BRB Nos. 08-0510
and 08-0510A

M.J.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
HUNT ENGINE, INCORPORATED	)	
	)	
Employer-Respondent	)	
	)	
and	)	
	)	
ACE FIRE UNDERWRITERS INSURANCE COMPANY	)	DATE ISSUED: 12/17/2008
	)	
Carrier-Respondent Cross-Petitioner	)	
	)	
AMERICAN LONGSHORE MUTUAL ASSOCIATION, LTD	)	
	)	
Carrier-Respondent Cross-Respondent	)	
	)	
AMERICAN HOME ASSURANCE COMPANY	)	
	)	
Carrier-Respondent Cross-Respondent	)	
	)	
AIG	)	
	)	
Carrier-Respondent Cross-Respondent	)	DECISION and ORDER

Appeals of the Order Granting American Home Assurance's Motion for Summary Decision, the Order Denying American Longshore Mutual Association's Motion for Summary Decision, the Order Granting ACE Fire

Underwriters' Motion for Summary Decision and Canceling Hearing, the Amended Order Granting ACE Fire Underwriters' Motion for Summary Decision and Canceling Hearing, and the Order Denying Claimant's Petition for Reconsideration of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

Francesco J. Guastella (Frischhertz & Associates), New Orleans, Louisiana, for claimant.

Charles E. Leche (Deutsch, Kerrigan & Stiles, L.L.P.), New Orleans, Louisiana, for carrier ACE Fire Underwriters Insurance Company.

Douglas L. Brown (Brady Radcliff & Brown, LLP), Mobile, Alabama, for carrier American Longshore Mutual Association, Ltd.

Alan G. Brackett, Jon B. Robinson and Robert N. Popich (Mouledoux, Bland, Legrand & Brackett, LLC), New Orleans, Louisiana, for employer.

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

PER CURIAM:

Claimant appeals and ACE Fire Underwriters Insurance Company (ACE) cross-appeals the Order Granting American Home Assurance's Motion for Summary Decision, the Order Denying American Longshore Mutual Association's Motion for Summary Decision, the Order Granting ACE Fire Underwriters' Motion for Summary Decision and Canceling Hearing, the Amended Order Granting ACE Fire Underwriters' Motion for Summary Decision and Canceling Hearing, and the Order Denying Claimant's Petition for Reconsideration (2006-LHC-01416) of Administrative Law Judge Clement J. Kennington rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq*. (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant began working for employer as a diesel mechanic servicing diesel engines and generators in 1980. Claimant sought medical treatment for pain in his back and numbness in his right leg in 1989 and underwent surgery on his lower back and neck in 1989. Cl. Ex. 1 at 28. Claimant did not file a claim for this injury and his medical

expenses were paid by his private health insurer. Claimant eventually returned to work without restrictions.

In 1996, claimant began to suffer symptoms of pain in his back and numbness of his leg. He sought treatment with Dr. Whitecloud, who recommended conservative treatment, and a second opinion from Dr. Sirna, who recommended that claimant change to a less strenuous occupation. Dr. Sirna also opined that claimant will need multiple surgeries to treat his recurring stenosis. Claimant requested a change in duties at work and was made the shop superintendent over the engine remanufacture group at employer's Harvey facility. Cl. Ex. 1 at 46-47. Claimant's superintendent duties required that he regularly lift between 51 and 100 pounds and occasional twisting, climbing, reaching above shoulder level, crouching and stooping. Cl. Ex. 1 at 50, 55-56. Claimant's symptoms of pain continued and he reported in December 2001 that he could no longer do his work because of his pain. He has not returned to work since that date and filed a claim against employer under the Act in February 2002, alleging a repetitive trauma injury to his back and neck. Claimant also alleged he sustained injuries to his arms and hands. ACE Motion for Summary Decision Ex. A.

