

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 07 March 2008

Case No. 2006-LDA-67

OWCP No. 02-140246

In the Matter of:

J.W.

Claimant

vs.

SERVICE EMPLOYEES INTERNATIONAL

Employer

and

**INSURANCE COMPANY OF
THE STATE OF PENNSYLVANIA
C/O AIU**

Carrier

APPEARANCES:

GARY B. PITTS, ESQ.

On Behalf of the Claimant

GROVER E. ASMUS, ESQ.

On Behalf of the Employer

BEFORE: PATRICK M. ROSENOW

Administrative Law Judge

DECISION AND ORDER

PROCEDURAL STATUS

This case arises from a claim for benefits under the Defense Base Act (the Act),¹ brought by J.W. (Claimant) against Service Employers International, Inc. (Employer) and Insurance Company of the State of Pennsylvania, c/o AIU (Carrier).²

The matter was referred to the Office of Administrative Law Judges for a formal hearing. Both parties were represented by counsel. On 11 Dec 06 a hearing was held at which the parties were afforded a full opportunity to call and cross-examine the Claimant, offer exhibits, make arguments, and submit post-hearing briefs.

My decision is based upon the entire record which consists of the following:³

Witness Testimony of Claimant

Exhibits⁴

Joint Exhibits (JX): 1
Claimant's Exhibits (CX): 1-9
Employer's Exhibits (EX): 1-18

STIPULATIONS⁵

1. If Claimant suffers a disability as alleged, it falls within the coverage of the Act.
2. There was an Employer/Employee relationship at the time of the alleged occupational illness.
3. There was proper and timely notice and controversion.
4. Medical benefits were paid/provided except as to Dr. Starbranch.
5. No disability benefits were paid.

¹ 42 U.S.C. § 1651 *et seq.* (the Defense Base Act is an extension of the Longshore and Harbor Workers' Compensation Act 33 U.S.C. § 901 *et seq.*).

² For simplicity both Employer and Carrier are collectively referred to herein as Employer.

³ I have reviewed and considered all testimony and exhibits admitted into the record. Reviewing authorities should not infer from my specific citations to some portions of witness testimony and items of evidence that I did not consider those things not specifically mentioned or cited.

⁴ Counsel were informed that any exhibit in excess of thirty pages and Claimant's deposition would be part of the administrative record upon which the decision would be based only if specifically cited to by page number. Tr. 7, 123.

⁵ JX -1; Tr. 8-10.

ISSUES

1. Causation and relation to zone of special danger.
2. Nature and extent of disability.
3. Average Weekly Wage (AWW).

FACTUAL BACKGROUND

Claimant worked for Employer in Afghanistan as a plumber for five months. He began experiencing severe dizzy spells and episodes of syncope. He was hospitalized on 4 Feb 05 in Afghanistan. He was moved to a hospital in Germany for further testing and treatment. He then returned to the United States to seek further treatment for dizzy spells and chest pain. Employer paid no disability benefits, but did pay all of Claimant's related medical expenses, except for Dr. Starbranch.

POSITIONS OF THE PARTIES

Claimant argues that his work for Employer aggravated a pre-existing susceptibility to stress. Even before going to work for Employer, Claimant was divorced, raised two teenage daughters, and worked long hours. During that time he experienced dizziness and other symptoms as a result of stress. However, those symptoms resolved long before Claimant went to Afghanistan. Once there, he was exposed to situations that caused severe stress and his symptoms returned. He experienced dizzy spells, inability to focus, chest pain, headaches, and episodes of syncope. Claimant submits that he is entitled to temporary total disability benefits between 4 Feb 05 and 28 Feb 05 and partial disability benefits after 28 Feb 05. He asserts that he is not yet at maximum medical improvement and is entitled to permanent partial disability benefits. He also argues that his correct AWW is \$1,234.40.

Employer responds that the claim should be denied in its entirety. It argues that the stress suffered by Claimant was caused by issues in his personal life, and not his employment with Employer; that Claimant has not suffered any loss in wage earning capacity; and that Claimant is solely interested in obtaining a monetary settlement.

LAW

Although the Act should be construed liberally in favor of the claimant,⁶ the "true-doubt" rule, which resolves factual doubts in favor of the claimant when the evidence is evenly balanced, violates Section 7(c) of the Administrative Procedure Act,⁷ which specifies that the proponent of a rule or position has the burden of proof and, thus,

⁶ *Voris v. Eikel*, 346 U.S. 328, 333 (1953); *J.B. Vozzolo, Inc. v. Britton*, 377 F.2d 144 (D.C. Cir. 1967).

⁷ 5 U.S.C. § 556(d).

the burden of persuasion.⁸ In arriving at a decision, the finder of fact is entitled to determine the credibility of witnesses, to weigh the evidence and draw his own inferences therefrom, and is not bound to accept the opinion or theory of any particular medical examiners.⁹

Section 2(2) of the Act defines “injury” as “accidental injury or death arising out of or in the course of employment.”¹⁰ In the absence of any substantial evidence to the contrary, the Act presumes that a claim comes within its provisions.¹¹ The presumption takes effect once the claimant establishes a *prima facie* case by proving that he suffered some harm or pain and that a work-related condition or accident occurred, which could have caused the harm.¹²

A claimant need not affirmatively establish a causal connection between his work and the harm he has suffered, but rather need only show that: (1) he sustained physical harm or pain, and (2) an accident occurred in the course of employment, or conditions existed at work, which ***could have caused*** the harm or pain.¹³ These two elements establish a *prima facie* case of a compensable “injury” supporting a claim for compensation.¹⁴

A claimant’s credible subjective complaints of symptoms and pain can be sufficient to establish the element of physical harm necessary for a *prima facie* case and the invocation of the Section 20(a) presumption.¹⁵

⁸ *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 114 S.Ct 2251 (1994), *aff’g* 900 F.2d 730 (3rd Cir. 1993).

⁹ *Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98, 101 (1997); *Avondale Shipyards, Inc. v. Kennel*, 914 F.2d 88, 91 (5th Cir. 1988); *Atlantic Marine, Inc. and Hartford Accident & Indemnity Co. v. Bruce*, 551 F.2d 898, 900 (5th Cir. 1981); *Bank v. Chicago Grain Trimmers Association, Inc.*, 390 U.S. 459, 467, *reh’g denied*, 391 U.S. 929 (1968).

¹⁰ 33 U.S.C. § 902(2).

¹¹ 33 U.S.C. § 902(a).

¹² *Gooden v. Director, OWCP*, 135 F.3d 1066 (5th Cir. 1998).

¹³ *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981), *aff’d sub nom. Kelaita v. Director, OWCP*, 799 F.2d 1308 (9th Cir. 1986); *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991); *Stevens v. Tacoma Boat Building Co.*, 23 BRBS 191 (1990).

¹⁴ *Id.*

¹⁵ *See Sylvester v. Bethlehem Steel Corp.*, 14 BRBS 234, 236 (1981), *aff’d sub nom. Sylvester v. Director, OWCP*, 681 F.2d 359, 14 BRBS 984 (5th Cir. 1982).

