U.S. Department of Labor

Office of Administrative Law Judges
11870 Merchants Walk - Suite 204
Newport News, VA 23606

(757) 591-5140
(757) 591-5150 (FAX)

Issue Date: 13 November 2012

Case No: 2012-LHC-00190

OWCP No: 05-133355

In the Matter of:

ALISHA S. COX,

Claimant,

v.

NEWPORT NEWS SHIPBUILDING,
A DIVISION OF HUNTINGTON INGALLS
INDUSTRIES, INC.,
(Self-Insured),

Employer/Carrier,

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,

Party-In-Interest.

APPEARANCES: Gregory E. Camden
Attorney for the Claimant

Benjamin M. Mason
Attorney for the Employer

BEFORE: ALAN L. BERGSTROM
Administrative Law Judge

DECISION AND ORDER – DENYING BENEFITS

This proceeding arises from a claim filed under the provisions of the Longshore and Harbor Workers' Compensation Act, as amended (LHWCA), U.S. Code, Title 33, § 901 et seq., and is governed by the implementing Regulations found in the Code of Federal Regulations, Title 29, Part 18, and Title 20, Chapter VI, Subchapter A . The claim was forwarded to the Office of Administrative Law Judges on October 27, 2010 with indication of a February 23, 2006 injury date (OWCP No. 05-133355).

A formal hearing was held in Newport News, Virginia, on February 10, 2012, at which time the parties were afforded full opportunity to present evidence and argument as provided in the Act and applicable regulations. The Director did not appear. At the hearing, stipulations in joint exhibit 1, Administrative Law Judge exhibit 1 through 4, and Claimant's exhibits 1 through 18 were admitted without objection[1] (TR 4-7). The Employer did not submit documentary evidence at the hearing. The post-hearing written briefs filed by the respective counsel for the Claimant and the Employer were also considered.

The findings of fact and conclusions which follow are based upon a complete review of the entire record, in light of argument of the parties, as well as applicable statutory provisions, regulations and pertinent precedent.

STIPULATIONS

The parties have stipulated to, and this Administrative Law Judge finds, the following as fact (JX 1; TR 4-5):

1. The Claimant injured her back and ribs and sustained a post-traumatic stress disorder (PTSD) on February 23, 2006.
2. The injury occurred at Newport News Shipbuilding.
3. The injury arose out of and in the course of the worker's employment with the Employer.
4. There was an Employer/Employee relationship at the time of the injury.
5. The Employer was timely notified of the injury.
6. The claim was timely filed.
7. The Notice of Controversion was timely filed.
8. The District Director's informal conference was conducted on September 14, 2011.
9. The worker's average weekly wage at the time of injury was $775.97.
10. No compensation has been paid under the LHWCA.
11. No medical benefits have been paid under the LHWCA.
12. The worker reached maximum medical improvement on June 30, 2011 for the left knee.
13. If the LHWCA applies, the Claimant's relevant periods of disability are:

    a. March 6, 2006 to March 28, 2006;
    b. July 14, 2006 to November 19, 2006;
    c. January 23, 2007 to January 26, 2007
    d. May 2, 2008;

[1] The following exhibit notation applies: JX - joint exhibit; ALJX – Administrative Law Judge exhibit; CX – Claimant exhibit; EX – Employer exhibit; TR – transcript page

e. May 19, 2008 to May 20, 2008;
f. June 14, 2010 to June 17, 2010;
g. July 10, 2009; and,
h. October 16, 2010 to May 15, 2011.

14. In this case, situs jurisdiction exists within the meaning of §903(a) of the LHWCA.

ISSUES

The issues remaining to be resolved are (TR 5-6):

1. Did the Claimant's February 23, 2006, work-related injury arise out of covered employment in light of §902(3)(a) of the LHWCA ?
2. Is the Claimant entitled to temporary total disability compensation under the LHWCA for the periods stipulated?
3. Did the Claimant's left-knee impairment from February 8, 2011 arise out of the February 23, 2006, work-related injury?
4. Is the Claimant entitled to medical expenses for the left knee impairment?

