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Case at a Glance

Does an Administrator's General Interest in Fulfilling Her Duties Meet the Constitution's Requirements for Seeking Judicial Review of a Decision She Doesn't Like?

by Patrick C. McGinley

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Article III limits the decisional authority of federal courts to "cases or controversies." If a matter brought to federal court does not involve a case or controversy, the person seeking review is said to have no "standing" and the court is obligated to dismiss the matter. This case asks the Supreme Court to decide if an administrator — here, the Director of the United States Department of Labor's Office of Workers' Compensation Programs — has standing to seek review of an administrative-law decision with which the administrator disagrees.

A party asserting that he or she has standing in a case must establish: 1) an "injury in fact," i.e., a concrete or actual invasion of a legally protected right; 2) a "fairly traceable" causal connection between the claimed injury and the challenged action alleged to have caused it; and 3) a fair likelihood that the injury will be redressed by a favorable judicial decision. *Lujan v. Defenders of Wildlife*, 112 S. Ct. 2130, 2136 (1992).

The Supreme Court has acknowledged the difficulties involved in defining constitutional standing, noting that the "constitutional component of standing doctrine incorporates concepts concededly not susceptible of precise definition." *Allen v. Wright*, 468 U.S. 737, 751 (1984). It is not surprising, then, that the issue of standing to sue has been one of the most contentious in the field of administrative law.

Here, the Director of the Office of Workers' Compensation Programs (the "Director") seeks judicial review of what she believes is an erroneous factual determination by an administrative-law tribunal, the Benefits Review Board (the

"Board"). (The Board's decision with which the Director disagrees denied total disability benefits to an injured worker covered by the Federal Longshore and Harbor Workers' Compensation Act, 33 U.S. §§ 901-950 (1988) (the "LHWCA" or the "Act"), even though the worker, who was affected directly and adversely by the Board's decision, chose not to seek judicial review despite his clear standing to do so.)

The Director appealed the Board's decision to the Fourth Circuit. No party to the appeal raised any question about the Director's standing to seek review of the Board's denial of total disability benefits.

A federal court, however, has the authority and, indeed, the constitutional duty to ensure that the person seeking its decision has the constitutional standing under Article III to do so. Accordingly, a federal court will raise the standing issue even if the litigants do not. That is precisely

DIRECTOR, OFFICE OF WORKERS'
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LABOR V. NEWPORT NEWS
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FROM: THE FOURTH CIRCUIT





what the Fourth Circuit did in this case. The court proceeded to hold that the Director had not suffered an injury in fact as a result of the Board's decision and, thus, did not have standing to seek review of its decision on the total-disability issue.

The Director, undaunted by the turn of events in the Fourth Circuit, sought review of the Fourth Circuit's standing decision by filing a petition for a writ of certiorari with the Supreme Court which was granted. 115 S. Ct. 41 (1994). Now, the Court has the opportunity to clarify the scope of the injury-in-fact component of constitutional standing doctrine.

ISSUE

Does the Director of the United States Department of Labor's Office of Workers' Compensation Programs have standing to obtain judicial review of an administrative-law decision, when the injury in fact alleged by the Director does not disrupt the performance of her specific duties and does not implicate her interest in protecting the fiscal integrity of certain funds she administers?

FACTS

Jackie Harcum, a worker covered by the LHWCA, filed a compensation claim under the Act for a back injury sustained during his employment with the Newport News Shipbuilding and Dry Dock Company ("Newport Shipbuilding"). The saga of his claim provides the factual backdrop for this case.

The LHWCA, under which Harcum made his claim, was created as a comprehensive scheme to compensate maritime workers injured or killed while employed on the navigable waters of the United States. Under the Act, an employer is liable, up to a statutory maximum, for covered injuries or death without regard

to who was at fault. A maritime employer also has certain duties to provide medical services for any covered employee.

Harcum worked as a machine installer for Newport Shipbuilding from 1963 until 1988. As noted, during the course of his employment, Harcum experienced a series of back injuries. The injury on which his currently disputed workers' compensation claim is based occurred in October 1984. While working on a barge, Harcum was struck in the lower back. In early 1985, Harcum's physician twice performed surgery to treat the herniated lumbar spinal disc caused by the injury.

After a protracted recovery and several attempts by Harcum to return to work, his doctor placed severe restrictions on his ability to perform even light-duty work at the shipyard. On May 6, 1988, Newport Shipbuilding caused Harcum to be "passed out" of service, while promising that it would attempt to locate another job in its shipyard that he could perform within his physician's restrictions. In August 1988, Newport Shipbuilding informed Harcum that it had no shipyard work to offer him that was compatible with his physical disability. In February 1989, after receiving rehabilitation counseling provided by Newport Shipbuilding, Harcum secured a new five-dollar per hour job that is comfortably within the scope of work he can perform with his existing disability.

In October 1989, Harcum filed for compensation under the LHWCA. The claim was referred to an Administrative Law Judge (the "ALJ") for a hearing to resolve several disputed factual issues, including whether or not Harcum was entitled to benefits for total, rather than partial, disability from the date he stopped work at the shipyard —

May 6, 1988 — until the date he found alternative employment — February 16, 1989.

The ALJ ruled that Harcum was entitled only to partial disability benefits as of May 6, 1988. According to the ALJ, Harcum had regained residual wage-earning capacity as of the May 1988 date and, therefore, was entitled only to a partial, rather than total disability, award.

The Director appealed the ALJ's ruling to the Board, contending that Harcum was entitled to total disability benefits from the date of injury through February 1989 when he secured other employment. Harcum did not appeal but did support the Director's decision to do so.

The Board affirmed the ALJ, ruling that Newport Shipbuilding's contradicted evidence showed that there was suitable alternative employment available to Harcum as of May 6, 1988, the date of injury, and that Harcum had failed to show that he was unable to obtain other employment. The Board also ruled that a statement made to Harcum by representatives of Newport Shipbuilding to the effect that it would attempt to find a light-duty position for him and its hiring of a vocational consultant to assist Harcum in finding alternative employment did not affect his obligation to prove that he was unable to find other employment. The Board, thus, concluded that Harcum was only partially disabled as of May 1988.

The Director appealed to the Fourth Circuit. Harcum did not appeal but stated that the Director could pursue the appeal as she chose.

(Continued on page 154)



The Fourth Circuit, as explained above, raised the question of the director's standing to appeal. The court reasoned that Section 21(c) of the LHWCA, 33 U.S.C. § 921(c) (1988), which permits "any person adversely affected or aggrieved by a final order of the Board" to seek judicial review of that order, "codifies the constitutional requirement that limits standing to those persons who can allege 'that they personally have suffered or imminently will suffer an injury.'" 8 F.3d 175, 180 (4th Cir. 1993).

The Fourth Circuit expressed its view that the Director has standing to seek judicial review of a Board decision only if the decision "sufficiently implicates an administrative or economic interest of the Director so as to give rise to a redressable injury." 8 F.3d at 181. Finding that neither interest had been affected by the Board's decision relating to the total or partial nature of Harcum's disability, the appellate court held that the Director had not suffered an injury in fact that gave her standing to appeal the Board's decision.

CASE ANALYSIS

At the core of the Director's argument is her contention that standing to seek judicial review of Board decisions is not limited to injuries that directly affect her pecuniary interest in managing agency funds or that disrupt a specific administrative function. The Director contends that there is a split in the federal courts of appeals regarding this issue.

In contrast to the Fourth Circuit's narrow view of standing, she contends that Congress' grant of broad administrative and enforcement responsibilities to the Director gives her a significant stake in the correct interpretation of the LHWCA by the Board and in the Act's consistent application. She argues that any

adverse effect a Board decision has on these substantive interests of the Director means that the Director has sustained an injury in fact that satisfies the Constitution's Article III standing requirements.

The Director observes that Congress authorized the Director to participate in any appeal of a Board decision to a federal court of appeals by providing for the appointment of attorneys to represent the Director. 33 U.S.C. § 921a (1988). The Director argues that Congress did not indicate an intent to limit the Director's appellate participation only to issues that directly affect her pecuniary interest or that disrupt a specific administrative function. On the contrary, the Director asserts that Congress' imposition of such a wide variety of legal duties gives her a significant stake in the substantive outcome of claim adjudications and, thus, Congress must have intended that the Director have standing to seek judicial review of substantive legal and factual issues arising from the Board's resolution of disputed claims.

The Director argues that by charging her with the responsibility for administering and enforcing a compensation system akin to a public social insurance program, Congress gave the Director a material interest in ensuring that the Act is construed and applied in a manner consistent with its intent in enacting the LHWCA. Also relevant on this point is the fact that the Director has been instructed by Congress to assist claimants directly in the claim-adjudication process.

The Director also asserts that erroneous Board rulings impair the Director's efficient administration of the LHWCA by undermining her authority to resolve compensation disputes without recourse to formal administrative-law hearings. Thus,

she asserts, precluding her from appealing the Board's claim-adjudication decisions would reduce employer incentives to view the Director's informal resolution process as authoritative because an employer could proceed to a higher level of review from which the Director could not appeal. Moreover, the Director further asserts that if her ability to seek judicial review of legally or factually incorrect Board decisions were blocked, important policy differences between the Director and the Board would be perpetuated without a forum for resolution.

The Director next argues that limiting standing only to issues that directly affect her pecuniary interest or that disrupt a specific administrative function would lead to a case-by-case judicial inquiry regarding what constitutes injury to a specific administrative function, thereby injecting additional uncertainty and inefficiency into the claim-adjudication process.

Consistent with this expansive view of the Director's standing are the regulations promulgated by the Secretary of Labor that interpret the Act as granting the Director standing to participate in all stages of the claim-adjudication process, including seeking judicial review of Board decisions in the federal appeals courts. 20 C.F.R. § 802.410 (a). The Director contends that the Secretary's interpretation of the Act is entitled to judicial deference.

Finally, the Director contends that the history of the LHWCA confirms Congress' intention to confer standing to seek judicial review of Board rulings. In particular, the Director points to the legislative history of the Black Lung Benefits Act ("BLBA") which generally incorporates the procedures of the LHWCA. The Director emphasizes that, when the



BLBA was passed in 1977, the Senate Committee that drafted the statute specifically addressed the issue of the standing of the Director to appeal erroneous Board decisions under both the LHWCA and the BLBA. The Committee stated in its report that it was Congress' intent to afford the Director the right to participate in the adjudication of both BLBA and LHWCA claims before ALJs, the Board, and appropriate federal courts.

At the outset, Newport Shipbuilding asserts that no conflict between the federal circuit courts of appeals exists regarding the standing of the Director to seek judicial review of Board decisions when the claimant does not participate in the appeal. Newport Shipbuilding points to decisions of the Second, Fourth, and Fifth Circuits, all holding that the Director does not have standing under Section 21(c) of the Act to seek judicial review of a Board decision unless her pecuniary or specifically designated administrative interests are adversely affected. *See Fusco v. Perini North River Assocs.*, 601 F.2d 659 (2d Cir. 1979); *Director, OWCP v. Donzi Marine, Inc.*, 586 F.2d 377 (5th Cir. 1978). Newport Shipbuilding contends that language to the contrary in decisions of other circuits is merely dicta, i.e., not necessary to the holding in the case.

Newport Shipbuilding concedes that the Court has not addressed the scope of the Director's standing to seek judicial review of Board decisions. It observes, however, that while Section 21(c) gives the Director the statutory authority to seek judicial review of Board rulings, the Court has suggested that the Director must still satisfy the injury-in-fact element of Article III's case-or-controversy standing requirement. *Director, OWCP v. Perini North River Assocs.*, 459 U.S. 297

(1983). The Court in *Perini* noted that "she may not have Article III standing to argue the merits of [the claim] because the Director's presence does not guarantee the existence of a justiciable controversy" with respect to the scope of the claimant's coverage under the LHWCA. 459 U.S. at 304.

Harcum's failure to appeal the Board's adverse ruling is heavily relied on by Newport Shipbuilding to support its argument that only Harcum, not the Director, suffered an injury in fact. While Harcum obviously had standing to appeal the Board's decision, he expressly declined to participate in any review proceeding. According to Newport Shipbuilding, it is the claimant's presence in any appeal of a Board decision that creates an injury in fact for purposes of Article III standing. Conversely, asserts Newport Shipbuilding, the absence of a claimant removes any injury in fact that could establish Article III standing. The presence of the Director adds nothing to the calculus necessary to create standing for purposes of Article III.

Newport Shipbuilding asserts, as did the Fourth Circuit, that the LHWCA codifies the constitutional requirement that limits standing to those persons who can allege "that they personally have suffered or imminently will suffer an injury." 8 F.3d 175, 180. Here, neither the Director's pecuniary interest nor her legitimate administrative interests are implicated by the Board decision she is trying to challenge on appeal.

Finally, Newport Shipbuilding argues that in this case the Board's determination of when partial disability commences under the Act does not alter the Director's ability to carry out her responsibilities under the LHWCA or to protect the fiscal integrity of any special fund.

According to Newport Shipbuilding, the Director claims an interest only in the Board's construction of the LHWCA's requirements for a determination of partial disability and that interest simply has not been in the past and is not now enough to confer standing to appeal.

SIGNIFICANCE

The significance of this case is related to whether or not the Court has an interest in attempting to clarify its standing jurisprudence which critics have often found conflicting and confusing. Thus, the Court could take an expansive view of injury in fact and affirm the liberal standing principles it enunciated in its 1970s standing cases. If so, the Court could hold that the Board's decision caused the Director to sustain an injury in fact to her broad interest in the proper enforcement of the Act and, accordingly, would reverse the Fourth Circuit.

In contrast, the Court could take a more restrictive approach to construing the constitutional injury-in-fact requirement. If so, the Court would be continuing the trend of its recent decisions which have restricted the scope of standing, a course that limits access to federal courts as a forum for resolution of legal disputes.

(Continued on page 156)



ARGUMENTS

For the Director, Office of Workers' Compensation Programs, United States Department of Labor

(Counsel of Record: Drew S. Days, III, Solicitor General; Department of Justice, Washington, DC 20530 (202) 514-2217):

1. The Director's standing to seek judicial review of decisions of the Benefits Review Board is not limited to decisions that affect her pecuniary interest or disrupt her performance of specific administrative functions.
2. The history, text, and structure of the Longshore and Harbor Workers' Compensation Act indicate a congressional intent to give the Director a stake in claim adjudications and to vest her with standing to seek judicial review of erroneous Board decisions.

For Newport News Shipbuilding and Dry Dock Company (Counsel of Record: Lawrence P. Postol; Seyfarth, Shaw, Fairweather & Geraldson; 815 Connecticut Avenue, NW, Suite 500, Washington, DC 20006; (202) 463-2400):

1. The alleged general injury to the Director's broad interest in the administering and enforcing the Longshore and Harbor Workers' Compensation Act is not sufficient to satisfy the injury-in-fact element of Article III's case-or-controversy requirement.
2. The Benefits Review Board's decision did not affect the Director's pecuniary interest or disrupt her performance of specific administrative functions and, therefore, she did not suffer an injury in fact sufficient to satisfy constitutional standing criteria.