The administrative law judge first granted the motion of American Home Assurance (AHA) to be dismissed from the proceedings and denied the motion of American Longshore Mutual Association (ALMA) to be dismissed from the proceedings. *See* Orders dated October 2, 2007. With regard to AHA, the administrative law judge stated that claimant either suffered the natural progression of an injury which occurred in 1989, or an aggravation of an injury suffered in May 1996, that resulted in disability in December 2001, and at neither time was AHA the insurer. With regard to ALMA, the administrative law judge stated that claimant either suffered a natural progression of his 1989 injury or claimant suffered an aggravation of his back condition in 1996 which progressed to disability in 2001, or claimant suffered an aggravation in May 2001 which progressed to disability in December 2001. The administrative law judge observed that under these scenarios, ALMA could not be held liable, but, if claimant suffered an aggravation of his back condition in December 2001 which became disabling, ALMA could be held liable.[1]

The administrative law judge next addressed ACE's motion for summary decision, which alleged, *inter alia*, that claimant was not a maritime employee pursuant to Section 2(3), 33 U.S.C. §902(3), and was not injured on a covered situs, 33 U.S.C. §903(a). The administrative law judge found that claimant did not establish he was injured on a

[1] In his October 22, 2007, Order denying a motion to correct, the administrative law judge specifically stated that AIG was properly identified as a potentially responsible insurer.

covered situs or worked in covered employment. Therefore, the administrative law judge granted ACE's motion for summary decision and denied the claim for benefits. *See* Orders dated February 22 and 27, 2008. Claimant filed a motion for reconsideration of this decision, which the administrative law judge denied. The administrative law judge found that employer's Harvey facility is not an "adjoining area" pursuant to Section 3(a) of the Act and that claimant did not establish he was injured while performing repairs on maritime equipment. Thus, the administrative law judge found that claimant did not satisfy the Act's situs requirement. In addition, the administrative law judge found there is nothing inherently maritime about employer's engine repair work as most of employer's business involves repair of engines used in land-based facilities. The administrative law judge determined that neither claimant nor employer performs any maritime function. In addition, the administrative law judge found that claimant's work on vessels was momentary and episodic and he thus concluded that claimant failed to establish the Act's status requirement. Therefore, the administrative law judge affirmed his finding that claimant is not covered under the Act. *See* Orders dated February 27 and March 28, 2008.

On appeal, claimant contends the administrative law judge erred in granting summary decision against him as the administrative law judge misapplied the law in finding that claimant did not satisfy the Act's situs and status elements. Carriers ACE and ALMA respond to claimant's appeal, urging affirmance of the administrative law judge's grant of summary decision. ACE has filed a protective cross-appeal, contending that if the Board vacates the administrative law judge's findings that coverage was not established, the case must also be remanded to address the responsible carrier issues and any other defenses raised to claimant's claim on the merits.

In determining whether to grant a party's motion for summary decision, the administrative law judge must determine, after viewing the evidence in the light most favorable to the non-moving party, whether there are any genuine issues of material fact and whether the moving party is entitled to summary decision as a matter of law. *Morgan v. Cascade General, Inc.*, 40 BRBS 9 (2006); *see also O'Hara v. Weeks Marine, Inc.*, 294 F.3d 55 (2d Cir. 2002); *Brockington v. Certified Electric, Inc.*, 903 F.2d 1523 (11th Cir. 1990), *cert. denied*, 498 U.S. 1026 (1991); *Buck v. General Dynamics Corp.*, 37 BRBS 53 (2003); 29 C.F.R. §§18.40(c), 18.41(a). In this case, the administrative law judge found that claimant failed to establish essential elements of his claim, *i.e.*, that he was a covered employee injured on a covered situs, and thus granted summary decision denying benefits.

For a claim to be covered by the Act, a claimant must establish that his injury occurred upon the navigable waters of the United States, including any dry dock, or that it occurred on a landward area covered by Section 3(a), and that his work is maritime in

nature pursuant to Section 2(3) and is not specifically excluded by any provision in the Act. 33 U.S.C. §§902(3), 903(a); *Director, OWCP v. Perini North River Associates*, 459 U.S. 297, 15 BRBS 62(CRT) (1983); *P.C. Pfeiffer Co. v. Ford*, 444 U.S. 69, 11 BRBS 320 (1979); *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 6 BRBS 150 (1977). Thus, unless claimant is injured on actual navigable waters in the course of his employment, a claimant must separately satisfy both the "situs" and the "status" requirements in order to demonstrate that coverage under the Act. *Id.*

We agree with claimant that the administrative law judge erred in granting summary decision in this case, as the administrative law judge's analysis of the situs and status issues does not accord with law. Thus, for the reasons discussed below, we vacate the denial of benefits and we remand the case for further findings regarding the Act's coverage provisions. Moreover, the administrative law judge did not, preliminarily, make a critical finding of fact regarding when claimant's injury or injuries occurred.[2] It is necessary to have this information prior to determining claimant's coverage under the Act. The administrative law judge noted that there are four scenarios in which claimant could have sustained an injury that resulted in claimant's disabling condition in December 2001. The administrative law judge found that: 1) claimant suffered an injury in 1989, the natural progression of which resulted in disability in December 2001; or 2) he suffered an aggravation of his previous injury or a new injury in May 1996, the natural progression of which resulted in disability in December 2001; or 3) he suffered an aggravation of a previous injury or a new injury in May 2001, which resulted in disability in December 2001; or 4) he suffered an aggravation of a previous injury or a new injury in December 2001, which resulted in disability. *See* Orders of October 2, 2007 at 5. In this case, claimant alleged a repetitive trauma injury. It appears that the administrative law judge's scenarios contemplate only that claimant sustained a traumatic injury as of a date certain. However, a traumatic injury may occur gradually as a result of continuing exposure to conditions of employment. *See LeBlanc v. Cooper/T. Smith Stevedoring, Inc.*, 130 F.3d. 157, 31 BRBS 195(CRT) (5th Cir. 1997); *see also Pittman v. Jeffboat, Inc.*, 18 BRBS 212 (1986); *Gardner v. Bath Iron Works Corp.*, 11 BRBS 556 (1979), *aff'd sub nom. Gardner v. Director, OWCP*, 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981).

On remand, the administrative law judge must first make a finding whether claimant's back condition is related to the working conditions on which his claim was based, *see* 33 U.S.C. §920(a), and then evaluate the situs and status elements with regard to claimant's location and work duties at the time of his last exposure to those working conditions. If claimant's injury occurred within the Act's coverage provisions, he

[2] ACE correctly contends on appeal that the administrative law judge must address its contention that claimant did not sustain any work-related injuries, and any other defenses raised by the named carriers.

remains entitled to benefits for any disability resulting therefrom, notwithstanding the occurrence of a subsequent injury that may not fall within the Act's coverage.[3] *See Meardry v. Int'l Paper Co.*, 30 BRBS 160 (1996); *see generally Fulks v. Avondale Shipyards, Inc.*, 637 F.2d 1008, 12 BRBS 975 (5th Cir.), *cert. denied*, 454 U.S. 1080 (1981). If the administrative law judge finds that claimant sustained a compensable injury, he must make findings regarding the responsible carrier consistent with his date of injury finding. *See Marinette Marine Corp. v. Director, OWCP*, 431 F.3d 1032, 39 BRBS 82(CRT) (7th Cir. 2005); *Foundation Constructors, Inc. v. Director, OWCP*, 950 F.2d 621, 25 BRBS 71(CRT) (9th Cir. 1991). As the administrative law judge must make new findings regarding claimant's date of injury, we also vacate the dismissal of AHA as a potentially liable carrier so that it may participate in the remand proceedings.[4] We turn, then, to the administrative law judge's findings regarding situs and status.

SITUS

Section 3(a) of the Act states:

> Except as otherwise provided in this section, compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from a injury occurring 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).

[3] If there is evidence of record apportioning claimant's disability between a covered injury and a subsequent non-covered injury, employer is relieved of liability for disability caused by the subsequent non-covered injury. *Leach v. Thompson's Dairy, Inc.*, 13 BRBS 231 (1981). If there is no apportionment, employer is liable for claimant's entire disabling condition. *Plappert v. Marine Corps Exchange*, 31 BRBS 13 (1997), *aff'd on recon. en banc*, 31 BRBS 109 (1997). If claimant sustained a covered work injury that aggravated a pre-existing condition, employer is liable for the entire resultant disability. *Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45(CRT) (5th Cir. 1986) (*en banc*)

[4] AHA was on the risk from August 6, 1996 to August 6, 1998.

33 U.S.C. §903(a). Claimant's injury must have occurred on a covered situs in order to be compensable.[5] *Alford v. MP Industries of Florida*, 16 BRBS 261 (1984). To be considered a covered situs, a site must have a maritime nexus, but it need not be used exclusively or primarily for maritime purposes. *See Texports Stevedore Co. v. Winchester*, 632 F.2d 504, 12 BRBS 719 (5th Cir. 1980) (*en banc*), *cert. denied*, 452 U.S. 905 (1981). In this case, employer's facility is not an enumerated site such as a pier or wharf. However, claimant contends that the facility is an "other adjoining area."

An area may be considered an "adjoining area" within the meaning of the Act if it is in the vicinity of navigable waters, or in a neighboring area, and it is customarily used for maritime activity. *Id.*; *see also Triguero v. Consolidated Rail Corp.*, 932 F.2d 95 (2d Cir. 1991); *Brady-Hamilton Stevedore Co. v. Herron*, 568 F.2d 137, 7 BRBS 409 (9th Cir. 1978). In determining whether a site is within an "adjoining area" under Section 3(a), the United States Court of Appeals for the Fifth Circuit, within whose jurisdiction this case arises, has held that the perimeter of an area is defined by function rather than labels or fence lines; thus, a covered area encompasses sites customarily used for maritime activity by any statutory employer. Moreover, an area can be "adjoining" if it is "close to or in the vicinity of navigable waters, or in a neighboring area." *Winchester*, 632 F.2d 504, 514, 12 BRBS 719, 727; *see also Sisson v. Davis & Sons, Inc.*, 131 F.3d 555, 31 BRBS 199(CRT) (5th Cir. 1998). Thus, the geographic proximity to navigable waters and the functional relationship of the site to those waters are critical in determining whether a location is a covered situs. *See Stratton v. Weedon Engineering Co.*, 35 BRBS 1 (2001) (*en banc*). In *Winchester*, the court held that the claimant's injury in a gear room located five blocks from the nearest dock occurred on a covered site as it occurred within an area customarily used by employers for loading and unloading. Not only was the gear room in a general area adjoining navigable waters where other gear rooms were located and which was thus customarily used for loading activities, but the gear room itself also had a sufficient nexus to the waterfront to be a covered site. More recently, the Fifth Circuit held a worker injured 50 to 300 feet from the Harvey Canal, a navigable waterway, was not injured on a covered situs since at the time of the worker's injury, the facility was not yet used to load or unload cargo, or to repair, dismantle or build a vessel. *Boomtown Belle Casino v. Bazor*, 313 F.3d 300 , 36 BRBS 79(CRT) (5th Cir. 2002). The court stated that whether a site is an "adjoining area" is determined not only by geographic proximity to navigable waters, but also by the nature of the work performed there at the time of the injury. *Id.*, 313 F.3d at 304, 36 BRBS at 83(CRT). In *Tarver v. Bo-Mac Contractors, Inc.*, 384 F.3d 180, 38 BRBS 71(CRT) (5th Cir. 2004), the Fifth Circuit held that a construction site near the intracoastal waterway used at the time of injury to build barge slips was not a covered situs because it was not yet serving a maritime purpose.

[5] Since his claim asserts a repetitive trauma injury, claimant's coverage is determined by his location at the time of the work activities which caused his harm.

The administrative law judge found that employer's diesel repair facility is not an adjoining area. Without further analysis of the evidence of record, the administrative law judge's finding cannot be affirmed. He stated that the shop is not "located on or adjacent to" any navigable waterway and that there is no direct access from the shop to the canal. The shop is separated from the Harvey Canal by Destrehan Avenue and 200 feet of buildings. The location of the shop is not dispositive of the situs issue, as it is in the general geographic area of a navigable waterway, *Winchester*, 632 F.2d at 514, 12 BRBS at 719, and the Fifth Circuit has stated that "absolute contiguity" with navigable waters is not required, *Sisson*, 131 F.3d at 557, 31 BRBS at 200(CRT). The administrative law judge also relied on the absence of evidence that the businesses surrounding employer's shop are maritime in nature. In addition, it is uncontested that the items repaired at the facility are transported by truck to and from the shop, and not through use of the canal. *See* Order of February 22, 2008 at 3. While these facts may support the conclusion that the shop does not have any functional relationship with the canal, *see Charles v. Universal Ogden Services*, 37 BRBS 37 (2003), the administrative law judge did not address evidence that employees would walk from the shop to the canal to perform repairs on vessels in the canal. Claimant's Petition for Reconsideration Ex. 2 at 57. This connection to the canal may be sufficient to bring employer's shop within the Act's situs coverage, pursuant to *Winchester*. *See Pearson v. Jered Brown Brothers*, 39 BRBS 59 (2005), *aff'd on recon. en banc*, 40 BRBS 2 (2006). However, it is unclear whether employer performed this type of repair work throughout claimant's employment; the administrative law judge found that claimant's personal involvement in this work ended in 1996 when he became a superintendent. Nonetheless, if the shop had this relationship to the navigable canal at the time of claimant's injury, the shop may be a covered situs regardless of the nature of claimant's personal work after 1996. Therefore, the case is remanded for further findings regarding the relationship of employer's shop to navigable waters, and for the administrative law judge to evaluate whether the shop was a covered situs as of the time of claimant's injury or injuries.

Moreover, the administrative law judge did not sufficiently address the contention that claimant was injured on actual navigable waters. *Perini North River Associates*, 459 U.S. 297, 15 BRBS 62(CRT). Claimant filed a claim for a repetitive trauma injury in this case and contended before the administrative law judge, as he does on appeal, that his employment required that he work aboard vessels on navigable waters. Employer's representative and claimant stated in affidavits that a number of the jobs claimant performed over the last twenty years of his employment occurred on vessels. Claimant's Petition for Reconsideration Exs. 1, 2. The administrative law judge stated, in noting the "uncontested facts," that claimant worked on vessels in September 2000 and November 1998. The administrative law judge also noted that claimant worked on "rigs;" he did not state if these are stationary rigs or not, which is a crucial distinction for the "navigable waters" inquiry. Work performed on any vessel, including floating rigs and jack-up rigs, in navigable waters is covered by Section 3(a). *Lockheed Martin Corp. v. Morganti*, 412

F.3d 407, 39 BRBS 37(CRT) (2d Cir. 2005), *cert. denied*, 547 U.S. 1175 (2006); *McCullough v. Marathon Letourneau Co.*, 22 BRBS 359 (1989). Moreover, prior to 1996, claimant was dispatched by employer to the Harvey Canal to work on vessels for Avondale Quick Repair. Claimant's Petition for Reconsideration Ex. 2 at 57. The administrative law judge stated this was a "rare" occasion in finding that claimant failed to meet the status test. He did not evaluate this employment in terms of "injury on navigable water." If claimant's duties on a vessel on navigable waters in the course of his employment involved repetitive trauma found to be a cause of his injury, he is covered under the Act pursuant to *Perini*; both the situs and status tests are met under these circumstances. *Anaya v. Traylor Brothers, Inc.*, 478 F.3d 251 (5th Cir. 2007), *cert. denied*, 128 S.Ct. 68 (2008); *see also Bienvenu v. Texaco, Inc.*, 164 F.3d 901, 32 BRBS 217(CRT) (5th Cir.1999) (*en banc*). Therefore, on remand, the administrative law judge must determine if claimant was injured while employed on actual navigable waters.

STATUS

We next address the administrative law judge's finding that claimant did not establish that he was engaged in "maritime employment" pursuant to Section 2(3). Section 2(3) states,

> 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). A claimant need not have been engaged in maritime activities at the time of the injury as long as he spent "at least some of [his] time" in covered activities. *Caputo*, 432 U.S. 249, 6 BRBS 150; *see also Maher Terminals, Inc. v. Director, OWCP*, 330 F.3d 162, 37 BRBS 42(CRT) (3d Cir. 2003); *Smith v. Universal Fabricators, Inc.*, 21 BRBS 83 (1988), *aff'd*, 878 F.2d 843, 22 BRBS 104(CRT) (5th Cir. 1989), *cert. denied*, 493 U.S. 1070 (1990). A claimant's work need not be spent primarily in covered duties if his covered activities are more than episodic, momentary, or incidental to non-maritime work. *Boudloche v. Howard Trucking Co.*, 632 F.2d 1346, 12 BRBS 732 (5th Cir. 1980), *cert. denied*, 452 U.S. 915 (1981); *McGoey v. Chiquita Brands Int'l*, 30 BRBS 237 (1997).

The administrative law judge addressed the general nature of employer's work and found that only 10 percent was related to repair of marine components. Order of March 28, 2008 at 5. He deemed this amount "incidental." Order of February 27, 2008 at 1. In considering claimant's work, the administrative law judge addressed his work aboard vessels between November 1998 and September 2000. He found that claimant spent only

1.1 percent of his time working aboard vessels during this period, and stated that his work on vessels between 1980 and 1996 was even more episodic because he worked on vessels on the Harvey Canal on "rare occasions." Order of March 28, 2008 at 5.

The administrative law judge failed to address claimant's overall employment and merged the status and situs requirements in finding that claimant's duties on vessels were momentary or episodic. Employer's representative testified that employer's business is 5 to 10 percent maritime, 70 percent related to land-based facilities and offshore drill rigs, and 15 to 20 percent related to stationary power plants. Cl. Ex. 2 at 10. He also testified that claimant worked on the engines in roughly the same ratio until 1996. Cl. Ex. 2 at 13. After 1996, claimant became a shop foreman who supervised other diesel mechanics.

Vessel engines are components of ships, and the construction and repair of engines, therefore, are "shipbuilding" or "ship repair." *Alford v. American Bridge Div.*, 642 F.2d 807, 13 BRBS 268, *modified in part on reh'g*, 655 F.2d 86, 13 BRBS 837, *modified in part*, 668 F.2d 791 (5th Cir. 1981), *cert. denied*, 455 U.S. 927 (1982). The administrative law judge thus erred in stating that employer is not sufficiently engaged in such work within the meaning of the Act. Claimant's work on vessel engines both as a diesel mechanic and as a supervisor of other diesel mechanics is covered work, provided it is more than momentary or episodic. The Fifth Circuit held in *Boudloche*, 632 F.2d 1346, 12 BRBS 732, that a truck driver was covered who regularly performed vessel loading and unloading during his pick-ups and deliveries as a part of his overall work time; the court rejected the Board's holding that a "substantial" portion of the claimant's work must be in covered employment. As the claimant was "directed to regularly perform *some* portion of what was indisputably Longshore work" he was covered under the Act. *Id*., 632 F.2d at 1348, 12 BRBS at 734 (emphasis in original); *see also Lennon v. Waterfront Transport*, 20 F.3d 658, 28 BRBS 22(CRT) (5th Cir. 1994); *Howard v. Rebel Well Service*, 632 F.2d 1348, 12 BRBS 734 (5th Cir. 1980) (claimant covered where 10 percent of his time was regularly spent in ship repair). Thus, if claimant worked on vessel components for 10 percent of his time, he is a "maritime employee." Therefore, as the administrative law judge misstated and misapplied the relevant law, his finding that claimant did not establish the status requirement is vacated and the case is remanded for further findings.[6]

[6] As this case arises in the Fifth Circuit, claimant is entitled to the Act's coverage if he was injured while performing maritime duties on a covered situs, regardless of his overall employment duties. *Odom Constr. Co., Inc. v. U. S. Dept. of Labor*, 622 F.2d 110, 12 BRBS 396 (5th Cir. 1980), *cert. denied*, 450 U.S. 966 (1981); *Schilhab v. Intercontinental Terminals, Inc*., 35 BRBS 118 (2001).

Accordingly, we vacate administrative law judge's Order dismissing AHA from the proceedings and the Orders granting ACE's motion for summary decision and denying the claim. The case is remanded for further findings consistent with this opinion.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge