

U.S. Department of Labor

Office of Administrative Law Judges
St. Tammany Courthouse Annex
428 E. Boston Street, 1st Floor
Covington, LA 70433-2846

(985) 809-5173
(985) 893-7351 (Fax)



Issue Date: 29 November 2007

CASE NUMBER: 2006-LDA-00131

OWCP NO.: 02-146577

IN THE MATTER OF

D.M.,
Claimant

v.

SERVICE EMPLOYERS INTERNATIONAL,
Employer

and

INSURANCE CO. OF THE STATE OF PENN., c/o AIG WORLDSOURCE,
Carrier

**ORDER DENYING MOTION FOR RECONSIDERATION AND AFFIRMING
DECISION AND ORDER**

This proceeding involves a claim for benefits under the Longshore Harbor Workers' Compensation Act ("the Act"), 33 U.S.C. § 901, *et. seq.*, and its extension, the Defense Base Act ("DBA"), 42 U.S.C. § 1651, *et. seq.* brought by D.M. ("Claimant") against Service Employers International ("Employer") and Insurance Company of the State of Pennsylvania, c/o AIG Worldsource ("Carrier"). The issues raised by the parties could not be resolved administratively, and the matter was referred to the undersigned in the Office of Administrative Law Judges for a formal hearing. The hearing was held on April 25, 2007, in Houston, Texas. On September 18, 2007, a Decision and Order Denying Benefits issued as Claimant failed to establish that he suffered a compensable injury.

On October 1, 2007, Claimant filed a Motion for Reconsideration, contending that credibility of Drs. Griffith and DeSouza, as well as Ms. Ragland, should be re-evaluated in light of research he obtained regarding validity of Minnesota Multiphasic Personality Inventory-2 ("MMPI-2") test that had been administered to him by Dr. Griffith. He also contends that his attorney, Mr. Pitts, failed to research the MMPI-2. On October 24, 2007, Employer/Carrier filed a Response in Opposition to Claimant's Motion for Reconsideration, arguing that the

undersigned carefully considered all of the evidence in this matter, that none of the evidence was erroneously admitted, and that no “legal point” has changed such that reconsideration is necessary. Employer/Carrier also argue Dr. Griffith’s credibility, as well as Claimant’s, and Claimant’s Wife’s credibility was already evaluated by the undersigned; Claimant’s criticism of the MMPI-2 is due to his dislike of it’s outcome; the results of his MMPI-2 were available for critique by Dr. DeSouza prior to the formal hearing; and that the results of his MMPI-2 were submitted to Dr. Ruebenzer for examination as to validity. He concurred with Dr. Griffith’s findings regarding Claimant’s MMPI-2 test results. Employer/Carrier further argue that prior to and following the formal hearing, Claimant was represented by an attorney, Mr. Pitts, who has extensive experience in litigating Defense Base Act cases and is not to blame for Claimant’s conduct.

In support of his Motion for Reconsideration, Claimant submitted several documents including page 5 of Claimant’s MMPI-2 Outpatient Mental Health Interpretive Report (Employer’s exhibit 22, p. 7); a Narrative Surrounding Claimant’s Case entitled Mission to Corrigador dated September 26, 2007 (an earlier draft of this narrative was submitted into evidence as Employer’s exhibit 4, pp. 13-14); an OWCP-3 Status Report; an article from a guidetopsychology.com entitled Psychological Testing; an article from drmillsmu.com entitled A Summary of the Minnesota Multi-Phasic Personality Inventory; an article from truthout.org entitled Scientists: Brian Injuries From War Worse Than Thought; an article from scarlettlawgroup.com entitled How to Deal with the Defenses of Malingering, Secondary Gain and Personality Testing; an abstract of an article from interscience.wiley.com entitled Raising Doubts About Claims of Malingering: Implications of Relationships Between MCMI-II and MMPI-2 Performances; an article from americanchronicle.com entitled Scientific Studies: Do Litigants Malingering?; Dr. DeSouza’s biographical information from kumc.edu; an article from ptsdcombat.blogspot.com entitled A Brief History of PTSD, WWI to Present; a Memorandum of Informal Conference dated July 7, 2006; a KBR Logcap III regarding Theater Transportation Mission (Corrigador); an Order of Remand dated September 12, 2007 in an unrelated case; a Decision and Order dated June 29, 2007 in an unrelated case; a Decision and Order dated July 24, 2006 in an unrelated case; excerpts regarding Dr. Griffith from a Decision and Order in an unrelated case; a citation to a Decision and Order in an unrelated case, namely case number 2007-LDA-00123; an e-mail entitled Law and Disorder; excerpts from foreignaffairs.house.gov regarding Congressman Ackerman’s hearing on PTSD in Civilians Retuning from Iraq; an excerpt from med.uth.tmc.edu regarding Dr. Griffith’s contact information and interests; an excerpt from psychiatrictimes.com regarding comments made by Dr. Griffith concerning access to mental health care; an article from rosabrooks.squarespace.com entitled Deniable, Disposable Casualties; and an article from time.com entitled Blackwater’s Florida Court Woes. Employer/Carrier objects to Claimant’s documents in support of his Motion as untimely and unauthenticated.

The Federal Rules of Civil Procedure are applicable to proceedings for review of compensation orders awarded under the Act to the extent that procedural matters are not provided for in the Act. *Galle v. Director, OWCP*, 246 F. 3d 440, 447 (5th Cir. 2001) (citing, FED. R. CIV. P. 81(a)(6)). Filings of motions for reconsideration are governed by the *Code of Federal Regulations Part 802.206(b)(1)* which permits motions for reconsideration of an administrative law judge’s compensation order. *Id.* at 442, 448. Reconsideration is appropriate

when a moving party is able to present newly discovered evidence not available at the time of hearing, or when the record shows a manifest error of law or fact. *Cowan v. Jack*, 2002 WL 1453825, *2 (E.D. La. 2002) (citing, *Matter of Prince*, 85 F. 3d 314 (7th Cir. 1996) *cert. den.*, 519 U.S. 1040 (1996)). It is important to note that when there is a formal hearing in a matter, the record is closed at the conclusion of the hearing. 29 C.F.R. Part 18.54(a). The record may not be re-opened “except upon a showing that new and material evidence has become available which was not readily available prior to the closing of the record.” 29 C.F.R. Part 18.54(c).

The documents submitted by Claimant in support of his Motion for Reconsideration were, for the most part, readily available prior to the closing of the record in this matter. The documents which were not readily available prior to the closing of the record including the Order of Remand in case number 2006-LDA-00036 are unrelated to the issues in this case and do not present any new or material evidence. In addition, the credibility determinations in the Decision and Order Denying Benefits that issued in this case were based on a voluminous record, including numerous depositions and medical records, as well as Claimant’s testimony, his wife’s testimony, and testimony of Dr. Griffith. None of the documents submitted by Claimant in support of his Motion serve to alter those determinations. Therefore, the “new” evidence submitted by Claimant justifies neither re-opening the record nor re-evaluation of the credibility determinations in the Decision and Order Denying Benefits. Accordingly, Claimant’s Motion for Reconsideration is hereby **DENIED** and the Decision and Order Denying Benefits issued on September 18, 2007 is hereby **AFFIRMED**.

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CLEMENT J. KENNINGTON
ADMINISTRATIVE LAW JUDGE