PARTY POSITIONS

Claimant's Position:

Claimant's counsel submits that in order to determine if the Claimant is excluded from coverage under §902(3)(a) of the LHWCA, a detailed examination of her job duties is required to determine if her work was an integral part and necessary ingredient of the shipbuilding process. He argues she is not excluded from coverage under the LHWCA because her primary duty was to oversee pipefitter jobs that were not adhering to the pre-scheduled sequence or agenda and to move those jobs along as quickly as possible. He submits that she performed this duty by completing "Indiscrepancy Reports" when material was delivered improperly or mechanics were fitted wrong; by reporting planning problems that needed resolved at weekly meetings with shop and ship supervisors; by dealing with missing items or parts that would delay work; and by delivering to the assembly shop those "hot" parts left on her office desk. He states that when the Claimant left her office, she was required to wear a hard hat, safety glasses, steel-toed shoes and earmuffs and was exposed to the same dangers other shipyard workers experienced.

Claimant's counsel argues that the Claimant's job was an integral part of the shipbuilding and repair operations of the Respondent and that her specialized skills were a necessary ingredient of the shipbuilding process, without which the shipbuilding process would be impeded and cause a significant backlog in satisfying the requirements of the agenda. Thus the Claimant met the status test under §902(3) of the LHWCA at the time of her February 23, 2006 injury at work.

Claimant's counsel argues that the Claimant is entitled to the §920(a) presumption that her left knee pain in 2010 is related to her original left knee injury in 2006 because her treating physician opines that the pain is due in part to the stress placed on the left knee joint by her altered gait and low back pain. He submits that the Respondent has failed to rebut the §920(a) presumption so

that the Claimant is entitled to temporary total disability compensation for the periods stipulated in JX 1 and for related necessary medical treatment under §907 of the LHWCA.

Employer's Position:

Employer's counsel argues that at the time of the February 23, 2006 injury, the Claimant was not a covered employee under §902(3)(a) of the LHWCA. He submits that at the time of the February 23, 2006 injury she was employed as a production control, status and agenda clerk for a period of approximately one year. She had been a shop production control clerk for two years immediately prior thereto, and an office assistant before that. He states that the Claimant worked with two other people in a small 20'x30' office that is walled off at the end of Assembly Shop Building 160 from the pipe assembly shop itself, where approximately 30 people assemble "details" into "a big assembly to put on the ship."

Employer's counsel stated that the Claimant's job at the time of the February 23, 2006 injury involved attending weekly meetings in an office in another part of the shipyard where she would notify ship supervisors of assembly shop 160 job status, schedules, and planning problems needing parts or assembly repair after failing inspection. To obtain status information she would meet with assembly shop foremen and workers in the mornings regarding the progress of assigned work and meet with general foremen and installers working on the relevant ship. To assist in meeting assembly shop production schedules, she would e-mail and notify workers of the schedules and request needed parts. If small parts were delivered to her desk in the office, she would take it to the person needing the part in the shop, though this happened only "a couple of times a month." He argues that a lot of the Claimant's work in Building 160 "was on the computer and her job involved ordering parts and to make sure the parts were delivered to the job" and to close-out jobs on the computer when a job was completed. He submits that the Claimant "was not involved in any way in hands-on completion of any of the jobs in the shop" and that "as a salaried employee she was not allowed to be involved in production" which must be done by hourly employees.

Employer's counsel submits that the Claimant suffered two broken ribs and a back injury on February 23, 2006, when a co-worker taped the Claimant to her office chair while working at her computer and rolled her through the office and down a step before other persons caught her before the chair fell over. He states the Claimant was treated by her primary care physician and other specialists and started having leg problems which became worse, while she was out of work due to back problems, and by October 2010 her left leg was swelling, became locked, and caused pain. She underwent surgery and returned to work in May 2011 in the sheet metal shop in Building 5 doing similar status and agenda work within permanent work restrictions assigned in June 2011.

