

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 17 December 2012

Case No: 2012-LHC-01125

OWCP No: 05-134289

In the Matter of:

DONNA T. LITTLE,

Claimant,

v.

HUNTINGTON INGALLS INDUSTRIES, INC.,
(Self-Insured),

Employer/Carrier,

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,

Party-In-Interest.

APPEARANCES: John H. Klein
Attorney for the Claimant

Christopher R. Hedrick
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 April 6, 2012 with indication of a November 4, 2011 injury date (OWCP No. 05-134289).

A formal hearing was held in Newport News, Virginia, on October 9, 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 Administrative Law Judge exhibits 1 through 5, Claimant's exhibits 1 through 3 and Employer's exhibits 1 through 5 were admitted without objection¹ (TR 5 - 9). Closing argument was made at the hearing.

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 (TR 5-7):

1. The Claimant sustained an injury to her left ankle on Friday, November 4, 2011, while walking from her parked car to Respondent's shipyard entrance prior to the beginning of her shift.
2. The Claimant's normal duties as a supply clerk for Respondent in Building 512 fall within covered maritime employment under the LHWCA.
3. Throughout the month of November 2011, there existed an employer/employee relationship between the Respondent Employer and the Claimant.
4. The Claimant gave the Respondent Employer timely notice and filed a timely claim for benefits for the November 4, 2011, left ankle injury.
5. The Employer filed timely notice under the LHWCA.
6. The Claimant's average weekly wage at the time of the November 4, 2011, left ankle injury was \$857.10.
7. The Claimant returned to work on Wednesday, November 9, 2011.
8. The Claimant suffered no economic loss within the meaning of the LHWCA since returning to work on November 9, 2011.
9. The Claimant reached maximum medical improvement for the left ankle injury on November 30, 2011.

ISSUES

The issues remaining to be resolved are (TR 7-8):

1. Did the Claimant suffer a left ankle injury on November 4, 2011, within a situs covered by the LHWCA?
2. Did the Claimant suffer a left ankle injury on November 4, 2011, which arose out of or in the course of maritime employment under the LHWCA?
3. Did the Claimant suffer an economic loss between November 4 and 8, 2011?
4. Is the Claimant entitled to temporary, total disability compensation benefits for the closed period of November 4 to 8, 2011 due to a left ankle work-related injury?

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

5. Is the Claimant entitled to reasonable and necessary medical treatment pursuant to §907 of the LHWCA for a November 4, 2011, left ankle work-related injury?

PARTY POSITIONS

Claimant's Position (TR 41-46, 48-49):

Claimant's counsel argued that the Claimant's work in handling parts and supplies for the building and repair of ships falls within the covered status requirements of the LHWCA. He submits that the Claimant injured her left ankle while transiting directly from the Respondent's 39th Street parking lot to her work site in the shipyard foundry complex. He acknowledged that the Claimant left the employer's parking lot and crossed a public street (Warwick Boulevard) and publicly owned grassy area to get to the gate where she entered a fenced-off part of the shipyard. He noted that the fenced-off foundry complex is connected to the fenced scrapyards facility of shipyard on the other side of Warrick Boulevard by railroad tracks known as "The Cut" and used by the shipyard.

Claimant's counsel submits that the Claimant parked her car in the employer's parking lot and walked directly to the shipyard's foundry complex and, even though she was on publically owned property, she should not be punished for not walking the entire route on shipyard property. He argues that it is the finest of lines to say the Claimant is in a covered situs if she had walked on the railroad track from the parking lot to the foundry facility and not in covered situs because the more direct route was over city owned property and she was in the city's grassy area near the foundry complex entrance gate when she injured her left foot. He submits that the 39th Street parking lot is adjacent to and separated from the foundry complex by a fence and adjacent to and separated from the scrapyards facility by a fence, such that it is one big maritime complex. He argues that under the *Allen Williams v. Northrop Grumman Shipbuilding, Inc.*, 44 BRBS 132 (Sep. 29, 2011), the Claimant was in a covered situs when injured. He argued that *Humphries v. Director, OWCP*, 834 F.2d 372 (4th Cir. 1987) did not apply because the Claimant was on an approximately 8 foot wide grass strip between the public highway and the foundry complex fence at the time of injury and could have reached out and touched the shipyard fence and was about ½ block from the gate entrance, versus the 5000 feet away from shipyard property as in *Humphries*. Additionally, the Claimant was going directly from one shipyard site to another shipyard site whereas *Humphries* had left the shipyard on a private venture before returning to the shipyard.

