred on these vessels.

Ms. Downey-Stammet has not proven any part of her injurious exposure occurred aboard vessels, or that she did any work on vessels. Ms. Downey-Stammet offered nothing to show she inhaled volatile hydrocarbons or was otherwise exposed to injurious chemicals aboard a vessel upon navigable waters. She acknowledged ". . . I was on the beach when I was injured." [84] Accordingly, Ms. Downey-Stammet has failed to establish her *prima facie* case that her claim falls within the coverage of the Act.

V. Conclusion

Based upon the foregoing Decision, and upon the entire record, this claim is **DISMISSED**.

So Ordered.

Digitally signed by William Dorsey
DN: CN=William Dorsey, OU=Administrative Law Judge, O=Office of Administrative Law Judges, L=San Francisco, S=CA, C=US
Location: San Francisco CA

WILLIAM DORSEY
Administrative Law Judge

[82] Downey-Stammet Depo. at 26.
[83] Downey-Stammet Deop. at 25–26.
[84] Downey-Stammet Depo. at 34.