



DOL Board declares shift change is a legitimate personnel action and denies claim for LHWCA benefits

By Michael H. Weier ■ October 30, 2015

The U.S. Department of Labor Benefits Review Board (Board) in *Nathaniel E. Raiford v. Huntington Ingalls Industries, Inc.*¹ declared an employer's decision to change a shift that gave rise to claimant's stroke and altered mental state was a legitimate personnel action, and denied disability and medical benefits under the Longshore and Harbor Workers' Compensation Act (LHWCA).²

Nathaniel Raiford ("Claimant") worked for nearly 30 years as a painter in the sign shop of Huntington Ingalls Industries, Inc. ("Employer"). When the sign shop closed, the Employer reassigned Claimant to painting on ships and shortly thereafter moved Claimant from first (day) shift to second (evening) shift. Several months following the shift change, Claimant suffered a cerebral vascular event (stroke), depression and anxiety.

Claimant filed a claim for medical and compensation benefits under the LHWCA. He alleged dissatisfaction with the shift change and concern regarding the commute home because he did not drive and the local transit bus did not operate when the second shift ended. Claimant also alleged an altered sleep pattern, concentration difficulties and altered mental status due to the shift change.

The Employer denied the claim and Claimant appealed to the Board. At hearing on appeal, Claimant had the burden to prove a prima facie case for entitlement to LHWCA benefits by a preponderance of the evidence. To establish a prima facie case, Claimant was required to show he sustained "a harm or pain and that conditions existed or an accident occurred at his place of employment, which could have caused the harm or pain."³ The administrative law judge (ALJ) found that there was undisputed medical evidence that Claimant suffered a harm – a stroke and an altered mental state (depression and anxiety). The Employer defended by asserting the shift change was a "legitimate personnel action" that does not constitute a "working condition" and cannot result in a compensable injury.

The ALJ concurred with the Employer and denied benefits. In its decision on appeal, the Board noted prior decisions that declared:

A legitimate personnel action or termination is not the type of activity intended to give rise to a worker's compensation claim. To hold otherwise would unfairly hinder [an] employer in making legitimate personnel decisions and in conducting its business.⁴

Continued

Determine whether the alleged medical condition is related to working conditions versus a legitimate personnel decision



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Shift change is a legitimate personnel action (continued)

Accordingly, the Board affirmed the ALJ's determination in support of the Employer and denied the claim. The Board's ruling further solidifies the principle that an employer's legitimate personnel decision cannot give rise to a compensable claim. There must be some working condition, not simply a personnel decision, to support a claim for medical and compensation benefits under the LHWCA.

It is noteworthy in the *Raiford* matter that Claimant limited his assertion of causation to his medical condition and the shift change. Had Claimant alleged, and medical evidence supported, that general or specific working conditions during the late shift caused or otherwise contributed to the development of his medical or psychological conditions, the decision may have been different. However, because Claimant limited his causal-relationship assertion to the shift change – a legitimate personnel decision – the ALJ and Board were compelled to declare that claimant's physical and psychological conditions were not compensable and affirmed the claim denial.

When assessing LHWCA claim compensability, employers and administrators of LHWCA claims should identify whether there is evidence to determine that the alleged medical condition is related to working conditions versus a legitimate personnel decision. ■

¹ BRB No. 15-0003 (August 24, 2015)

² 33 U.S.C. §§ 901 – 950.

³ *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009); *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *Maryland Shipbuilding & Drydock Co. v. Jenkins*, 594 F.2d 404, 10 BRBS 1 (4th Cir. 1979); See also *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982).

⁴ *Marino v. Navy Exchange*, 20 BRBS 166, 168 (1988); See also *Pedroza v. Benefits Review Board*, 624 F.3d 926, 44 BRBS 67(CRT) (9th Cir. 2010); *Sewell v. Noncommissioned Officers' Open Mess, McChord Air Force Base*, 32 BRBS 127 (1997) (McGranery, J., dissenting), *aff'd on recon. en banc*, 32 BRBS 134 (1998) (Brown and McGranery, JJ., dissenting).

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