Claimant's counsel argued that the railroad tracks used by the Respondent connect all the shipyard parcels into one parcel and the railroad track crosses the public road Warwick Boulevard. He argued that *Williams* states that when all that separates the parking lot from the maritime area is a fence; it is not enough to break situs. He submits that since the Claimant was merely separated from the foundry complex by a fence at the time of her injury, she was in a covered situs at the time of injury.

Employer's Position TR (46-48):

Employer's counsel acknowledged that in *Williams* the North parking lot was separated from the shipyard by a fence but the injury occurred in the parking lot, which the Benefits Review Board held was a covered situs. He argues that the Claimant was not injured in the 39th Street parking lot but injured on property owned by the City of Newport News, Virginia, while walking on a grassy area separated from navigable waterways by a fence on one side and a public street on the other side at the time of injury so that the place of injury was not contiguous with a navigable waterway. He cited *McCormick v. Newport News Shipbuilding and Drydock Co.*, 32 BRBS 207 (1998) and *Griffin v. Newport News Shipyard and Drydock Co.*, 32 BRBS 87 (1998) in support of his argument.

SUMMARY OF RELEVANT EVIDENCE

Testimony of Claimant (TR 8-28)

The Claimant testified that she is employed by Respondent for 33 years as a supply clerk and works in the inventory supply department, Building 512. As a supply clerk she processes and issues material to the waterfront for repairs or construction on ships. The materials are picked up by another department and transported by truck or mules to the waterfront.

The Claimant testified that her work shift normally began at 7:00 AM so she had to be at the shipyard before then. In the morning of November 4, 2011 she drove her privately owned vehicle from her home to work and parked in the shipyard's 39th Street parking lot alongside Warwick Boulevard in Newport News, Virginia and under the 39th Street overpass. Parking in the 39th Street parking lot is limited to shipyard workers with a particular colored decal. There are signs limiting use of the parking lot to shipyard employees. She stated she came out of the parking lot crossed Warwick Boulevard and walked down the grass strip along the opposite side of Warwick Boulevard from the parking lot towards the entrance gate to her worksite. She reported that when she ran up the grass embankment after crossing Warwick Boulevard she did not see a little trench because the grass had grown over it and twisted her ankle. She stated she was able to continue walking to work. She reported that there is a fence that travels all the way down to the entrance gate where you enter the shipyard property for her worksite.

The Claimant testified that there is railroad track that runs from the shipyard across Warwick Boulevard and towards the foundry area. The railroad track also goes under Huntington Avenue and on to the waterfront area of the shipyard. The railroad tracks are designated for use with certain types of shipment. She reported that there is a sidewalk on the parking lot side of Warwick Boulevard that would allow someone to walk up to where the railroad tracks cross Warwick Boulevard. She stated that there are a number of shipyard employees who park their cars in the same parking lot as her and that some cross Warwick Boulevard and walk up the grass strip to the gate entrance just like she does.

The Claimant testified that she made it to work on November 4, 2011 but left for the shipyard medical clinic because of the left ankle injury. She stated the clinic sent her home so she did not complete the entire November 4, 2011 workday. On November 9, 2011 she returned to the

shipyard clinic and was returned to work to complete the workday. She stated that there was a period of light duty after returning on November 9, 2011 and she was provided full-time work by the shipyard during that period. She has returned to her full-time supply clerk work.

On cross-examination, the Claimant testified that she is not required to park in the parking lot used and that she could have walked on the public sidewalk from the parking lot all the way down to the gate guard shack and crossed Warwick Boulevard at that point. She reported that Warwick Boulevard is open to the public to use. She stated that there is a grassy strip on the eastern side of Warwick Boulevard and there is a fence. She reported that to gain entrance onto the shipyard property she has to show her security badge to the gate guard. There are signs posted that limits entrance at the gate to shipyard employees.

Upon examination by this Administrative Law Judge, the Claimant placed a blue "P" on EX 1 to indicate where she parked her car the morning of November 4, 2011 and a "G" where the gate is for entrance into the shipyard property containing Building 512 where she worked.