Employer's counsel submits that §902(3)(a) of the LHWCA excludes from coverage individuals employed exclusively to perform office clerical, secretarial, security and date processing work unless that individual's actual work function is a necessary, essential and integral part of the longshoring, shipbuilding or ship repair process. He argues that the Claimant's work duties were not a necessary, essential and integral part of the longshoring, shipbuilding or ship repair process; lack substantial nexus to maritime navigation or commerce; and did not expose her to

the hazards normally associated with covered maritime employment. He argues that the Claimant's presence in the assembly shop is only to collect information she could obtain by e-mail or use of a telephone from the office and that her actions of delivering small parts to the shop area is that of a good employee but not required in the performance of her job because she could easily move the part to the shop foreman's desk in the office or call a shop worker to pick up the part from her desk. He argues her reporting status of jobs to a ship supervisor in the weekly meetings was only the relaying of information on the status of jobs going through the pipe assembly shop and not an employment action bringing coverage under the LHWCA. He argues that wearing safety gear while outside her office did not transform her job into employment covered by the LHWCA.

Employer's counsel states the Claimant underwent left knee arthroscopic surgery on February 8, 2011 and argues that no physician has related the Claimant left knee problem to her injuries incurred on February 23, 2006. He submits that the Claimant has bilateral knee problems because of wear-related degenerative changes and osteoarthritis. He argues that the Claimant's knee problems did not arise out of the February 23, 2006 injury and that the Claimant is not entitled to medical benefits under the LHWCA due to her knee condition.

SUMMARY OF RELEVANT EVIDENCE[2]

Testimony of Claimant (TR 7-32)

The Claimant testified that in February 2006 she was working in the position of "production control, status and agenda" and had been in that position for "maybe a year." Prior to that position she had work two years writing up discrepancies and stuff in production control and was an office assistant before that job. She reported that on February 23, 2006 she was working on her computer in the office in Building 160, when a co-worker taped her to her rolling office chair, rolled her through the office and down one step, where she was caught by two people before the chair fell over. She sustained two broken ribs and hurt her back. She was treated by her primary care physician and was referred to a pain specialist and a psychiatrist, both of whom she still sees.

The Claimant testified that approximately 30 people work in the assembly shop in Building 160 and assemble pipes for the ship. She reported that the office in which she worked is a walled off area to the side of the assembly space at the entry point. She and two other people work in the office. Her job involved staffing the agenda which was "what jobs the ship needed completed and if the job got stuck for some reason she would move them along." She reported that "to staff" a job meant stating whether the jobs had planning problems that needed resolved, the jobs needed materials, the jobs failed inspection, or had some other problem holding up the job. She reported this information to the general foreman and persons installing the assemblies on the ship at weekly meetings in an office north of the carriers. She stated her job included contacting workers in the assembly shop to try and get jobs done by the time they were due and to try and get parts needed to meet the work schedule. She reported that she would go into the assembly

[2] For reasons set forth in the Decision and Order, only evidence relevant to the issue of "status" under §902(3)(A) of the LHWCA is summarized.

shop each morning to meet with the foreman and go over the list of jobs "while the mechanics were there and I would note what the problems were or if they were going to keep their [completion] date." That was the information she would take to the weekly meeting with ship people.

The Claimant testified that "maybe a couple of times a month" a small part that was needed for a job would be delivered to her desk and she would take it to the foreman or whoever needed it in the assembly shop.

The Claimant testified that she began having leg problems on and off and that by October 2010 both legs had swelled up and her left leg locked up to where she could not move it and she was in a lot of pain. Her physician referred her to a specialist using her personal insurance. The specialist took an x-ray of her leg and reported a lot of debris that needed cleaned up. She had surgery on February 8, 2011 and was released back to work in May 2011. She was assigned work in "status and agenda" in the Building 5 sheet metal shop. She reported her work is mostly office work with two or three other people.

On cross-examination, the Claimant testified that when she sought treatment for her left leg in October 2010 she was already out of work because of her back injury. She stated that when she was released to go back to work in May 2011, she was released for work based on both her back and leg conditions.

The Claimant testified that S. Hayes was her supervisor when she worked in the office in the Building 160 pipe assembly shop. She was a salary employee at the time. She did a lot of the status and agenda work on the computer but could not get all the needed information just off the computer. Her job included ordering parts and get delivery of the parts to Building 160 so that jobs could be completed. She reported that she would contact the "057 salary people, who would expedite the material that was missing to finish the shop job." She stated that she would not obtain materials listed to do a job or make sure there was a flow of all items to the shop; but that she "was only interested in what was holding the job up." She would check in the computer to see if a job had been listed as closed out in the computer and report that at the weekly meeting. She testified that no one from the assembly shop would bring her paperwork to enter into the computer and that it was not her job to enter information, like a job was completed. Her job was to deal with those jobs that had a hang-up in completing. She stated a lot of times the location of missing material could be seen in the computer and if there was a glitch in the computer or inventory, the material expediters could get the missing material from somewhere. If the expediters were used to get material they would come to her office or call her at the office and tell her about receiving and or delivering the material. She reported that there were a couple of times per month when small items were brought by expediters to her or left on her desk and then she would give the missing material to the foreman or whoever needed it for the job and then go back into the office. She testified that as a salary employee she was not allowed to be involved in the production side of work, which had to be done by hourly employees.

The Claimant testified that the office area is divided up with the general foreman in the back section, a pipe assembly shop foreman and engineer in the middle section, and two pipe assembly shop foremen in another office section. She stated that she could have placed delivered

missing material from her desk to a foreman's desk but then the job would have waited a little longer. She reported that she was given the avenue to meeting with the foremen in the shop each morning to check on job status inquired upon by ship personnel because she was not getting cooperation from the foreman before then on good job completion dates. She used the morning meetings for a while but it didn't work so she stopped going out into the assembly shop each morning to get job status information.

The Claimant testified that she is not the person to set scheduling or job sequence when jobs are being lined-up. She receives a listing of the jobs as they are to be completed and if they are not completed on time because of missing material, her job would include locating and ordering the missing material so the jobs could be completed in the correct sequence. If the material was all present and the job completed as scheduled her involvement was only looking in the computer to make sure the job was closed out when the shop was done. She stated that "most of [the jobs] are late getting there and she would have to get a date of when they would be completed" for transfer to the ship. She reported that about 10% of the jobs were completed on schedule without problems and that there were problems with missing material as well as mechanics fitted wrong. If the mechanics were fitted wrong she would fill out an indiscrepancy report form (IR) on the office computer that would lead most of the time to getting all new material to complete the job correctly. She would give the filled out IR to the engineer in the office and fax a copy to the planning engineer using the office facsimile machine.

On cross-examination, the Claimant testified that she would find out a job was not properly done and needed an IR directly from the shop supervisor. They would come to her and say something like "we cut this pipe too short, we're going to need an IR so we can get more pipe." Sometimes a job will be delivered to the ship and the ship will send it back. The ship is supposed to write the IR but don't always; but she'll learn of the problem when the job comes back or at the weekly meeting.

Testimony of S. Hayes (TR 32-41)

S. Hayes testified that in 2006 he was the supervisor of production control and supervised 10 to 11 people throughout the shipyard, including the Claimant in the pipe assembly shop. He stated that the "agenda" referred to by the Claimant was the 20 to 25 jobs going through the pipe assembly shop and she would be responsible to report job "status" and answer to the ship construction supervisors and control people on the ship when they were going to get the respective job assemblies. To report job status, the Claimant would attend a meeting once a week with other agenda/status employees from other shops and the ship construction supervisors and go over agenda items one at a time. When they got to a pipe assembly shop item, the Claimant would report on the status of that job to let the people know what the status was of that job item.

S. Hayes testified that he told everyone working for him in 2006 that "their job function was not to move material, but it was your job to get other people to do their job to move the material, but if it's dragging behind, by all means if you felt the need to pick up a piece of material and carry it somewhere, go ahead and do that." "057 would pick up stuff at the warehouse and … lay it on her desk for her to make sure the foremen got the piece of material when it showed up." It was

OK for the Claimant to take it from her desk and give it to the right person. He reported the majority of the Claimant's work was done in front of a computer, but she could also go out into the shop to look at a job process to get a status to report. She did not have any hands-on involvement in the pipe assembly shop jobs.

S. Hayes testified that the Claimant was a salary employee and that the union contract stipulates that salary individuals are not supposed to do hourly employee work. He stated that "putting together the assembly detail is a hourly function" for trades people to perform. At the time, the Claimant was responsible as a "hull rep" for reconstruction of a carrier, and other "hull reps" were responsible for the submarine program and another for the overhaul program.

S. Hayes testified that when the Claimant wrote an IR for replacing material, it would go from engineering to a grouping department to add the material to the system, then to the planners who would add the material to a job package, then production control would order the material, shop 053 would pull the material from the warehouse and put it on a pallet, and transportation would take the material from the warehouse to a receiving warehouse near the pipe assembly building like the knitting warehouse about 100 yards away. For "hot parts" shop 057 could bypass transportation and the knitting warehouse by picking up the material directly from the warehouse and delivering it to the Claimant. He reported that the Claimant was responsible for all pipe shop jobs and she may have occasion to go to other pipe shops in the yard outside Building 160.

On cross-examination, S. Hayes testified that when the Claimant left Building 160 for her weekly meetings, she would have to wear a hard hat, safety glasses, steel-toed shoes and earmuffs as part of normal safety procedures. She would also wear safety equipment, except the hard hat, when in the pipe assembly area outside of the office. He stated that "hot parts" are priority items for a job that the ship needs. Sometimes the "hot items" could be delivered directly to the Claimant's desk.

On re-direct examination, S. Hayes testified that there are very few places in the shipyard individuals are not required to wear a hard hat, safety glasses and steel-toed shoes as safety equipment.

Medical Progress Records from Newport News Shipbuilding Medical Clinic (CX 1)

On October 30, 2006 the Claimant was seen in the Newport News Shipbuilding medical clinic following treatment by a physician for an "accidental injury." The notation states the injury event between February 14, 2006 and March 7, 2006 was reported by hotline in June 2006 and that the Clamant did not report the injury because she did not want to get anyone in trouble. The individual who tied her to the chair was fired and the two witnesses to the event were disciplined. Medical treatment records requested.

November 15, 2006 entry indicated medical records from pain management Dr. T.U. Gajjar linked the spine injury to the work injury event. Dr. M. Potter was indicated as primary care physician,

November 29, 2006 entry indicated Claimant reported some low back pain and ability to workout at Curves. Dr. Potter documented left, 11th-rib fracture and also placed Claimant with work restrictions due to her back.

January 2, 2007 indicated the left, 11th-rib fracture had healed and the Claimant had returned to work.

The records contain further entries on back problems and treatment and out-of-work periods in 2010 and 2011.

10/30/2006 Report of Injury (CX 2)

On October 30, 2006 the Claimant completed a Report of Occupational Injury in which she indicates 2:00 PM, February 23, 2006 as the injury date and 4:15 PM, March 7, 2006 as the first medical treatment date. She describes the injury event consistently with her testimony. Her medical treatment was with Dr. T.U. Gajjar. Treatment consisted of medication, physical therapy and cortisone injections. The Claimant indicated the injury as lumbar/sacral strain, fractured ribs and post-traumatic stress syndrome.

10/31/2006 Accident Questionnaire (CX 13)

On October 31, 2006 the Claimant completed an Accident Questionnaire related to the injury of 2:00 PM, February 23, 2006. The Claimant described the February 23, 2006 events consistent with her testimony.

Short-term Disability/Workers' Compensation (CX 15)

This exhibit reflects that the Claimant was paid short-term disability compensation under the State workers' compensation program for various periods between March 6, 2006 and January 26, 2007.

Newport News Shipbuilding Workers' Compensation Department Correspondence (CX 16)

By this exhibit, Respondent Employer's case manager directed a treating physician to submit billing to Respondent Employer's Workers' Compensation Department because the treatment of the Claimant involved a work related injury incurred on February 23, 2006. It also requested that a script for physical therapy be forwarded to the case manager so that it could be scheduled with "our preferred provider at a facility as close to the claimant's residence as possible."

DISCUSSION

In order for an employee to be entitled to benefits under the LHWCA the employee must establish that an injury occurred in an area covered by §903(a) of the LHWCA (situs) and that the work being performed by the employee was maritime employment under §902(3) of the LHWCA and not employment specifically excluded from coverage by §902(3)(A-H) of the LHWCA (status). "To meet the status requirement of the LHWCA, an employee must perform

necessary, essential and integral work directly related to shipbuilding, ship repair, or longshoring process." *Williams v. Newport News Shipbuilding and Dry Dock Co*., 47 F.3d 1166, *2 (4th Cir. 1995) *unpub* [reproduction clerk], citing *Northeast Marine Terminal Co. v. Caputo*, 432 US 249, 273 (1977). The status requirement is also satisfied if the employee is "engaged in work which is integral to the loading, unloading, constructing or repairing of vessels … [but] those activities must be more than episodic, momentary or incidental to non-maritime work." *Stalinski v. Electric Boat Corp*., 38 BRBS 85, 87 (2005) [quality assurance department clerk], citing *Chesapeake & Ohio Railway Co. v. Schwalb*, 493 US 40 (1989), *Stone v. Ingalls Shipbuilding, Inc*., 30 BRBS 209 (1996) [materials order clerk], and *Coleman v. Atlantic Container Service, Inc*., 22 BRBS 309 (1989) *aff'd*, 904 F.2d 611 (11th Cir. 1990); *Boone v. Newport News Shipbuilding and Dry Dock Co*., 37 BRBS 1 (2003) [materials supply clerk in warehouse]

The 1984 amendments to the LHWCA excludes specific employees from coverage as set forth in §902(3)(A-H). The LHWCA provides, in pertinent part –

> §902. Definitions
>
> ….
> (3) 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, but such term does not include –
>
> (A) Individuals employed exclusively to perform office clerical, secretarial, security, or data processing work;
> (B) …..
>
> If individuals described in clauses (A) through (F) are subject to coverage under a State workers' compensation law.
> ….

"A key factor in determining status is the nature of the activity to which an employee may be assigned. … [As] the legislative history explains … the excluded activities and occupations either lack a substantial nexus to maritime navigation and commerce or do not expose those employees to the hazards normally associated with longshoring, shipbuilding and harbor work." *Stalinsky*, supra at 87 citing H.R. Rep. No. 570. 98th Cong., 2nd Sess. (1984). Indeed "it is well established that work which may be integral to employer's operations and thus within the general definition of maritime employment may nonetheless be excluded under Section 2(3)(A) if the work is exclusively clerical and office-oriented." *Stalinsky*, supra at 87 referring to *Ladd v. Tampa Shipyards, Inc*., 32 BRBS 228 (1998) [production clerk]; *Stone*, supra at 213; *Sette v. Maher Terminals, Inc*., 27 BRBS 224 (1993).

I. The Claimant is not entitled to benefits under the LHWCA for her February 23, 2006 work-related injury due to her lack of status under §902(3)(A) of the LHWCA.

a. *The Claimant's employment at the time of February 23, 2006 work-related injury was exclusive office clerical work.*

The evidence established that the Claimant was injured on February 23, 2006 when a co-worker taped her to her rolling office chair while she was seated at her office computer, rolled her through the office and out the office door onto steps leading down into the pipe assembly shop work area in Building 160. Pipe assembly shop workers came to her assistance and kept the Claimant and chair from falling over.