Once the presumption applies, the burden shifts to the employer to rebut the presumption with substantial evidence to the contrary that claimant's condition was neither caused by his working conditions nor aggravated, accelerated, or rendered symptomatic by such conditions.¹⁶ "Substantial evidence" means evidence that reasonable minds might accept as adequate to support a conclusion.¹⁷ Employer must produce facts, not speculation, to overcome the presumption of compensability. Reliance on mere hypothetical probabilities in rejecting a claim is contrary to the presumption created by Section 20(a).¹⁸ The testimony of a physician that no relationship exists between an injury and claimant's employment is sufficient to rebut the presumption.¹⁹

Once an employer offers sufficient evidence to rebut the presumption, the presumption is overcome and no longer controls the outcome of the case.²⁰ If an administrative law judge finds that the Section 20(a) presumption is rebutted, he must weigh all of the evidence and resolve the causation issue based on the record as a whole.²¹ The presumption does not apply, however, to the issue of whether a physical harm or injury occurred²² and does not aid the claimant in establishing the nature and extent of disability.²³ In addition, a psychological impairment can be an injury under the Act if it is work related.²⁴ Employers accept their employees with the frailties which predispose them to bodily injury.²⁵

When aggravation of or contribution to a pre-existing condition is alleged, the presumption still applies, and in order to rebut it, Employer must establish that Claimant's work events neither directly caused the injury nor aggravated the pre-existing condition resulting in injury or pain.²⁶ A statutory employer is liable for consequences of a work-related injury which aggravates a pre-existing condition.²⁷ Although a pre-

¹⁶ See *Gooden*, 135 F.3d 1066; *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 1082 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 820 (1976); *Conoco, Inc. v. Director [Prewitt]*, 194 F.3d 684, 33 BRBS 187 (5th Cir. 1999); *Louisiana Ins. Guar. Ass'n v. Bunol*, 211 F.3d 294, 34 BRBS 29 (5th Cir. 1999); *Lennon v. Waterfront Transport*, 20 F.3d 658, 28 BRBS 22 (5th Cir. 1994).

¹⁷ *Avondale Industries v. Pulliam*, 137 F.3d 326, 328 (5th Cir. 1988); *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283 (5th Cir. 2003) (the evidentiary standard necessary to rebut the presumption under Section 20(a) of the Act is "less demanding than the ordinary civil requirement that a party prove a fact by a preponderance of the evidence").

¹⁸ See *Smith v. Sealand Terminal*, 14 BRBS 844 (1982).

¹⁹ See *Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984).

²⁰ *Noble Drilling Co. v. Drake*, 795 F.2d 478 (5th Cir. 1986).

²¹ *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119 (4th Cir. 1997); *Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153 (1985); *Greenwich Collieries*, 512 U.S. 267.

²² *Devine v. Atlantic Container Lines, G.I.F.*, 25 BRBS 15 (1990).

²³ *Holton v. Independent Stevedoring Co.*, 14 BRBS 441 (1981); *Duncan v. Bethlehem Steel Corp.*, 12 BRBS 112 (1979).

²⁴ *Director, OWCP v. Potomac Elec. Power Co.*, 10 BRBS 1048 (D.C. Cir. 1979).

²⁵ *Britton*, 377 F.2d at 147, 148.

²⁶ *Rajotte v. General Dynamics Corp.*, 18 BRBS 85 (1986).

²⁷ See *Bludworth Shipyard, Inc. v. Lira*, 700 F.2d 1046 (5th Cir. 1983); *Fulks v. Avondale Shipyards, Inc.*, 637 F.2d 1008, 1012 (5th Cir. 1981).

existing condition does not constitute an injury, aggravation of a pre-existing condition does.²⁸

In evaluating evidence, the ALJ must determine the credibility and weight to be attached to the testimony of the medical witnesses and is entitled to deference in doing so.²⁹ Generally, the opinion of a treating physician is entitled to greater weight than the opinion of a non-treating physician.³⁰ However, an ALJ is not bound by the opinion of one doctor and can rely on the independent medical evaluator's opinion and evidence from the medical records over the opinion of the treating doctor.³¹ A claimant's credibility may be relevant if in developing their opinions, doctors relied on what the claimant told them.³²

EVIDENCE

Claimant testified at trial and in deposition in pertinent part that³³:

He currently resides in Baytown. He is forty-six years old and was raised in the Houston, Texas area. At age fourteen he was involved in an incident where he was badly injured by a bull. As a result of this incident, he had every bone in his body broken except for his back and pelvis. He was in a coma for eighteen months and was hospitalized for three years. He graduated from high school, but was a year behind because of his medical problems. He did not drop out and obtain a GED. He continued going through high school and graduated.

He does not remember telling Dr. Hilton that he dropped out and obtained a GED. At the time he was seeing Dr. Hilton, he was not experimenting with marijuana, but he did when he was a teenager. During his deposition he stated that he was never involved with recreational drugs. He does not remember telling Dr. Hilton that he used marijuana when he was younger.

He also completed a few months in business college.

Before going to Afghanistan, he was successfully self-employed for twenty-seven years in the painting and remodeling business.

²⁸ *Volpe v. Northeast Marine Terminals*, 671 F.2d 697, 701 (2d Cir. 1982).

²⁹ *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2nd Cir. 1961); *Pimpinella v. Universal Maritime Service, Inc.*, 27 BRBS 154 (1993).

³⁰ *Downs v. Director, OWCP*, 152 F.3d 924, (9th Cir. 1998); *see also Loza v. Apfel*, 219 F.3d 378 (5th Cir. 2000)(Social Security administrative law decision).

³¹ *Duhagan v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997).

³² *Houghton v. Marcom, Inc.*, (BRB Nos. 99-0809 and 99-1315)(April 25, 2000)(Unpublished).

³³ Tr 29-120; EX-18 (as cited; see n.4).

He was married for eighteen years and had two children. He divorced his wife in 1989 but maintains a good relationship with his ex-wife and their two children.

He married Sandra in 1978 and they were divorced in 1989. He experienced a lot of stress following his divorce. This was related also to his being a single father trying to raise two daughters on his own, in addition to working twelve to fourteen hours a day. He was a company owner and was also with the Northwest Volunteer Fire Department as a commissioner. His daughters chose to live with him as opposed to their mother. His business developed some tax problems.

Six years after his divorce, he met his second wife, Rebecca. He dated Rebecca for eight months and then they were ceremonially married in 2000. He never truly trusted Rebecca. His distrust was based on her past and issues with her family. She did not have any financial problems when they married, but acquired them during the marriage. She spent a lot of his money and got her family involved in his business. There was a job that he had bid to do for three thousand dollars, and when Rebecca's relatives had finished the job, he had to go back in and fix it for eleven thousand dollars. That put him in a very bad financial situation. He went into debt because her cousin messed up several jobs. He finally got information about her family that had been hidden from him. That caused him to stop trying to alleviate the situation and just pull away from her. Rebecca had been married three times before and one of the men she married was in prison in Arizona for child molestation. This concerned Claimant.

Before he left for Afghanistan they had been married for about four and a half years. The marriage was not successful. About a month ago, he found out that Rebecca had not divorced her previous husband, so their marriage to him was not valid. He and Rebecca had no children together.

Approximately five years before he went overseas, he experienced stress because of his divorce and being a single parent. In the five years leading up to his departure to Afghanistan, he had no problems with dizziness or chest pain. He never blacked out or fainted prior to Afghanistan. His problems before Afghanistan involved an incident where he fainted.³⁴ His doctor informed that it was caused by working too much and raising his two daughters on his own. He had pains in his arms, and the doctor sent him to get some blood testing done. He was diagnosed as just being generally overworked and fatigued. He was prescribed a blood thinner by a doctor in the northwest Houston area. He was under his care for two to three months, and visited him two to three times. He did not receive any emergency room or hospital treatment, he made strictly outpatient office visits. He was only prescribed blood thinners.

³⁴ Inconsistency in Claimant's testimony.

He had no problems passing a pre-employment physical prior to working in Afghanistan. EX-3 is a questionnaire that he completed at the time that he went through his pre-employment examination. He did not mention dizziness or passing out or list any heart, circulatory, or central nervous system problems. He informed KBR that he had stress problems five years prior to his work in Afghanistan. He doesn't remember what else he listed, but he does recall indicating his issues with stress. During the deposition he indicated that he had been healthy up until he left for Afghanistan. He did not mention the stress problems because he did not believe them to be heart problems or anything serious.

He went to Afghanistan to get away from Rebecca and to make money to put into his own account separate from her. He had planned to divorce her when he returned from Afghanistan. His principal focus in going to Afghanistan was to make a lot of money. He was in a poor financial state in the United States. At the time that he went to Afghanistan, he owed the IRS approximately ten thousand dollars. His home mortgage was being foreclosed on and he had filed Chapter 13 bankruptcy. He decided to go overseas with Service Employees International because KBR was offering a significant sum of money for his service. He also had some patriotic motivation since his son-in-law was in the Marine Corp and was serving in the Middle East. He wanted to go over to Afghanistan to help and do his job.

He left for Afghanistan on 31 Aug 04 and was there through 31 Dec 04. While in Afghanistan, he worked in plumbing, plumbing maintenance, and construction. He was skilled in these jobs prior to working in Afghanistan.

He was in Kandahar at first. He and others complained about the poor conditions. They were often in open range, in very dusty areas with lots of sand storms, and had difficulty breathing. They often requested respirators from supervisors but were consistently denied. He then went straight to the safety department and retrieved a box of paper masks to disperse to his fellow employees.

His friend David passed away in the middle of the night after complaining several times to the supervisor. David complained to the foreman first, who raised the issue with the supervisor. The foreman instructed David to speak with the supervisor. David informed the supervisor that he was not feeling well, had not been feeling well for several days, and required a day off. The doctor agreed to give David a note excusing him from work, but the supervisor instructed him to return to work. David worked the rest of the day, and passed away that night. David had a significant prior history of cardiac problems with seven bypasses and died while sleeping. Claimant believed that David should not have been sent to Afghanistan to begin with. The death caused him great stress.

He informed the supervisor that he did not approve of the way that the employees were being treated, but the supervisor, had nothing to say in response. The foreman was unable to handle the circumstances and quit. No less than two weeks after the conversation with his supervisor regarding David's death, Claimant and some of his tent mates were transferred to Bagram. He believes that there is a relationship between his friend's death and the transfer. Employer sent them to Bagram because it thought that they were going to cause a commotion about the way that people were being treated in Kandahar.

In Bagram, the conditions were better, but Claimant still had stress about David. He started having stress related pain for about three weeks before going to the hospital on 4 Feb 05. At that time there were several mortar attacks in Bagram and he could see, feel and hear the explosions. He was continuing to work seven days per week and twelve hours per day.

In Afghanistan, a constant source of stress was land mines and fear of stepping on a bomb. On all of the bases, the outside perimeter wires were infested with land mines. There is some training on recognizing them, but not enough to allow employees to proceed safely. In addition, he was responsible for four different camps, including Special Forces, Marine, and Army. This was a great deal of responsibility that added to his stress. He had to rebuild most of them because they had many minor problems.

During his employment in Afghanistan, he was never involved in an incident where he was being shot at. There was an incident where he was attacked with an RPG. He was in Bagram and there were three or four different missile attacks. When he was in a military flight to Kandahar, he was shot at in the air. He was never involved in an incident where someone in close proximity to him was shot or killed, but in Kandahar, he often saw stacks of dead bodies. He reported this to the supervisor. He saw a local warlord driving down the road outside the gate every day.

The actual work he was doing involved twelve hour days seven days a week. He was extremely distressed when his friend died especially because of the poor treatment his friend received. The employer did not take proper steps to protect the employees' respiratory systems. He believed that he was threatened with termination if he complained, and was constantly harassed. The work did not cause stress; the circumstances surrounding his employment were the source of the stress. The most traumatic thing that happened to him was the sight of dead bodies stacked up, seeing missiles going down the road with the warlords, and the constant pressure from his boss to do things a certain way or be terminated.

When he was in Afghanistan, he had some friends in the Special Forces who were monitoring Rebecca's activities. They reported to him that she was being unfaithful. He had a plan worked out with the bankruptcy trustee to make periodic payments. His plan was to make money in Afghanistan, send it home to Rebecca, and Rebecca would pay the trustee. Rebecca did not make these payments and the bankruptcy was dismissed. His attorney, Corey Mills, also made several mistakes and poor decisions that caused his bankruptcy to be dismissed. Much of the documentation and paper work was not properly filed. Regardless of whether Rebecca made the payment, the bankruptcy would have been dismissed because of his attorney's failure to properly attend to the paperwork. At one point, Rebecca moved to Emerald Isle North Carolina and threw all of Claimant's business records out.

He began experiencing physical symptoms of illness. His right and left arms were aching. He had muscle pain, dizzy spells, and trouble focusing. He was passing out and had constant headaches. He had problems with smells and breathing, probably because of the constant exposure to chemicals.

He went to see a doctor from Halliburton around 5 Jan 05, about three weeks after he landed in Bagram. The doctor was actually a veterinarian, but gave him Dramamine to prevent dizziness. The Dramamine did not help his symptoms and they progressed drastically. If he stood or sat up too quickly, or turned his head too quickly, he would have a fainting spell.

Approximately two weeks into January 2005, he had been complaining to the doctors about chest pains, dizzy spells, lightheadedness, and constant coughing. In January 2005, he returned home for rest for approximately ten days. During this period he had two blackout spells witnessed by his family. He went to Emerald Isle Primary Care and saw Dr. Hemmerlein. He reported the blackout spell to him and also reported the spell when he went back to the base in Bagram. Dr. Hemmerlein was his primary care physician from when he came back from Landstuhl. He does not know of any reason why there would be no record of this treatment.

In January of 2005 when he was home for rest, nothing happened with his wife that would cause arguments, upset, or stress. She was concerned about his fainting spells. The children had witnessed one of his fainting spells. The episodes came without warning. After one particular fainting incident, he made an appointment to see Dr. Hemmerlein that same day. He did not go to the emergency room. During the visit, he was given a physical. Ms. Pitman, Dr. Hemmerlein's associate, informed him that he was going through post traumatic stress disorder.

Back in Afghanistan in February, he had problems with dizziness, blacking out, and pain in his arms. On 4 Feb 05, he was driving and found himself falling in and out of consciousness. He believed he was having a heart attack or a stroke. He drove himself to the Army hospital where an EKG was performed. He again fainted when descending from the EKG table and found himself in the intensive care unit. He was transferred to a gurney and woke up in Germany. He was then flown back to the US from Germany, accompanied by a medical nurse. He arrived in Wilmington, North Carolina, where he was released to his wife.

There were indications that Rebecca was not being faithful while he was in Afghanistan. He contracted a sexual disease from her when he returned from Afghanistan.

He saw numerous doctors. The doctors evaluated his heart and found irregularities. He saw another doctor about his fainting spells. He limited his driving to the island only; if he had to go longer distances, Rebecca would drive him. A nurse practitioner at Dr. Hemmerlein's office in August of 2005 was the first to suggest PTSD. She suggested he see Dr. Lewis Barton, but he never saw that doctor. He saw a psychologist Dr. Brown one time after it was suggested that he suffered from PTSD. He told him about his experiences.

When he was in North Carolina, he had some jobs painting and remodeling. He did about four or five jobs that paid about two thousand dollars each. He returned to Texas in May of 2005 to work with his cousin doing mowing. He did mowing for about a month or so to save money to buy a truck and eventually move out. He does not know how much money he was paid for that work, since his wages were not reported to the IRS. His cousin housed him for a brief period of time and secured a job for him at Baywood Arms.

At Baywood Arms, where he made approximately three hundred dollars per week. He was paid every two weeks, and received a free apartment that was valued at approximately \$600.00 per month, including electricity and cable. He worked there for forty hours a week at twelve dollars an hour. He was on call twenty four hours a day in addition to his eight hour work days. If he received emergency calls in the middle of the night, it would be considered overtime. He had that job for three or four months. He no longer has that job because he got into an argument with his boss.

After he lost his job with Baywood Arms, he moved in with his daughter and son-in-law and obtained a job with Amber Electric, his son-in-law's company. He had no problems with that work. He was fired from the job at Amber Electric the Monday before the hearing because of his inability to stay focused on his job and concentrate, due to the medications he was taking. He was working fifty to fifty-

five hour weeks, usually ten hour days, at sixteen dollars per hour, plus one hundred dollars per day as a travel allowance to drive down and back. He had worked for Amber Electric for about a month when they dismissed him. He didn't have difficulty with this job because it was not very stressful, but he ultimately could not do the work because he could not stay focused enough to stay in a safe environment. His co-workers were constantly reminding him to tie off his harness. He was terminated from this job because of safety concerns and because of the medication he was taking.

He is qualified in building construction and competent in constructing residential structures. He has HVAC certification, electrical license, plumbing license, swimming pool license, and chemical license. His DBA business license is still effective. He does not know if he plans to go back to that line of work. He might not want to get back into self-employment because running his own business is stressful. He is hesitant about working for someone else, but would like to be gainfully employed.

He filled out a form for disability benefits with Social Security, but that claim has been denied. In that application he told Social Security that he had been disabled beginning on February 15, 2005 and had not had any income. He was working for his cousin at the time he filed for disability, and had a few jobs painting houses in North Carolina. Four weeks after he applied, he received notice that he was denied benefits. By then he had taken the job at Baywood Arms. He sought employment before his claim was denied.

He was referred to Dr. Starbranch by Service Employees International and saw her on 30 May 06. He saw her about two to three times per month. She mainly managed his medication. He needed medication to stay calm and focused because he had suicidal thoughts. When he met with Dr. Hilton, he took a test and gave an interview. He did not take a test administered by Dr. Starbranch. She gave him some paperwork and examined his background in order to obtain a report that stated he suffered from PTSD. She informed him that she does not involve herself in workers' compensation cases and would not go to court. She would not testify in this case. He talked to her secretary to obtain a report to support his claim. He spoke with her nurse, Leslie Milburn, about obtaining a letter stating that they were treating him for PTSD. He does not recall ever hearing that PTSD was not his diagnosis. No one in Dr. Starbranch's office ever told him that she does not do therapy.

He has sought medical care since then. He has loss of hearing in both the left and right ears at about the 30% level. He has dizzy spells, constant nervousness, and semi-psychotic thoughts. The dizzy spells were not as bad as they were previously. He drives because he has to, but is very careful, does not turn his head

suddenly, and uses his mirrors. He has not been in any auto accidents. If he must turn his head quickly to the right or left, he becomes very dizzy. That is similar to how he feels when rising from bed in the mornings. He still has problems with tightness in his chest, but it has been intermittent. The symptoms have been eased by medication. He is prescribed Paxil and Depakote. He does not think he could return to work in Afghanistan. It would cause a great deal of problems for his stress symptoms.

***Claimant's Medical Records since 4 Feb 05 state in pertinent part that:*³⁵**

He presented on 4 Feb 05, complaining of dizziness when standing and laying down, and chest pressure on his left side, associated with job related stress. He reported progressively worsening chest pressure over the previous three weeks. He denied any chest pain or change in appetite. He reported he is a smoker and has occasional palpitations. He denied cough or phlegm, but noted he had stress related chest pains approximately ten years before. He had no blockages. He said he was on no medication and denied drug use. Later, he denied pain or discomfort. He indicated that five years before he had been hospitalized for 5 days for cardiac problems. He was admitted and evacuated to Germany.

An ECG performed at the Womack Army Medical Center indicated some abnormalities, but a stress test was normal. A 6 Feb 05 Radiologic Examination Report indicated a normal MRI of the brain and a normal intracranial MRA. Further testing showed a normal ECG and heart rate. His blood pressure reaction to exercise was normal and he had no chest pain.

On 11 Feb 05, Claimant was flown to Charlotte, NC.

On 21 Feb 05, Claimant called Dr. MacDonald's office and asked for a referral to a neurologist for chest pain since at least 8 Feb 05. When told he would need to see a medical doctor to be evaluated for chest pain he explained he was evaluated in Germany and the chest pains were found to be stress related.

On 28 Feb 05, Claimant reported that his vertigo cleared with the Epley maneuver, but he was still bothered by ringing in his ears. The doctor suggested that he wait a couple of months to see if there was any subjective change in his hearing or tinnitus. Claimant was advised to see Dr. McCabe for evaluation of persisting complaints of chest pain.

Claimant saw Dr. Gould on 29 Jun 05 for a Stress Echocardiogram, which was normal.

³⁵ CX-1 (as cited; see note 5).

Claimant's Employment Agreement states in pertinent part that:³⁶

Claimant and Employer entered into an employment agreement on 25 Aug 04. Either side could terminate the contract at any time for any reason. Claimant's sole recourse for any injury, illness, or death arising out of the course of employment was determined under the the Defense Base Act. Claimant's assignment was anticipated to be approximately twelve months, but there was no minimum guaranteed duration of employment. The assignment location could be changed at any time within the area of operations.

Claimant was aware that the assignment location might be in a potentially hazardous environment. His compensation was \$2,583.00 per month, plus a Foreign Service Bonus of 5% of his base salary.

Claimant represented that he was physically capable of performing the work for which he was employed at the Assignment Location and agreed during the term of employment to submit to a physical examination by Employer at the beginning and end of his assignment.

A 20 Jan 04 Letter of Recommendation from the Department of Defense states in pertinent part that:³⁷

During his tenure with Kellogg, Brown, and Root (KBR) at Bagram, Afghanistan, Claimant provided plumbing service of the highest quality. His service was instrumental in maintaining a sanitary comfortable environment. He was highly recommended for any plumbing jobs. He was a hard worker and would ensure a job is done correctly and to satisfaction.

The 4 Feb 05 Employer's First Report of Injury states in pertinent part that:³⁸

Claimant was engaged in day shift plumbing and maintenance. Claimant was employed as a plumber in the maintenance department and worked seven days per week in Afghanistan. Claimant suffered from persistent dizziness and near falls that occurred intermittently since his return from R&R. Claimant reported that this occurred both before and after R&R, and when he was driving. He suffered from dizziness, chest pains, job related stress. Claimant did not stop work immediately; he was instructed to return to work on that day, 4 Feb 05.

³⁶ CX-2; EX-4.

³⁷ CX-3.

³⁸ CX-4.

The 4 Feb 05 Occupational Illness Report states in pertinent part that:³⁹

Claimant reported suffering from persistent dizziness on 4 Feb 05. He suffered dizziness since returning from R&R. Employer requested that Claimant be treated at the U.S. Army Hospital in Afghanistan. He did not respond to medicine.

A document detailing Claimant's Earnings from Employer in 2004 states in pertinent part that:⁴⁰

Claimant's total foreign earnings were \$21,688.48, including hazard pay, area differential, overseas allowance, gross regular pay, holiday pay, and PTO-non TopFlex.

An LS-203 Employee's Claim for Compensation Form states in pertinent part that:⁴¹

Claimant was injured in Bagram AFB and Kandahar, Afghanistan by exposure to the stresses in the war zone in Afghanistan. He suffers from PTSD mood disorder, anxiety disorder, panic attacks, and injury to the body generally. He received medical treatment from Dr. Eileen Starbranch. He was not treated by a physician of his choice. Treatment was not provided by Employer and Claimant is still disabled on account of the injury. He has worked during the period of disability and has received wages since becoming disabled.

A Tabular Summary of Medical Treatment states in pertinent part that:⁴²

Claimant was treated and seen frequently in military hospitals and by doctors throughout February of 2005. He resumed treatment in June of 2005 and maintained monthly appointments for treatment for the remainder of 2005 and into 2006.

He was seen in the 325th Field Hospital ICU in Afghanistan, the U.S. military hospital in Germany, the AIG Medical Department, AirMed International, The Heart Center of E. Carolina, and Emerald Isle Primary Care. He was seen and treated by Drs. MacDonald, Hunley, Gould, Frazier, Clarke, Pitman, Siegel, Hemmerlein, Pittman, Kerner, Starbranch, Terry, and Hilton.

³⁹ CX-5.

⁴⁰ CX-6.

⁴¹ CX-8.

⁴² CX-9.

His complaints included dizziness, chest pain, vertigo, insomnia, ringing in his ears, lightheadedness, syncope, nausea, heart fluttering, stress, headache, weight loss, nervousness, depression, irregular and rapid heart beat, trouble controlling anger, flash backs, loss of consciousness, abdominal pain, and anxiety.

He underwent the following tests: EKGs, CTs, x-rays, MRIs, Myocardial perfion stress/rest SPECT scan, Fit to Fly assessment, physical exams, audiometry, ENG, vestibular assessment, electrocardiogram, echocardiogram, Tilt Table Test, carotid duplex bilateral ultrasound exam, abdominal ultrasound, psychiatric examination, and MMPI.

Claimant had the following medical diagnoses: cardiac disease, vertigo, abnormal EKG, hearing loss suggestive of noise exposure, 33% weakness in right ear, neurogenic syncope, palpitations along right chest wall, and moderate diseased portion of the common carotid arteries bilaterally with stenoses of less than 50%.

Claimant received medication to treat his symptoms. His work restrictions include: assistance for daily living activities, ability to ambulate with assistance only in February of 2005, and no restrictions at all in November of 2006.

Administrative Claim Papers state in pertinent part that:⁴³

A letter dated 19 Sep 05 from Andrew Hanley, Claimant's attorney at the time, requests an informal conference as soon as possible for Claimant.

A medical examination report dated 3 Aug 05 indicates that Claimant has PTSD with accompanying insomnia. He was prescribed medication for his symptoms and instructed to obtain a psychiatric evaluation from Dr. Barton Lewis.

On 9 Aug 05 Nurse Laura Pittman stated that Claimant has PTSD, episodes of syncope, and suggested he undergo a psychiatric evaluation.

On 6 Sep 06, Andrew Hanley filed a Notice of Withdrawal and withdrew as attorney of record.

⁴³ EX-1.

*Claimant's Recorded Transcribed Statement of 3 Mar 05 states in pertinent part that:*⁴⁴

Shannon Woolard conducted a recorded interview in person with Claimant on 3 Mar 05 regarding an incident that occurred on 4 Jan 05 in Afghanistan.

He has had two years of business college and owned his own business for eighteen years prior to going to KBR. His business was Willis Paint and Remodeling and was located in Houston Texas. Claimant was married and had three dependents, Shelby, age 9, Charles, age 11, and Amanda, age 14, all of whom lived with him. He was still employed with KBR at the time the statement was taken. His supervisor in the Plumbing Department was Pompey, Plumber Number 2. Claimant's job title was Plumber, Maintenance Department.

He was in Afghanistan to do sub-contract work as an Army contractor for KBR. He was required to be in this area every day as a normal part of his job duties. His first dizzy spell was 8 Jan 05 in Afghanistan and caused by stress from his boss. The incident was also possibly caused by airborne elements. The same day, Claimant reported the incident to the Supervisor Plumber and to the KBR doctor on site at Bagram Air Force Base. The doctor suggested he take the next day off. No one helped him after the incident. He had not been drinking alcohol or taking any prescription or non-prescription drugs prior to the incident. He was not removed from his duties because of the dizzy spells. The incident also caused hearing loss, eye sight loss, and chest pains. He was treated at the Bagram Air Force base Army Hospital located in Afghanistan. He was confined to their facility for two days.

There were several witnesses, but Claimant does not have their addresses and telephone numbers, and even if he did, he does not believe any of them would give a statement because it might cause them to lose their jobs. The cause of the incident was stress, being overworked, and perhaps a water or airborne disease. At the time he was employed with KBR for five months.

On 4 Jan 05, he reported having dizzy spells to Plumber Number 1 and Plumber Number 2. They discounted his complaint and told him not to think anything of it. The doctor recorded his condition and gave him medication for motion sickness. The medicine did not help his condition and made him sick. He told his boss that his condition was worsening, but the boss threatened to terminate Claimant for being unable to perform his job. Around 10 Jan 05, Claimant went back to the doctor because his stress level was increasing and he was experiencing chest pains. Since the condition was worsening, Claimant took R&R a week early, paying for it out of his own pocket.

⁴⁴ EX-2.

His R&R was in February and he took sixteen days because of the dizzy spells. His R&R was spent in North Carolina at his residence. During his R&R he did not drive and participated in only a few family functions where his wife was able to drive. During R&R he was unable to get out much and had severe dizzy spells. He fell several times.

After sixteen days of R&R, he returned to Afghanistan. He fell upon his return to Afghanistan and injured himself. One of the newer plumbers helped him recover. From that point, his condition worsened. He visited the KBR doctor and told him that he was having chest pains and dizzy spells. He was getting sick and having hot and cold flashes. The doctor sent Claimant to the Army hospital where he stayed over night. The next day the Army hospital moved him to Germany where tests were run. He returned to the US and is undergoing more testing due to chest pains and breathing problems. He also lost some of his vision when a foreign object hit his eye.

Claimant believed he was subjected to asbestos exposure that contributed to his dizzy spells. He was in contact with asbestos while performing plumbing maintenance. The asbestos was in liquid and burning form. It was burned and the entire area became filled with smoke from the burning asbestos.

Claimant would have liked changes to be made in KBR's policy regarding how employees are treated with respect to safety rules and regulations.

The Pre-Deployment Medical Documents state in pertinent part that:⁴⁵

Claimant's next of kin was his wife. Claimant had no drug or other allergies, no previous illnesses or exposure to hazardous substances, and had no other medical conditions.

Claimant had never worked for Halliburton KBR and associated companies before. He had not had surgery, medical care by a doctor, or any change to his health in the past twelve months. He had never been demobilized for medical reasons. He never had any problems with his respiratory system, with blood disorders, his central nervous system, his kidneys and bladder, his liver, his heart and circulatory system, or his skin. In the past, he had stomach pain, nausea, and vomiting, associated with a common cold. He consumed liquor occasionally. He experienced back pain sometimes, and wore glasses for reading.

⁴⁵ EX-3.

The OSHA respirator medical evaluation questionnaire (RMEQ) stated that Claimant had never had significant medical problems.⁴⁶

A physical examination record showed that Claimant had no abnormal findings upon physical exam. He still required an audiometric Exam and interpretation, blood tests, an LLA, an evaluation for fitness to wear a respirator, a chest x-ray, an EKG, and a Spirometry test.

A Spirometry Report indicated that Claimant's lung age was 77 years and that there was mild obstruction in his lungs. A hearing test indicated that Claimant had normal speech frequencies in both ears. A chest x-ray report indicated that there was no active disease.

Claimant's Wage Documents state in pertinent part that:⁴⁷

The total amount paid to Claimant between October of 2004 and January of 2005 was \$25,972.81.

The KBR Incident Reporting Form states in pertinent part that:⁴⁸

Claimant reported an injury that occurred on 4 Feb 05 at a military base in Bagram, Afghanistan. Claimant's supervisor was Wayne Hendricks.

Claimant presented to the clinic with persistent dizziness and near falls. He was given Sudafed and meclizine without relief of his symptoms. His description of incidents and symptoms were vague enough to warrant further investigation. An EGK and CT were performed and were unremarkable. He gave a history of intermittent chest pain along with a significant history of personal and job related stress. He was admitted for observation and serial cardiac enzymes while he awaited medevac to Landstuhl for a cardiac stress test.

The Jobsite Medical, Medevac and Landstuhl AFB Records state in pertinent part that:⁴⁹

A Radiologic Examination Report dated 10 Feb 05 states that Claimant had a normal MRI of the brain and a normal intracranial MRA. He also had a normal myocardial perfusion study with normal left ventricular systolic function.

⁴⁶ EX-3 includes an RMEQ that appears as if it should be five pages long, based on the page numbers. Only pages 1, 3, and 5 of the RMEQ were included in EX – 3, and pages 2 and 4 of the questionnaire were left out of the exhibit.

⁴⁷ EX-5.

⁴⁸ EX-6.

⁴⁹ EX-7; many documents included in this exhibit were (1) duplicates of documents presented in CX-1 and (2) completely illegible.

The Coastal Ear, Nose, and Throat Associates Reports state in pertinent part that:⁵⁰

On 14 Feb 05, Claimant went to Coastal Ear, Nose, and Throat for dizziness that started on 8 Jan 05. His problem was worse when he lay down or sat up quickly. He experienced ringing and pain in his ears, sneezing, dizziness, and watery eyes. He also had chest pain, shortness of breath, double vision, nausea, vomiting, and frequent urination. He took aspirin for his symptoms.

Claimant described the acute onset of illness that he characterized as unsteadiness and some increased ringing in his ears. Claimant reported a history of similar symptoms five years before requiring anticoagulation. Claimant was examined without any abnormal findings.

On 15 Feb 05, Claimant went in to the office for an ENG. It showed a right positional vertigo and a weakness of the right ear of 33%. The right sided weakness would suggest a previous labyrinthitis, particularly in light of a normal MRI. A right Epley maneuver was performed and Claimant was instructed to return in two weeks.

On 21 Feb 05, Claimant called asking for a referral to a neurologist for chest pain that had been occurring since 8 Feb 05. He was advised that he would need to be seen to be evaluated for chest pain. Claimant stated that he was evaluated in Germany and the pain was found to be stress related. Claimant continued to state that he needed to know about a neurology referral.

On 22 Feb 05, Claimant was notified that Dr. MacDonald wanted to see him for an exam before referring him to a neurologist. Claimant was again advised to see a doctor to evaluate chest pain. Names and numbers of several general physicians were given to Claimant, and Claimant was advised that if he has chest pain he should go to the emergency room.

On 28 Feb 05, Claimant reported that his vertigo has cleared with the Epley maneuver. He was still bothered by excessive ringing in his ears. The doctor suggested that Claimant wait for a couple of months to see if there was any subjective change in his hearing. Claimant was to see Dr. McCabe shortly for evaluation of chest pain.

⁵⁰ EX-8.

The Heart Center of Eastern Carolina Records state in pertinent part that:⁵¹

On 1 Jun 05, Claimant reported that he started noticing problems with chest pain and possible stroke in Afghanistan. He was doing contract work and was taken to an emergency room, after which he was transferred to Germany for further evaluation. Claimant stated that he had multiple strokes that gave him a feeling of lightheadedness and then near syncope. He complained of intermittent episodes of sharp chest pain. Prior to these episodes he denied having any previous cardiac problems. He disclosed he had some problems with vertigo in the past. His blood pressure was 104/70 and his heart rate was 61. He was in no acute distress. His lungs were clear and his heart regular. He was alert and oriented. His electrocardiogram showed a normal sinus rhythm with no ischemic electrocardiogram changes. Claimant was diagnosed as having near syncopal episodes, but not actually having strokes or transient ischemic attacks. A tilt study and an echocardiogram were recommended to test for heart disease, along with an event recorder to see if there were any cardiac dysrhythmias to explain the episodes.

Claimant's stress echocardiogram revealed that he achieved 12 METS and 85% of his maximum predicted heart rate. He had good aerobic exercise capacity. He had appropriate blood pressure response for the level of exercise. The stress echocardiogram was normal. The tilt table testing was abnormal. The syncopal episodes which he reported appeared to be different from what he experienced during the tilt table test. Claimant had no evidence of underlying structural heart disease or coronary artery disease by noninvasive testing. He was assessed with neurocardiogenic syncope with a positive tilt table.

Emerald Isle Primary Care Records state in pertinent Part that:⁵²

On 3 Aug 05, Claimant went to Emerald Isle Primary Care in order to establish a primary care provider. He saw Nurse Pittman and complained of stress. He reported that he had been having problems since he was in Afghanistan, working as a plumber with Halliburton. He stated that after he was there for two months, there was a missile attack and his bunker door flew open. When the stress started, Claimant started having dizziness, syncopal episodes, ringing in his ears, and insomnia. The dizziness and the syncopal episodes got progressively worse so he went to the military hospital. He was informed he suffered a stroke. He was transferred to a hospital in Germany. He had no residual effects from the stroke.

⁵¹ EX-9.

⁵² EX-10.

He had been home for six months. He was referred to Dr. McDonald for the ringing in his ears, syncope, and falling. They did some maneuvers and he felt fine for the day, but then the dizziness returned. He was then referred to Dr. Hundley with the Heart Center and tests were done. That prompted a referral to Dr. David Frazier, where he had a tilt table done.

He was exposed to asbestos regularly while in Afghanistan. He had been having dreams and flashbacks. There had been no change in his libido. His appetite was unchanged. Insomnia was one of his main problems. Dr. Frazier placed him on Florinef to help with the symptoms. His thoughts were in tact and he denied suicidal or homicidal ideations. Claimant was assessed as possibly having post traumatic stress disorder (PTSD) with accompanying insomnia. Claimant was started on Zoloft and Lunesta and told to see Dr. Barton Lewis for evaluation of PTSD.

Claimant was seen again on 12 Oct 05 by Dr. Hemmerlein. Claimant complained about multiple problems that originated when he was working in Afghanistan. He reported dizziness, particularly with certain gazes, difficulty sleeping, difficulty controlling his anger, and PTSD. He said he had an episode of dizziness while in Afghanistan, was told he had a stroke, and was eventually transferred to a military hospital in Germany, where he was treated with morphine. Claimant stated he had been evaluated by Dr. McDonald, Otolaryngologist, Dr. Frazier Cardiologist, and Dr. Hundley, Cardiologist. He also indicated he had an appointment with Dr. Barton Lewis about PTSD. He said he saw a therapist but had a difficult time relating to him and did not wish to see him again. Claimant appeared disheveled, but his vital signs were normal. A brief physical examination showed no obvious neurological or cardiovascular abnormalities and Claimant was neurologically in tact. Claimant was assessed with PTSD, tinnitus, and questionable CVA. The doctor decided not to intervene until he reviewed all of Claimant's old medical records.

Claimant was seen on 17 Jan 06 by Nurse Pittman. He complained of constant and worsening chest pain on the right side of his chest and into his shoulder. He also reported increased dizziness. Claimant stated he was under stress and had to climb tall ladders, which might be causing stress. He said he had never seen a psychiatrist or therapist since Mr. Brown, to whom he did not relate. He stopped taking Zoloft because it made him feel strange. He was on no other medication. His friend gave him Soma tablets which calmed him down. Claimant stated he needs a blood thinner and Nitroglycerin to keep with him because he thinks he has problems with coagulation. He was in no acute distress and his vital signs were stable. He had tenderness to palpation along the right chest wall and along the shoulder area and full range of motion in the shoulder. Claimant's respirations

were clear and heart rate and rhythm was regular. The EKG shows regular sinus rhythm and no ischemic changes.

On 20 Jan 06, Claimant returned to Dr. Hemmerlein complaining of PTSD and anxiety. Claimant was working full time doing home repairs. Claimant believed his PTSD was secondary to his exposure to the death of other individuals, exposure to radiation, and the fact that his employer misrepresented the job and its hazards. Claimant stated he was reassured the employees would not be exposed to combat, which was not true. He was primarily concerned about having another stroke. He reported that his only hospitalization in the past was three years⁵³ for multiple injuries sustained in a fall from bull-riding. Claimant continued on Trazodone and Zoloft. He was angry during the examination and complained about right chest pain that did not seem myocardial. His cardiogram appeared normal without any evidence of injury.

Claimant saw Nurse Pittman again on 2 Feb 06. He complained of not being able to hear out of his right ear. He stated that on 30 Jan 06 when he was having his carotid Doppler on that side, it felt strange. He felt fluid running through his ear. He stated that 75% of his dizzy spells resolved since his ear has been bothering him. Claimant's ear drum was reddened and there was purulent drainage behind the ear drum, with significant otitis media. Claimant was given a prescription of Omnicef and asked to follow up. The carotid Doppler produced negative results.

Claimant was seen again by Dr. Hemmerlein on 9 Mar 06. He came to retrieve his records for his compensation claim. He was concerned that he was not receiving compensation and his medical bills were not being paid. The doctor observed that Claimant had not followed through on his treatment. He only saw a psychologist once and never saw a psychiatrist as was recommended. He was scheduled to see Dr. Lewis but failed to do so. There was a slight flare of his depression which seemed to be centered on his economic plight.

Dr. Barton Lewis's Response to the Records Request states in pertinent part that:⁵⁴

Dr. Lewis has no records for Claimant.

⁵³ Claimant stated in his deposition that he was hospitalized for three months, not three years, as a result of this accident and injury.

⁵⁴ EX-11.

Dr. Eileen K. Starbranch's Records state in pertinent part that:⁵⁵

Her office sent a fax to Claimant's counsel informing him that she does not participate in worker's compensation claims cases because she does not do the legal work involved. She agreed to treat Claimant and provide his medical records.

On 30 May 06, Claimant complained of "post-stress" and said that he suffered from insomnia, loss of appetite, dizzy spells, stress, and depression. He indicated a history of drug, alcohol, and tobacco use. He claimed he suffered mental, verbal, and physical abuse by Employer.

On 15 Jun 06, Claimant reported being worried, nervous and shaky. He said he had difficulty falling and staying asleep. He was not taking his Depakote. Claimant was prescribed Paxil, Depakote, and Lunesta, instructed not to consume alcohol, and asked to follow up on 18 Jul 05.

In October 2006, Claimant tried to get a letter stating that the doctor was treating him for PTSD. The nurse explained to Claimant that PTSD was not one of his diagnoses, but Claimant said he was trying to settle a law suit and needed the letter for the judge. Dr. Starbranch determined she would need to examine him for criteria for PTSD before she could make any diagnosis or write a letter.

Claimant then indicated he wanted to re-start treatment and medication. He complained of insomnia, anger, stress, dizzy spells, and episodes of syncope. He was taking Paxil, Depakote, and Lunesta. He seemed oriented and cooperative, with clear speech and appropriate mood. He had mild depression and severe anxiety.

On 11 Oct 06, Claimant reported suffering from depression and headaches and was screened for PTSD.

Claimant sent an e-mail requesting a letter stating that he has PTSD from his employment in Afghanistan. He requested that this letter be sent to his attorney. On 11 Oct 06, Dr. Starbranch issued a letter stating that Claimant was diagnosed with mood disorder, anxiety disorder, panic attacks, and PTSD brought on by his

⁵⁵ EX-12.

Dr. Greg Terry's Records state in pertinent part that:⁵⁶

Claimant presented on 25 Sep 06 with complaints of abdominal pain located primarily in the periumbilical area. It did not radiate and had begun four days prior to this visit. The onset of pain occurred with no apparent trigger. Claimant characterized it as aching and cramping and of moderate intensity. Claimant estimated that the frequency of the pain was nearly hourly and the typical duration was the majority of the day. It was aggravated by lying on his stomach and associated with nausea and vomiting. Nothing relieved the pain. Claimant denied having abnormal stool. Claimant stated that he recently returned from Germany and was currently working in maintenance around a lot of children. Claimant complained of stress relating to a lawsuit against KBR. He was positive for abdominal pain, acid reflux symptoms, heartburn, and nausea and vomiting. He was assessed as having epigastric abdominal pain, changes in diet and habits were discussed, and Nexium was prescribed.

An ultrasound of his abdomen was performed on 25 Sep 06. It was a normal ultrasound of the abdomen.

The Texas Children's Hospital's Response to the Records Request states in pertinent part that:⁵⁷

It has no medical records were found for Claimant because they would have been destroyed in June of 2001 by Tropical Storm Allison.

Dr. Michael Hilton's Independent Medical Examination Report states in pertinent part that:⁵⁸

He conducted an independent medical examination of Claimant on 20 Nov 06. He interviewed Claimant for over three hours, administered Claimant the MMPI-2, and reviewed Claimant's medical records.

Claimant responded to the MMPI-2 items in an exaggerated manner. His responses were probably not random because he was consistent in his item responses. No clinical information can be obtained from this testing. The only information available from this testing is the very strong likelihood that there is purposeful and extreme exaggeration in his presentation.

⁵⁶ EX-13.

⁵⁷ EX-14.

⁵⁸ EX-15.

Claimant's overall presentation is suggestive of a significant degree of dysfunction in his personal life and of exaggerative tendencies and manipulation. There is also conflicting information about whether Claimant had pre-existing problems with dizziness, chest pain, and blacking out spells.

On psychological testing performed, Claimant was grossly exaggerative and his exaggeration was purposeful. Claimant's complaints of stressful encounters in Afghanistan fail to meet the necessary initial requirement necessary for the diagnosis of PTSD. Claimant does not exhibit any behaviors or complaints suggestive of persistent avoidance of stimuli associated with the trauma or numbness of general responsiveness.

It is Dr. Hilton's opinion to a reasonable degree of medical certainty that Claimant does not exhibit symptoms or make a presentation consistent with PTSD. Claimant's initial symptoms have expanded over time and have changed focus after he was told by a nurse that he had PTSD. It was only when he discovered that to obtain Workers' Compensation benefits for PTSD that he had to be treated by a psychiatrist that he finally sought out psychiatric care.

Claimant is prone to overstating his problems, magnifying his experiences and minimizing alternative explanations. He has not sought out psychiatric treatment in the way an individual would typically seek out treatment for PTSD. He has only seen Dr. Starbranch on a few occasions and he has been non-complaint in taking medication and inconsistent in showing up for treatment. It is clear in reviewing Claimant's records and from his examination that Claimant's primary goal since his return from Afghanistan has been to obtain a worker's compensation settlement. Psychiatric treatment has clearly been a secondary issue sought out only in support of his primary goal.

Claimant is not suffering from any specific or diagnosable psychiatric condition. Claimant is not currently disabled from working; he is currently working 55 hours per week and is not in need of any psychiatric intervention. He is capable of returning to his assignment in Afghanistan from a psychiatric perspective. He will, however, completely resist any attempts to put him back in that position.

ANALYSIS

Compensable Injury

The fundamental question is whether Claimant's work for Employer and presence in a zone of special danger in Afghanistan aggravated a pre-existing disposition toward stress or caused it to become symptomatic, resulting in PTSD.

Claimant's testimony and the records from Dr. Starbranch are sufficient to make Claimant's *prima facie* case, and invoke the Section 22 presumption. Conversely, Dr. Hilton's report is sufficient to rebut that presumption. That places upon Claimant the burden of establishing by a preponderance that he suffers from PTSD as a consequence of his employment in Afghanistan.

While the objective medical tests indicated some limited irregularities, they substantially resolved over time and do not have significant probative value in corroborating Claimant's complaints or his claim. As a result, Claimant's credibility and the medical opinions in the case have the greatest probative value.

In weighing the evidence in the case, I note that Claimant did not appear to be a particularly reliable witness or source of information. He was not complete or accurate in disclosing his full medical history to Employer or health care providers. His testimony was at time internally inconsistent or inconsistent with what he had previously told health care providers. It was also not consistently corroborated by the other evidence in the case. Much of his interaction with health care providers appeared to have been for the purpose of obtaining favorable opinions for litigation rather than treatment.

Moreover, it appears that the treating health care providers in this case who diagnosed Claimant as suffering from PTSD and attributed it to his employment in Afghanistan did so largely based upon his subjective reports to them. This is particularly the case with Dr. Starbranch, who was contacted only after the claim had been filed and this litigation had commenced. In spite of her insistence that she does not engage in compensation issues, Claimant proceeded to seek from her a letter establishing he has PTSD as a consequence of his time in Afghanistan. He did not actively and continuously treat with her, nor was he substantially compliant with his medication. The letter she issued appears to be more acquiescence to his request rather than a fully reasoned medical opinion.

On the other hand, while Dr. Hilton did not treat Claimant, he is board certified and conducted a thorough records review, testing, and examination. He determined that Claimant is exaggerating his symptoms for a diagnosis of PTSD in order to receive a compensation award. His reasoning is more consistent with the objective evidence in the case and his opinion is more fully articulated and supported than that of Dr. Starbranch or any of the other treating providers. Accordingly I give it much greater weight.

Claimant offers evidence of previous stress related problems and identifies a number of factors from his work in Afghanistan that he argues led to his development of PTSD. He cites his proximity and exposure to violence, the harsh breathing and work environment, the death of a friend (who had had multiple cardiac procedures before coming to Afghanistan), and callous disregard of Employer for its employees' safety and health. At other times, however, he has also mentioned exposure to asbestos and radiation.

On the other hand, his primary reason for going to Afghanistan in the first place was to try to work his way out of serious financial problems. He already had marital problems. As a result, while he was being exposed to the things he cited, Claimant was also being advised by special forces of his wife's infidelity and seeing the very purpose he went to Afghanistan in the first place frustrated by his wife and attorney, leaving him in a worse personal and financial situation than before. In spite of his testimony to the contrary, the circumstantial evidence of Claimant's symptoms peaking after his visit home supports the view that his personal situation was the source of any unusual stress.

Based on the weight of the evidence in the case, I do not find that Claimant carried his burden of proof and established that it is more likely than not that his work for Employer in a zone of special danger in Afghanistan caused or aggravated a preexisting condition leading to PTSD.

ORDER AND DECISION

The Claim is **DENIED**.

ORDERED this 7th day of March, 2008, at Covington, Louisiana.

A

PATRICK M. ROSENOW
Administrative Law Judge