February 2018

Newport News Shipbuilding & Dry Dock, Co. v. Winn United States Court of Appeals for the Fourth Circuit 326 F.3d 427 (Decided April 14, 2003)

Phan Alvardo '05

Follow this and additional works at: https://scholarship.law.stjohns.edu/admiralty_practicum

Part of the Admiralty Commons

Recommended Citation
Available at: https://scholarship.law.stjohns.edu/admiralty_practicum/vol2003/iss2/8

This Recent Admiralty Cases is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in Admiralty Practicum by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact cerjanm@stjohns.edu.
REQUIREMENTS FOR LIMITING AN EMPLOYER'S LIABILITY AS SET FORTH IN THE LONGSHORE AND HARBOR WORKER'S COMPENSATION ACT.

In order to limit liability under 33 U.S.C.S. § 908(f) for employee disability payments based on a pre-existing condition, the employer must sufficiently qualify the type and extent of the disability the employee would have suffered without the pre-existing condition.

Newport News Shipbuilding & Dry Dock, Co. v. Winn
United States Court of Appeals for the Fourth Circuit
326 F.3d 427
(Decided April 14, 2003)

Herbert E. Winn ("Winn") was diagnosed with asbestosis in April of 1997. A pulmonary function test revealed that Winn suffered from 20% permanent partial whole person impairment. Winn brought an action against his employer Newport News Shipbuilding and Dry Dock, Co. ("Newport"). It was stipulated that Winn was exposed to asbestos during his employment. However, Newport sought to limit its liability under the Longshore and Harbor Worker's Compensation Act ("LHWCA"), 33 U.S.C. § 908(f) based on a pre-existing condition which may have contributed to his asbestosis. Newport presented medical documentation suggesting that Winn suffered from chronic obstructive pulmonary disease as early as 1985. The chronic obstructive pulmonary disease was the result of Winn's smoking habit. Evidence was presented that Winn smoked a pack of cigarettes a day for nearly forty-five years.

In 1999, an Administrative Law Judge ("ALJ") denied Newport's claim that this pre-existing condition aggravated Winn's work related injury. The ALJ based this finding on the fact that Newport had failed to establish that existence of pre-existing permanent partial disability. Therefore, Newport failed to establish any credible arguments that would support the contribution requirement. Newport appealed to the Benefits Review Board ("Board"). On May 9, 2000, the Board issued a decision affirming the ALJ's findings. On appeal the Fourth Circuit stated that when the findings of an administrative law judge are being reviewed factual findings are deemed conclusive if supported by substantial evidence in the record. However, legal determinations are reviewed de novo.

Longshore and Harbor Worker's Act § 8(f) provided in part, "In...cases in which the employee has a permanent partial disability, found not to be due solely to that injury, and such disability is material and substantially greater than that which would have resulted from their subsequent injury alone, the employee shall provide...compensation for 104 weeks only." The LHWCA requires that employers who want to limit their liability under §8(f) establish three elements: 1) that the ultimate disability is caused in part by a pre-existing partial disability, 2) that the pre-existing disability was manifest to the employer prior to the work-related injury; and 3) that the ultimate disability materially and substantially exceeded the disability that would have resulted from the work related injury alone, in the absence of the pre-existing condition. The Court held that only requirements one and three were at issue in the present case.
Newport argued that Winn’s pre-existing condition of obstructive pulmonary
disease contributed to his present disability. It was Newport’s contention that the
disability Winn presently suffered exceeded the disability that would have resulted from
the work related injury standing alone. Newport attempted to establish this contention by
introducing medical evidence included x-rays and expert medical testimony. All three
experts alleged that if Winn were only suffering from work-related asbestosis, his
impairment level would be 10% less than his current state of disability. All three medical
experts introduced by Newport testified that Winn’s suffered from a pre-existing
condition which increased his asbestosis.

However, Newport failed to introduce any evidence showing the type and extent
of disability that Winn would have experienced if he was not suffering from obstructive
pulmonary disease at the time he was exposed to the asbestos. The medical testimony
merely concluded that because Winn was an admitted smoker and because medical
records established that he was suffering from obstructive pulmonary disease, this clearly
established a pre-existing condition, which partially contributed to the asbestosis. One
expert called by Newport attempted to calculate Winn’s disability by subtracting what his
disability would have been if resulting form the work related injury alone from his
present disability. The court held that this evidence was insufficient.

Therefore, the Fourth Circuit agreed with the ALJ and the Board concluding that
the evidence presented was not sufficient to establish that a pre-existing condition
contributed to Winn’s current asbestosis. The Court utilized the same standard relied on
by the Board. The standard was set forth in Director, OWCP v. Newport News
Shipbuilding and Dry Dock Co. (“Carmines”), 138 F.3d 134 (4th Cir. 1998). Carmines
required the quantification of the level of impairment that would ensue from a work­
related injury alone. Therefore, Newport failed to meet its burden of establishing what
Winn’s disability would have been if he had not been suffering from a pre-existing
condition at the time of the work related injury.

The court held that no evidence was provided establishing the degree of disability
caused by the asbestosis separate and apart from the impact of the pre-existing condition.
Therefore, the court found no basis for evaluating whether the prior injury materially and
substantially contributed to the total degree of impairment. Here, Newport provided no
evidence to show what Winn’s disability would have been had exposure to asbestos been
his only injury.

The Fifth Circuit held that it was not enough for medical experts to calculate the
total current disability and subtract from it the disability resulting from the pre-existing
condition. The Fifth Circuit affirmed the Board’s decision in denying Newport’s §8(f)
claim.

Phan Alvarado
Class of 2005