On February 23, 2006 that Claimant was performing her normal work duties in the area of "production control – status and agenda." She was responsible as a hull-rep for tracking and reporting the status of 20 to 25 jobs being performed in the pipe assembly shop (agenda) for an assigned aircraft carrier which would receive the completed pipe assemblies. Most of her "status and agenda" work was performed on a computer which was within a walled-off space in Building 160 near the entrance to the building separate from the pipe assembly shop work area. The walled-off space was further subdivided in order to provide office space for the general foreman in the back section, a pipe assembly shop supervisor and engineer in a middle section, and two pipe assembly shop supervisors in another section. The Claimant was provided a desk in the office space for her work location and worked near two other individuals in the office. She used an office facsimile machine to send copies of indiscrepancy reports (IR) that she would complete. She was a salaried employee and prohibited from being involved with the production side of the pipe assembly shop work, which was done by hourly employees.

The Claimant had no involvement in setting the sequence in which the pipe assembly shop jobs were performed or in setting the schedule for the individual jobs in the pipe assembly shop. The Claimant's work centered on maintaining a computerized status report for each pipe assembly shop job through the respective job's completion and reporting on the status of each job as it was addressed in weekly meetings held in another building on the shipyard by ship construction supervisors and attended by "status-agenda" employees from other shipyard shops. When the supervisors got to the pipe assembly jobs pending completion, the Claimant would report the status of each job as the jobs were addressed at the meeting. While transiting from Building 160 to the building with the weekly meeting, the Claimant was required to wear a hard hat, safety glasses, steel-toed shoes, and ear muffs.

In order to maintain the current status of each job on the agenda, the Claimant would use her computer to determine if a job had been placed in a completed or closed status by one of the pipe assembly shop workers or supervisors. At one point the Claimant would go into the shop area in the morning to meet with the foremen and workers to update the status of the jobs on her agenda. The frequency of the daily morning meetings decreased and by February 23, 2006, the Claimant would go into the shop area to talk to a worker on the status of a job as needed. These interfaces would normally be triggered by her review of the agenda for hold-ups in meeting the job schedule, such as planning problems, missing material, failed inspection, or improper assembly. If material was missing and holding a job up, she would locate material on the computer and

notify the "057 salary people" who would expedite the material needed to finish the shop job. On the occasions that a "hot part" was needed to continue work on a job and a material expediter was involved in getting the material, small parts would be delivered directly to her office desk by shop 057, bypassing the transportation shop, and she would take the piece out to the worker on that job in the pipe assembly shop. The Claimant indicated that the need for her to take small parts from her desk to the shop floor arose only a couple of times a month. The Claimant's supervisor testified that he had instructed each of his assigned "status-agenda" employees that it was not their job function to move material "but if it's dragging behind, by all means, if you feel the need to pick up a piece of material and carry it somewhere, go ahead and do that" so it was permissible for the Claimant to take small material from her desk "to the right person." Her supervisor also reported it was permissible for the Claimant to go into the shop area to look at a job to get a status for her report. The Claimant was not to have any hand-on involvement in the pipe assembly jobs. When on the shop floor, the Claimant was required to wear steel-toed shoes, safety glasses and ear muffs.

On occasion when a pipe assembly shop worker fitted a project wrong and needed replacement material, she would be notified directly by the shop supervisor and would enter data onto an IR that she would give to the shop engineer and transmit by facsimile to the planning engineer, which would set off a chain of events with engineering, planning, production control, warehousing and transportation to have replacement material delivered to the pipe assembly shop. If a ship returned the pipe assembly because it was assembled wrong, the ship was supposed to write the IR.

The Claimant would note in her "status-agenda" report the problems that were holding-up jobs on the agenda and would report that information during the weekly "status-agenda" meeting with the ship supervisors when asked.