April 9, 2012 Deposition of Claimant (EX 3)

The Claimant testified through deposition on April 9, 2011 that she had been working in Building 512 in the scrapyards area of the shipyard for about one year. She reported that the grassy embankment on the east side of Warwick Boulevard at 39th street is approximately 7 to 8 feet wide. She stated that it was not light when she was walking from her parked car to work the morning of November 4, 2011.

The Claimant testified that she felt a twinge when she stepped into the hole and twisted her ankle. She reported to work and began working but there came a point where the pain had increased to where she could not really work and reported the problem to her superior.

Testimony of J. Kelly (TR 28-40)

Mr. Kelly testified that he is the engineering manager to the Managing Area Department 041. He stated that he is responsible for all real estate activities of the shipyard. He identified the parking lot on EX 1 marked with a "P" as one of several parking lots that can be used by employees with an aqua colored parking decal such as the Claimant's decal. He stated Warwick Boulevard is a public roadway and is also marked as route 60.

Mr. Kelly testified that the shipyard fence all along the grassy strip on the east side of Warwick Boulevard sits on the shipyard's property line. He marked the area in red on EX 1. He reported that the area between the fence and Warwick Boulevard is "city right of way" and that the shipyard is required by ordinance to cut the grass, but cannot improve, alter or do anything else to the strip without permission from the city. He identified several entrance gates to shipyard property and testified that to enter the shipyard you go through turnstiles where the gate guard takes the employee's badge and runs it through a machine to make sure that the badge is legitimate. He identified Warwick Boulevard, Huntington Avenue and Washington Avenue as public roadways, not owned by the shipyard. He reported that the shipyard's foundry complex is between Warwick Boulevard, Huntington Avenue, 42nd Street and 39th Street. He stated that

there are railroad tracks, called "The Cut", that runs out of the scrapyard area to the James River. He stated that there is a fence around the foundry complex.

Mr. Kelly testified that the sidewalk that runs along the west side of Warwick Boulevard is owned by the city. The shipyard does not maintain the sidewalk and if there is a problem with the sidewalk he calls Mr. Pear from the city to address the problem.

On cross-examination Mr. Kelly testified that the Claimant parked on shipyard property that is limited to shipyard workers. He stated that the railroad tracks cross Warwick Boulevard from the shipyard scrapyard area on the eastern side to the foundry complex on the west side of the road. The railroad tracks then go under Huntington Avenue and Washington Avenue. He stated people could walk under Huntington Avenue at that point and that people could also walk on the railroad. He agreed that where the railroad tracks crossed Warwick Boulevard there was a long railroad crossing arm that could block vehicular traffic when trains are on the track crossing Warwick Boulevard.

Upon examination by this Administrative Law Judge, Mr. Kelly testified that the parking lot is owned by the shipyard and is not fenced, though it is posted with signs designating the area as for employee parking only. He stated that the shipyard will tow cars of non-employees that are parked in the lot.

June 7, 2012 Deposition of J. Kelly (EX 2)

Mr. Kelly testified through deposition on June 7, 2012 that he is the manager of Engineering Department II in the 041 Plant Engineering Department located on the second floor of Building 103 on the James River side of the shipyard near 42nd Street and Washington Avenue. He reported that he is responsible for all shipyard real estate activities of buying, selling and leasing real property. He is responsible for maintain property maps and where the boundaries of the shipyard properties are.

Mr. Kelly testified that he is familiar with the grassy area alongside Warwick Boulevard that is between Warwick Boulevard and the shipyard fencing. He stated that the fencing along each side of Warwick Boulevard is on the shipyard property line and that the City of Newport News owns all the property between those fences along Warwick Boulevard. He testified that if Building 512 is in the scrapyard section of the shipyard it would be located inside the fenced area on the east side of Warwick Boulevard between the fence and railroad tracks.

Mr. Kelly testified that the shipyard cuts the grass outside the fence along the east side of Warwick Boulevard because of municipal code requirements and that the City is responsible for maintaining the drainage and contour of the area. He reported that several years before, the City had completed significant amount of work in the grass area outside the shipyard fence on the east side of Warwick Boulevard north of the railroad crossing.

Mr. Kelly testified that when the shipyard went from Northrop Grumman to Huntington Ingalls Industries April 1, 2011, a title search of all land owned by the shipyard was done and the shipyard maps were updated to reflect the results of the title searches

On cross-examination, Mr. Kelly testified that if there was a hole in the grassy area that he knew about he would report that to the City. He stated that he would not be permitted to fix the hole without the City's permission. He testified that the shipyard does nothing else with the grass strip along Warwick Boulevard except cut the grass as required by Municipal Code §13-150(A). He reported that the shipyard has no use for the grass strip property.

Report of Occupational Injury (Illness) (CX 1, EX 5)

In this exhibit the Claimant stated "I was crossing Warwick Blvd onto the embankment. I stepped into a hole covered with grass and twisted my left ankle foot." The report lists the time and date of injury as 6:40 AM on November 4, 2011, with the first report of injury being at 11:30AM and treatment at 1:09 PM on November 4, 2011.

Accident Questionnaire (CX 2, EX 4)

This exhibit was signed by the Claimant on Monday, November 7, 2011. In this report the Claimant indicated that there was sudden pain at the time of injury and that she last worked on November 4, 2011. The Claimant stated "I crossed Warwick Blvd onto the grassy embankment and stepped into a hole which was covered by the grass and twisted my ankle. At the time, I was in walking route to begin my shift in building 512. There is a sidewalk but it is located on the opposite side of Warwick Blvd. The reason I crossed the street at this location is due to the traffic light stopping traffic. I decided to cross the street in this area while the traffic was stopped instead of walking down the sidewalk." The detailed location of the event was listed as "On the grass embankment between 39th street and the scrapyard drive-in gate

11/4-30/2011 Shipyard Clinic Records (CX 3)

This exhibit indicates that at 1:20 PM, Friday, November 4, 2011, the Claimant reported the injury to medical personnel consistent with her testimony. She presented with left ankle edema and full range of motion in the left ankle. A left ankle x-ray was reported as negative. A sprained left ankle was assessed. The Claimant was advised to elevate her foot, apply ice or cold pack to the area, use crutches and be limited to sedentary level work.

The Claimant was seen again at 8:49 AM, Wednesday, November 9, 2011. She reported the left ankle as better though it was difficult to walk any distance. The left ankle was considered stable with tenderness and some edema. She was prescribed physical therapy for 3 to 5 times a week for 3 weeks. She was placed on work restrictions with no overhead lifting, crawling, kneeling, use of vibratory tools, pushing/pulling with both hands, and no lifting over 10 pounds.

At 1:22 PM, Thursday, November 10, 2011, the Claimant complained of spasm and cramping in the back of left leg into the thigh area. Mild tenderness was noted and Doppler vascular studies were ordered to rule-out deep vein thrombosis. The test was performed at Riverside Medical Center the same day and reported as negative for deep vein thrombosis. Her work restrictions were changed to sedentary level work that involved sitting and allowed for the left leg to be elevated.

When seen on November 16, 2011, the Claimant reported she was doing better and was weight bearing without crutches, but still had some left leg soreness. She was advised to continue her physical therapy. When seen on November 30, 2011, she reported her left ankle and foot much better and was cleared to return to work at full regular duty.

City of Newport News Downtown Map (EX 1)

This exhibit was used by the witnesses to indicate the location of the parking lot used by the Claimant, location of roadways, location of railroad tracks across Warwick Boulevard and under Washington Street and Huntington Street, and the location of the gate normally used by the Claimant to enter the shipyard controlled area containing Building 512.

The parking lot used by the Claimant was marked with a “P” and is located on the west side of Warwick Boulevard (route 60) between 38th and 39th Streets. The grass embankment walked by the Claimant on the east side of Warwick Boulevard between 39th Street and the shipyard gate by the railroad tracks was circled in red. The gate area on the east side of Warwick Boulevard was marked by a blue “G” and is located adjacent to the route 60 sign centered on Warwick Boulevard. The railroad tracts identified as “The Cut” in testimony is indicated in brown and located from the route 60 sign on Warwick Boulevard moving to the southwest under Huntington Avenue and Washington Avenue and into the waterfront portion of the shipyard between 39th Street and 41st Street.

DISCUSSION

Compensable injuries under the Act are limited to “accidental injury or death 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, and includes an injury caused by the willful act of a third person directed against an employee because of his employment,” 33 USC §902(2) of the Act.

In order to be entitled to benefits under the Act, a claimant must satisfy both the occupational “status” test under §902(3) of the Act and the geographical “situs” test under §903(a) of the Act. *Herb’s Welding, Inc. v. Gray*, 470 US 414 (1985); *Sidwell v. Express Container Services, Inc.*, 71 F.3d 1134 (4th Cir. 1995)

To meet the maritime “situs” requirement of §903(a) of the Act, the Claimant must establish that, at the time of injury, she was “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 USC §903(a).

In this case the Claimant alleges an injury occurring in the grass embankment adjoining the shipyard property at the fence line along the east side of Warwick Boulevard. Since the record failed to demonstrate that this area was a pier, wharf, dry dock, marine terminal, building way or marine railway, the Claimant can only satisfy the maritime “situs” requirement if she establishes

by a preponderance of the evidence that the grassy embankment area of land was an “other” adjoining area that is customarily used by the Employer in loading, unloading, repairing, dismantling or building a vessel.

The general test to determine the issue of “situs” in the Fourth Circuit is set forth in *Sidwell v. Express Container Services, Inc.*, 71 F.3d 1134 (4th Cir. 1995). There the Court noted that the U.S. Supreme Court had not articulated a test for determining what was an “other adjoining area” within the meaning of § 903(a) of the Act. The Court examined and specifically rejected the approach of the Courts of Appeal for the Third, Fifth and Ninth Circuits.² The Court also noted it had examined the issue of “situs” in earlier cases of *Newport News Shipbuilding & Dry Dock Co. v. Graham*, 537 F. 2d 167 (4th Cir, 1978), *cert denied*, 439 US 979 (1978), where a comprehensive test was not offered, and in *Humphries v. Director, OWCP*, 834 F. 2d 372 (4th Cir. 1987), *cert. denied*, 485 US 1028 (1988). The Court stated that it “reject[ed] the idea that Congress intended to substitute for the shoreline another hard line” in the 1972 amendments to the Act and found that §903(a) of the Act was a clearly stated intention of Congress that “the LHWCA requires that covered situses actually ‘adjoin’ navigable waters ... that is, if it is ‘contiguous with’ or otherwise ‘touches’ such waters. If there are other areas between the navigable waters and the area in question, the latter area simply is not ‘adjoining’ the waters under any reasonable definition of that term.” *Sidwell v. Express Container Services, Inc.*, supra, at 1138. The Court went on to state that the additional statutory language of “customarily used by the employer in loading, unloading, repairing, dismantling, or building a vessel” was a further restriction on “other adjoining areas” such that the geographical “situs” must first adjoin navigable waters and then be customarily used by the employer in a certain manner. The Court acknowledged in *Jonathan Corp. v. Brickhouse*, 142 F.3d 217, 220 (4th Cir. 1998) that “the situs requirements still establish geographical boundary for coverage [and] as with any geographical boundary, workers can still move across that boundary into and out of the Act’s coverage.” (citing *Herb’s Welding, Inc. v. Grey*, 470 US 414, 426-427 (1985))

In this case the evidence established that the 7 to 8 foot wide grassy embankment on which the Claimant stepped into a hole and twisted her ankle on November 4, 2011 ran along the east side of Warwick Boulevard between Warwick Boulevard and the shipyard fence line placed on the edge of shipyard property. The pertinent section of grassy embankment extended from 39th Street along Warwick Boulevard in a northerly direction pass the shipyard gate used to enter the Employer’s scrapyard area of the shipyard located near the railroad tracks that cross Warwick Boulevard in a westerly direction from the gate entrance area. The pertinent section of grassy embankment and Warwick Boulevard are owned and controlled by the City of Newport News. Pursuant to the local code requirements, the Employer mows the grass to keep the height within city requirements. Mr. Kelly testified that the grassy embankment area is not utilized by the shipyard for any purpose.

² The Court of Appeals for the Ninth Circuit established a four factor test in *Brady-Hamilton Stevedore Co. v. Herron*, 568 F.2d 137 (9th Cir. 1978). The Court of Appeals for the Fifth Circuit “eliminated the situs requirement in favor of a case-by-case, ‘broad and nebulous’ inquiry” in *Texports Stevedore Co. v. Winchester*, 632 F.2d 504 (5th Cir. 1980) (*en banc*), *cert. denied*, 452 US 905 (1981). The Court of Appeals for the Third Circuit substituted an “employment nexus (status) with maritime activity” to effectively eliminate a situs requirement in *Sea-Land Service, Inc. v. Director, OWCP*, 540 F.2d 629 (3rd Cir. 1976).

The Claimant did not introduce any evidence that would indicate that the shipyard uses the grassy embankment to load or unload vessels, dismantle vessels, repair vessels, or build vessels. Without such use, the grassy embankment that abuts shipyard property, but is not owned by the shipyard and is outside the perimeter of the shipyard, cannot be considered “other adjoining area customarily used by the employer in loading, unloading, repairing, dismantling or building a vessel” and cannot be considered a covered situs under §903(a) of the LHWCA.

Claimant’s counsel argues that *Williams*, supra, applies in this case because the shipyard parking lot in which the Claimant parked her car adjoins shipyard property that is contiguous with navigable waters and she was injured while walking directly from her parked car to her worksite in the shipyard. In *Williams* the Court recognized that “it is not unusual for marine terminals to cover hundreds of acres [and] such terminals are covered in their entirety; it is not necessary that the precise location of an injury by used for loading or unloading operations ... it suffices that the overall area which includes the location [of injury] is part of the adjoining water.” *Williams* at page 3 citing *Sidwell*, supra at 1140, n.11. Under *Williams* there is no issue that the 39th Street parking lot adjoins “The Cut” and foundry areas of the shipyard, is within the perimeter of the shipyard adjacent to the water, and is a covered situs under the LHWCA. However, Warwick Boulevard and that parcel of land described as a 7 to 8 foot wide strip of grassy embankment being traversed by the Claimant at the time of her injury was not owned by the shipyard and was not within the perimeter of the shipyard adjacent to the water. That real property was owned and maintained by the City of Newport News, Virginia, and was outside the shipyard’s perimeter.

Here the Claimant had arrived at the shipyard when she parked in the shipyard’s 39th Street parking lot. She left the shipyard when she moved onto the City of Newport News property of Warwick Boulevard and the adjacent grassy embankment. She has failed to establish that the City of Newport News owned property was “customarily used by the employer in loading, unloading, repairing, dismantling, or building a vessel.” She reentered the shipyard when she moved into the shipyard gate entrance at the railroad tracks and scrapyards area of the shipyard. Such movement across geographical boundaries is that envisioned by the Court under §903(a).

Since, the Claimant has failed to establish that the area owned by the City of Newport News outside the perimeter of the shipyard and was being traversed by the Claimant between the 39th Street parking lot and scrapyards entrance, was customarily used by the Employer for specified maritime activity, this Administrative Law Judge finds that the alleged injuries did not occur in a maritime “situs” as required by 33 USC §903(a) and that the Claimant is not entitled to benefits under the Act. Since the Claimant has not established the required situs, the remaining issues in this case are moot.

CONCLUSION AND FINDINGS OF FACT

After deliberation on all the evidence of record, including argument of counsel, this Administrative Law judge finds:

1. The Claimant sustained an injury to her left ankle on Friday, November 4, 2011, while walking from her parked car to Respondent’s shipyard entrance prior to the beginning of her shift.

2. The Claimant's normal duties as a supply clerk for Respondent in Building 512 fall within covered maritime employment under the LHWCA.
3. Throughout the month of November 2011, there existed an employer/employee relationship between the Respondent Employer and the Claimant.
4. The Claimant gave the Respondent Employer timely notice and filed a timely claim for benefits for the November 4, 2011, left ankle injury.
5. The Employer filed timely notice under the LHWCA.
6. The Claimant's average weekly wage at the time of the November 4, 2011, left ankle injury was \$857.10.
7. The Claimant returned to work on Wednesday, November 9, 2011.
8. The Claimant suffered no economic loss within the meaning of the LHWCA since returning to work on November 9, 2011.
9. The Claimant reached maximum medical improvement for the left ankle injury on November 30, 2011.
10. The Claimant was not in a covered maritime "situs" under § 903(a) of the Act at the time of her left ankle injury of November 4, 2011.
11. The Claimant is not entitled to benefits under the LHWCA for the left ankle injury of November 4, 2011.

ORDER

It is hereby ORDERED that the claim for benefits filed by the Claimant for the lower extremity injury of November 4, 2011 **is DENIED**.

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia