

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM W. JACOBS : CIVIL ACTION
: :
v. : :
: :
GREAT LAKES DREDGE & DOCK CO. : NO. 97-5494

O R D E R — M E M O R A N D U M

AND NOW, this 10th day of March, 1998, the motion of defendant Great Lakes Dredge & Dock Co. for summary judgment is granted, Fed. R. Civ. P. 56.¹

This personal injury action was filed under the Jones Act, 46 U.S.C.App. § 688(a) (1994 & Supp. 1997), for damages, maintenance, and cure. The complaint alleges that on October 28, 1994 plaintiff William W. Jacobs was injured while aboard defendant's dredge "Long Island" as the result of defendant's negligence. See compl. ¶¶ 4-6. Jurisdiction is federal question. 28 U.S.C. § 1331 (1994).

The sole question on this motion is whether, as a Jones Act prerequisite, plaintiff at the time of his injury was a seaman. See 46 U.S.C.App. § 688(a) (1994 & Supp. 1997). The factual record is as follows:

In 1972, plaintiff began working as a deckhand and, in 1978, entered defendant's employ.

¹ "[S]ummary judgment should be granted if, after drawing all reasonable inferences from the underlying facts in the light most favorable to the non-moving party, the court concludes that there is no genuine issue of material fact to be resolved at trial and the moving party is entitled to judgment as a matter of law." Kornegay v. Cottingham, 120 F.3d 392, 395 (3d Cir. 1997) (quoting Spain v. Gallegos, 26 F.3d 439, 446 (3d Cir. 1994) (further citation omitted)).

Plaintiff's affidavit, ¶¶ 1, 5. For much of the next 16 years, he worked on various vessels in defendant's fleet as either a deckhand or a tugboat captain. Id. ¶¶ 5-6. For 18 months from 1982 to 1984, he was an "office runner" for defendant. Id. ¶ 5; plaintiff's deposition, at 19-20. For 25 years, plaintiff has been a member of Local 25 of the Marine Division of the International Union of Operating Engineers. Affidavit, ¶ 4; deposition, at 16. In the fall of 1994, plaintiff was working as the operator of defendant's vessel "Thames River." Deposition, at 37-38. On October 12, 1994 plaintiff was laid off upon completion of a job in Ocean City, Maryland. Id. at 38. Shortly thereafter, he was contacted by Local 25 about a three-month job, again as office runner for defendant. Id. at 39-40. Plaintiff accepted the position and was based at defendant's Pier 6 office, in Baltimore. Id. ¶ 8. There, he spent, by his estimate, 80 percent of his time driving a truck to pick up and deliver supplies for defendant's vessels. Deposition, at 25-26, 55-56. Most of the deliveries were made to defendant's dredge "Long Island" at McCluskey's Marina. Id. at 33, 36-37. On October 28, 1994 - 11 days after he began working as office runner - plaintiff was injured when he slipped and fell down on a walkway grate in the "Long Island" engine room. Id. at 57-58. As directed by one of the defendant's project engineers, plaintiff was aboard the "Long Island" to deliver a message to the dredge's mate. Id. at 41.

Last year, the Court reapproved its earlier delineation of the twofold aspects of seaman status - in terms of functionality and substantiality:

First . . . an employee's duties must contribute to the function of the vessel or to the accomplishment of its mission.

* * * *

Second, and most important for our purposes here, a seaman must have a connection to a vessel in navigation (or to an identifiable

group of such vessels) that is substantial in terms of both its duration and its nature.

Harbor Tug and Barge Company v. Papai, ___ U.S. ___, ___, 117 S. Ct. 1535, 1540, 137 L. Ed.2d 800 (1997) (quoting Chandris, Inc. v. Latsis, 515 U.S. 347, 368, 115 S. Ct. 2172, 2179, 132 L. Ed.2d 314 (1995)). The determination of seaman status is a mixed question of law and fact and, as such, will often be inappropriate for resolution under Rule 56. Nevertheless, "summary judgment . . . is mandated where the facts and the law will reasonably support only one conclusion." McDermott International, Inc. v. Wilander, 498 U.S. 337, 356, 111 S. Ct. 807, 818, 112 L. Ed.2d 886 (1991).

Here, plaintiff has raised a material issue under the first part of Chandris, insofar as his delivery of supplies and acting as a messenger arguably "contribute[d] to the function of the vessel or to the accomplishment of its mission." As specifically explicated by Chandris, the facts are insufficient, however, to satisfy the substantiality requirement.

In his response to the summary judgment motion, plaintiff asserts that his employment with defendant before this accident establishes a substantial "connection to . . . an identifiable group of vessels." Plaintiff's response, at 13. In Chandris, the Court articulated that "[w]hen a maritime worker's basic assignment changes, his seaman status may change as well." Chandris, 515 U.S. at 372, 115 S. Ct. at 2191. The decision gave two illustrations of this principle, including re-assignment to a vessel from a shoreside position and transfer to a desk job after service at sea.

For example, we can imagine situations in which someone who had worked for years in an employer's shoreside headquarters is then reassigned to a ship in a classic seaman's job that involves a regular and continuous, rather than intermittent, commitment of the worker's labor to the function of a vessel. Such a person should not be denied seaman status if injured shortly after the reassignment, just as someone actually transferred to a desk job in the company's office and injured in the hallway should not be entitled to claim seaman's status on the basis of prior service at sea. If a maritime employee receives a new work assignment in which his essential duties are changed, he is entitled to have the assessment of the substantiality of his vessel-related work made on the basis of his activities in his new position.

Id., 115 S. Ct. at 2191-92.

Here, plaintiff's new work assignment as office runner was a land-based position with different duties from his previous employment at sea. The assessment of the substantiality of his vessel-related work at the time of his injury must be determined on the basis of his activities as office runner – most of which, as he admitted, involved driving a truck in shoreside pursuits. The deliveries that he made do not constitute an adequate "connection to a vessel in navigation," id. at 368, 115 S. Ct. at 2179, any more than the deliveries to a ship or ships by an employee of an independent company. Given the change in the nature of his work, he cannot claim seaman status by reason of prior service.

Accordingly, defendant's motion must be granted and this action dismissed.

Edmund V. Ludwig, J.