After deliberation on the evidence of record, this Administrative Law Judge finds that the Claimants work as a "production control – status and agenda" employee is clerical in nature and primarily performed in an office environment. Her infrequent time in the pipe assembly shop to deliver a "hot part" and her short time on the shop floor to obtain the status of a delayed job, were activities that were episodic, momentary and incidental to non-maritime work, and could have been achieved without her presence on the shop floor. Her time spent transiting through the shipyard to and from the weekly meeting with ship supervisors were routine scheduled events; but, were clerical in nature and incidental to her non-maritime work.

b. *The Claimant was subject to coverage under State workers' compensation law at the time of the February 23, 2006 work-related injury*.

CX 15 and 16 demonstrate that the Claimant was paid short term disability compensation under the Virginia Workers' Compensation Act related to the February 23, 2006 work-related injury.

c. *The Claimant is excluded from coverage under the LHWCA for her February 23, 2006 work-related injury by §902(3) of the LHWCA.*

The LHWCA specifically excludes from coverage those individuals who are employed exclusively to perform office clerical, secretarial, or data processing work if the individual is subject to coverage under a State workers' compensation law. 33 U.S.C. §902(3)

As set forth above, at the time of the February 23, 2006 work-related injury, the Claimant was employed exclusively to perform clerical and secretarial work and was subject to coverage under the Virginia Workers' Compensation Act. Accordingly, this Administrative Law Judge finds that the Claimant is not a covered employee under the LHWCA.

II. Since the Claimant is not entitled to benefits under the LHWCA due to her February 23, 2006 work-related injury, the remaining issues are moot.

As noted above, in order for an employee to be entitled to benefits under the LHWCA the employee must establish both, (i) that an injury occurred in an area covered by §903(a) of the LHWCA (situs); and (ii) that the work being performed by the employee was maritime employment under §902(3) of the LHWCA and not employment specifically excluded from coverage by §902(3)(A-H) of the LHWCA (status). See *Sidwell v. Virginia International Terminals*, 372 F.3d 238 (4th Cir. 2004); *Director, OWCP v. Perini North River Associates*, 459 US 297 (1983)

In that the Claimant has not established the status prong for entitlement under the LHWCA, she is not entitled to benefits under the LHWCA. Accordingly, the remaining issues are moot and not further addressed.

CONCLUSION AND FINDINGS OF FACT

After deliberation on all the evidence of record, including post-hearing briefs of counsel, this Administrative Law judge finds:

1. The Claimant injured her back and ribs and sustained a post-traumatic stress disorder (PTSD) on February 23, 2006.
2. The injury occurred at Newport News Shipbuilding.
3. The injury arose out of and in the course of the worker's employment with the Employer.
4. There was an Employer/Employee relationship at the time of the injury.
5. The Employer was timely notified of the injury.
6. The claim was timely filed.
7. The Notice of Controversion was timely filed.
8. The District Director's informal conference was conducted on September 14, 2011.
9. The worker's average weekly wage at the time of injury was $775.97.
10. No compensation has been paid under the LHWCA.
11. No medical benefits have been paid under the LHWCA.
12. The worker reached maximum medical improvement on June 30, 2011 for the left knee.

13. The Claimant's employment at the time of February 23, 2006 work-related injury was exclusive office clerical work.
14. The Claimant was subject to coverage under State workers' compensation law at the time of the February 23, 2006 work-related injury.
15. The Claimant is excluded from coverage under the LHWCA for her February 23, 2006 work-related injury by §902(3) of the LHWCA.
16. The Claimant is not entitled to benefits under the LHWCA for her February 23, 2006 work-related injury.

ORDER

It is hereby **ORDERED** that the claim for benefits under the LHWCA based on the February 23, 2006 work-related injury is **DENIED**.

Digitally signed by Alan L. Bergstrom
DN: CN=Alan L. Bergstrom,
OU=Administrative Law Judge, O=Office
of Administrative Law Judges,
L=Newport News, S=VA, C=US
Location: Newport News VA

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia