

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 12 August 2008

CASE NO.: 2007-LDA-322

OWCP NO.: 02-145764

IN THE MATTER OF:

G. A.¹

Claimant

v.

GROUP 4 FALCK SECURITY SUPPORT SERVICES

Employer

and

INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,
c/o AMERICAN INTERNATIONAL UNDERWRITERS

Carrier

APPEARANCES:

GARY B. PITTS, ESQ.
For The Claimant

JAMES L. AZZARELLO, ESQ.
For The Employer/Carrier

Before: LEE J. ROMERO, JR.
Administrative Law Judge

¹ Pursuant to a policy decision of the U.S. Department of Labor, the Claimant's initials rather than full name are used to limit the impact of the Internet posting of agency adjudicatory decisions for benefit claim programs.

DECISION AND ORDER

This is a claim for benefits under the Defense Base Act, 42 U.S.C. § 1651, et seq., an extension of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901, et seq., (herein the Act), brought by Claimant against Group 4 Falck Security Support Services (Employer) and Insurance Company of the State of Pennsylvania, c/o American International Underwriters (Carrier).

The issues raised by the parties could not be resolved administratively and the matter was referred to the Office of Administrative Law Judges for hearing. Pursuant thereto, Notice of Hearing was issued scheduling a formal hearing on April 22, 2008, in Houston, Texas. All parties were afforded a full opportunity to adduce testimony, offer documentary evidence and submit post-hearing briefs. Claimant offered 20 exhibits, Employer/Carrier proffered 10 exhibits which were admitted into evidence along with one Joint Exhibit. This decision is based upon a full consideration of the entire record.²

Post-hearing briefs were received from the Claimant and the Employer/Carrier. Based upon the stipulations of Counsel, the evidence introduced, my observations of the demeanor of the witnesses, and having considered the arguments presented, I make the following Findings of Fact, Conclusions of Law and Order.

I. STIPULATIONS

At the commencement of the hearing, the parties stipulated (JX-1), and I find:

1. That the Claimant was injured on January 18, 2005.
2. That Claimant's injury occurred during the course and scope of his employment with Employer.
3. That there existed an employee-employer relationship at the time of the accident/injury.
4. That the Employer was notified of the accident/injury on January 18, 2005.

² References to the transcript and exhibits are as follows: Transcript: Tr.____; Claimant's Exhibits: CX-____; Employer/Carrier's Exhibits: EX-____; and Joint Exhibit: JX-____.

5. That Employer/Carrier did not file a Notice of Controversion.
6. That an informal conference before the District Director was held on April 27, 2006.

II. ISSUES

The unresolved issues presented by the parties are:

1. The nature and extent of Claimant's disability.
2. Whether Claimant has reached maximum medical improvement.
3. Claimant's average weekly wage.
4. Entitlement to and authorization for medical care and services.
5. Attorney's fees, penalties and interest.

III. STATEMENT OF THE CASE

The Testimonial Evidence

Claimant

Claimant testified at the formal hearing and was deposed by the parties on April 21, 2008. (EX-9). Claimant is a college graduate who attended law school for one year. (Tr. 21; EX-9, p. 21). He also attended a seminary for three years as a theology student. (EX-9, p. 21). He worked in security at government buildings for fifteen years before being hired by Employer to work in Kosovo. (Tr. 21).

He deployed to Kosovo on March 16, 2004, and was assigned to a civilian security team at Camp Monteith, Kosovo, providing security for the U.S. Army. (Tr. 22; EX-9, p. 18). The team provided security at entry gates, monitored traffic, checked IDs and vehicles as well as securing ten guard towers around the base. He testified that a physical fitness test was a prerequisite to employment which included running one mile in ten minutes or less. (Tr. 22; EX-3, pp. 6-7). He stated that after his leg injury he was "not fit to run a mile in ten minutes." (Tr. 23).

On January 18, 2005, Claimant slipped and fell on wooden stairs which appeared dry, but had a glaze of invisible ice. He became airborne and landed on his left leg, which was painful, causing him to think he "had broke my leg." He was able to pull himself up by the handrail and limped to Employer's Headquarters where he reported his accident and injury to his supervisor. (Tr. 23). His supervisor asked if he wanted to see the company doctor at Camp Bondsteel, but did not offer to transport Claimant. Claimant declined stating "it felt like a horrible sprain and it was swollen black and blue." He decided to wait for a day or two for the swelling to go down. A few weeks later when the swelling did not seem to improve, he elected to see the company doctor. (Tr. 24; CX-2, p. 1).

Claimant testified he saw the company doctor one time, who gave him "some pills and ointment to make the swelling go down," and told him to wrap a bandage around his leg. He was told the leg "will naturally heal" in time. (Tr. 25; EX-9, pp. 22-23, 25). Claimant testified the swelling went down and he went back to work on "special duty," in a guard tower near the headquarters. He stated he was not physically fit to work. He could not climb into the back of a military vehicle, which was a requirement of the job, walk upstairs, put pressure on the bent leg, or run. He stated he could never pass another running exam "to do another yearly contract as force protection specialist." He was limping and Employer accommodated his limitations. (Tr. 26; EX-9, pp. 24-26). He testified that he would not have been in a position to run if needed as a reinforcement. (Tr. 27). He completed his yearly employment contract. (Tr. 25).

He testified he waited for "most of 2005" for his leg to heal naturally. In May 2005, he inquired about another job as a force protection specialist with DynCorp International, who made a job offer, which he declined because his leg had not healed enough to do a running test. (Tr. 27-28; CX-10).

On December 29, 2005, he was evaluated by Dr. Pelnar, an orthopedic specialist, who informed him that he had a permanent injury and would not be running or jumping anymore and could not lift heavy objects. No physical therapy was recommended. (Tr. 29; EX-9, p. 27).

On March 3, 2007, Claimant was examined by Dr. Zeman, an orthopedic surgeon with the University Hospital in Plzen, Czech Republic, who is well-spoken in English. Dr. Zeman ordered an MRI. Dr. Eva Svehlova prepared an interpretive report of the MRI. Dr. Zeman reviewed the MRI and an Orthopedic Guide To

Impairment Ratings assigning a disability rating of 50% for Claimant's left leg. (Tr. 30; EX-9, pp. 33, 36). Claimant acknowledged he did not treat with any doctors between December 2005 and March 2007. (EX-9, p. 33). Before his work accident/injury, Claimant stated he had no problems with his left leg. (Tr. 36).

In November 2007, Claimant submitted to an examination by Dr. Thomann in Frankfort, Germany, at the behest of Employer/Carrier. Claimant traveled by train 400 miles to the examination. (Tr. 31). Claimant stated Dr. Thomann assured him he had a serious leg injury and ordered an MRI. The exam lasted two hours after which Dr. Thomann prepared a report in German and indicated he would send Claimant a report written in English. (Tr. 33; EX-9, p. 36). Claimant testified that Employer/Carrier did not pay his hotel expense or train fare of \$250.00. (Tr. 33). Employer/Carrier apparently reimbursed Claimant for his hotel expense, but not his train and taxi fare of \$253.00. (CX-20, p. 1).

In January 2008, Dr. Zeman performed another brief exam and confirmed his previous findings and opinions. (EX-9, p. 36). Claimant deposed that his present complaints are he cannot walk up and down stairs "like a normal person," cannot run because the quadriceps muscle will not do its job to make running possible, and if he tries to climb a ladder and bend his leg 90 degrees and engage the quadriceps muscle he has a very sharp pain. He wears a leg brace regularly. (EX-9, p. 37).

He testified that after his contract with Employer ended and before he reached maximum medical improvement, he engaged in day trading of gold and silver which was not profitable, and made some money through longer-term investments. He initially estimated making about \$200.00. (Tr. 40). In 2006, he attempted a position as an English language real estate agent for Czech realtors, but did not make a net profit after advertising his availability. (Tr. 37-38). He contemplated importing damaged cars from the United States for repair and resale, but the venture did not get beyond the planning stages. He performed a "small amount of teaching of English, mostly in exchange for Czech lessons." He also estimated earnings from teaching of \$50.00 per month on average. (Tr. 40). He is presently planning on making a living teaching business English in Czech and is taking a course of study online presented by TEFL International from which he will receive a certificate two months following the formal hearing. (Tr. 39; EX-9, p. 10).

On cross-examination, Claimant acknowledged that he average about \$70.00 weekly as investment income. He also acknowledged that he never took a physical fitness test after his injury because he knew he could not run. Dr. Zeman told him he could not run. No Employer representative told him he could not pass the fitness test. (Tr. 42-44). Other than the job offer from Dyncorp International, which also required the successful completion of a physical fitness test, Claimant did not actively seek employment. (Tr. 46; CX-10).

The Medical Evidence

Claimant was initially evaluated by Dr. Krume Georgiev of the ITT Medical Staff at Camp Bondsteel, Kosovo. (EX-1, p. 7). He determined there was local swelling in the area of the left knee and left foot. No laboratory tests or X-rays were performed. His pertinent diagnosis was "knee edema, ballottement positive on left patella (a palpatory maneuver to test for a floating object)." Medication and elastic bandages were prescribed. (CX-1, p. 3; EX-3, p. 29).

Dr. Jan Pelnar

On December 29, 2005, Claimant was examined by Dr. Jan Pelnar, an orthopedic surgeon. He presented with continued complaints of pain in the area of the left knee and a sense of instability which condition had lasted since his January 18, 2005 job accident/injury. On physical exam, no edema was observed but the "quadriceps distal attachment" was painful on palpation. X-rays of the left knee showed arthritic changes, "minor osteophytes in the marginal area of the intercondylar eminence in anteroposterior part of distal attachment," calcification in the region of the patella upper pole, but otherwise without obvious structural or traumatic changes. He noted enthesiopathy of the distal quadriceps tendon. Dr. Pelnar concluded that the injury had created a distortion of the left knee/leg and had a high probability of causal relation to Claimant's January 2005 accident and recommended "without large physical load, no jumps, running, burdens, longer walks, etc." He diagnosed a sprain and extension affecting the collateral knee ligament, a strain and extension of the cruciate ligament and chronic instability of the knee. (CX-1, p. 5; EX-5, p. 5). No further treatment was recommended.

Dr. Petr Zeman

Dr. Zeman, a physician at the Clinic of Orthopedics and Traumatology, Charles University Hospital in Pilsen, Czech Republic, rendered a permanent impairment rating for Claimant on March 3, 2007. He rated Claimant's injured left lower extremity at 50% based on his exam as well as Dr. Pelnar's exam "of one year ago." He noted that Claimant reported no improvement in his leg since the January 2005 accident and that he cannot run or lift heavy objects and has great difficulty going up and down stairs. Claimant reported he could walk without great difficulty and wears a leg brace recommended by Dr. Pelnar. Dr. Zeman considered Claimant's leg injury to have reached permanency because it had been two years since the job accident. Using A Concise Guide to Orthopedic and Musculoskeletal Impairment Ratings, by Chris E. Wiggins, and combining the percentages rated for motion and flexion, he determined Claimant had a 20% impairment to the whole person and a 50% impairment to the left lower extremity. (CX-1, p. 7). No treatment regimen was provided to Claimant.

On January 15, 2008, Dr. Zeman again examined Claimant and noted he "had been treated conservatively by Dr. Pelnar." Objectively, he concluded the following about Claimant's left knee: "with minimum flexion, motility," varus was slightly positive, front socket positive, meniscus without obvious findings, and hypotrophy of quadriceps. X-rays revealed incipient arthritic changes. Medication was prescribed and rehabilitation of the left knee was to be initiated. (CX-1, p. 61).

On March 11, 2008, Dr. Eva Svehlova interpreted a MRI of the left knee as exhibiting a partial rupture "of m. quadriceps fem. tendon over patella, which is healed by inadequate fibrous tissue." (CX-1, p. 64). Dr. Zeman opined on April 7, 2008, that the MRI interpretation by Dr. Svehlova confirmed his initial assumption that Claimant had suffered an injury to his left knee-partial rupture of the quadriceps tendon, which was now only "with an apparent ligament scar, 5 cm long, of non-homogenous structure." He noted that in view of the present clinical finding and result of MRI, he could not agree with the opinion of Dr. Thomann who concluded the injury was not a rupture. He re-affirmed his March 3, 2007 conclusions as correct and determined that Claimant had a 50% disability from his work injury of January 18, 2005. (CX-17, p. 2).

Dr. K. D. Thomann

Dr. Thoman, an orthopedist for the Institute for Insurance Medicine, evaluated Claimant at the request of Employer/Carrier on November 21, 2007. (CX-1, p. 37; EX-4). He reviewed Claimant's prior medical treatment for his job injury and the completion of his employment contract. (CX-1, pp. 38-40). He noted that Dr. Pelnar had prescribed a brace which Claimant continues to use and that "Dr. Zeman did not treat" Claimant. (CX-1, p. 41). From all of Claimant's prior medical evaluations, Dr. Thomann observed that no further medical treatment or physiotherapy was planned and the possibility of surgery was not mentioned. Id.

Claimant reported to Dr. Thomann that after his accident he was no longer able to exercise or run. (CX-1, p. 42). He also reported continued problems with his left leg, when bending his left knee joint or when he climbs stairs or squats. He related that he could walk for about one hour with his brace, but could not run or lift any heavy objects. If he does not wear his brace, he feels a weakness in the left leg and his walking gets worse. His knee does not swell after walking. (CX-1, pp. 43, 54).

On physical exam, the left thigh showed a stronger muscular reduction and the lower left leg showed a light swelling. Claimant was able to squat only 50%, reporting a feeling of weakness in the left leg. (CX-1, p. 44). Dr. Thomann reported the left knee joint appeared to have an insignificant increase in circumference and a mild laxity of the front oblique ligament on the left knee joint. The left lower leg was slightly swollen, but there was no muscle weakness of the thigh or of the lower leg. (CX-1, p. 46). Dr. Thomann performed movement deflections and measurements. (CX-1, pp. 47-48).

An ultrasound of the left knee was also conducted on November 21, 2007, which revealed no relevant joint effusion although minimal collection of fluid was observed. It was determined that the quadriceps and patellar tendon is intact. (CX-1, p. 50). A MRI Tomography of the left knee joint was also performed which showed "discreet signs of chronic enthesiopathy of the quadriceps tendon, however no indication of a partial rupture or of acute friction" of the front oblique ligament or inner or outer ligament. (CX-1, pp. 9, 51, 59).

Dr. Thomann assumed, taking the job accident into account, that there was a significant distortion of Claimant's left knee joint with knee joint effusion and an elongation without complete rupture of the front oblique ligament. He concluded however that as a result of the job injury there was minimal impairment of the left leg. He recommended further physiotherapy and muscular training to build the muscles of the left leg. (CX-1, pp. 55-56). He further concluded that the light degenerative changes and enthesiopathy (a state of irritation or inflammation) were unrelated to Claimant's job accident. (CX-1, pp. 57, 59). He opined that Claimant had not reached maximum medical improvement and physiotherapy was recommended for the next six months along with walking training. (CX-1, pp. 57-58).

As a result of the job accident, Dr. Thomann opined that Claimant's functional restrictions were a slight degree of restriction in bending the left knee joint, light muscle reduction in the left leg, and slight increase in the front oblique ligament. Using the Guide to the Evaluation of Permanent Impairment, Fifth Edition, (herein Guides, tables 17-6, 17-7 and 17-33), he assigned an impairment of 11% for the left leg. He further opined that a slight improvement in the muscle atrophy can be expected and for that reason, a permanent impairment of the left leg was assigned at 9%. He further opined that Dr. Zeman's assessment was not correct. (CX-1, pp. 58-59).

The Contentions of the Parties

Claimant contends he injured his left leg in a slip and fall accident on January 18, 2005, while employed as a force protection specialist with Employer in Kosovo. He was accommodated in his employment through the completion of his employment contract on March 17, 2005. He reached maximum medical improvement on March 3, 2007, and seeks temporary partial disability compensation benefits from March 18, 2005 through March 3, 2007, based on the difference between his earnings and an average weekly wage of \$994.53. Claimant also contends he has a permanent impairment rating of 50% for his leg injury and should be found to be permanently totally disabled after March 3, 2007, to present and continuing because Employer/Carrier has not established suitable alternative employment.

Employer/Carrier contend that there is no probative medical evidence that Claimant could not work during the period from March 18, 2005 through March 3, 2007, and is not entitled to any temporary partial disability benefits as a result of his January 18, 2005 work injury. Employer/Carrier assert that Claimant has been paid and received \$19,757.55 for a permanent partial impairment rating of 11% under the schedule based on an average weekly wage of \$935.49 (EX-7), and that no further disability benefits are warranted.

IV. DISCUSSION

It has been consistently held that the Act must be construed liberally in favor of the Claimant. Voris v. Eikel, 346 U.S. 328, 333 (1953); J. B. Vozzolo, Inc. v. Britton, 377 F.2d 144 (D.C. Cir. 1967). However, the United States Supreme Court has determined that the "true-doubt" rule, which resolves factual doubt in favor of the Claimant when the evidence is evenly balanced, violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. Section 556(d), which specifies that the proponent of a rule or position has the burden of proof and, thus, the burden of persuasion. Director, OWCP v. Greenwich Collieries, 512 U.S. 267, 114 S.Ct. 2251 (1994), aff'g. 990 F.2d 730 (3rd Cir. 1993).

In arriving at a decision in this matter, it is well-settled that 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. Duhagon v. Metropolitan Stevedore Company, 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).

It is also noted that the opinion of a treating physician may be entitled to greater weight than the opinion of a non-treating physician under certain circumstances. Black & Decker Disability Plan v. Nord, 538 U.S. 822, 830, 123 S.Ct 1965, 1970 n. 3 (2003) (in matters under the Act, courts have approved adherence to a rule similar to the Social Security treating physicians rule in which the opinions of treating physicians are accorded special deference) (citing Pietrunti v. Director, OWCP, 119 F.3d 1035 (2d Cir. 1997) (an administrative law judge is bound by the expert opinion of a treating physician as to the

existence of a disability "unless contradicted by substantial evidence to the contrary"); Rivera v. Harris, 623 F.2d 212, 216 (2d Cir. 1980) ("opinions of treating physicians are entitled to considerable weight"); Loza v. Apfel, 219 F.3d 378 (5th Cir. 2000) (in a Social Security matter, the opinions of a treating physician were entitled to greater weight than the opinions of non-treating physicians).

A. The Compensable Injury

Section 2(2) of the Act defines "injury" as "accidental injury or death arising out of or in the course of employment." 33 U.S.C. § 902(2). Section 20(a) of the Act provides a presumption that aids the Claimant in establishing that a harm constitutes a compensable injury under the Act. Section 20(a) of the Act provides in pertinent part:

In any proceeding for the enforcement of a claim for compensation under this Act it shall be presumed, in the absence of substantial evidence to the contrary- that the claim comes within the provisions of this Act.

33 U.S.C. § 920(a).

The Benefits Review Board (herein the Board) has explained that 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. 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). These two elements establish a **prima facie** case of a compensable "injury" supporting a claim for compensation. Id.

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. 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 (CRT) (5th Cir. 1982).

Based on the stipulations of the parties, I find and conclude that Claimant suffered an injury to his left knee and leg on January 18, 2005, when he slipped and fell enroute to his duty station.

Thus, Claimant has established a **prima facie** case that he suffered an "injury" under the Act, having established that he suffered a harm or pain on January 18, 2005, and that his working conditions and activities on that date could have caused the harm or pain sufficient to invoke the Section 20(a) presumption. Cairns v. Matson Terminals, Inc., 21 BRBS 252 (1988).

B. Nature and Extent of Disability

The parties stipulated that Claimant suffers from a compensable injury to his left knee/leg, however the burden of proving the nature and extent of his disability rests with the Claimant. Trask v. Lockheed Shipbuilding Construction Co., 17 BRBS 56, 59 (1980).

Disability is generally addressed in terms of its nature (permanent or temporary) and its extent (total or partial). The permanency of any disability is a medical rather than an economic concept.

Disability is defined under the Act as an "incapacity to earn the wages which the employee was receiving at the time of injury in the same or any other employment." 33 U.S.C. § 902(10). Therefore, for Claimant to receive a disability award, an economic loss coupled with a physical and/or psychological impairment must be shown. Sproull v. Stevedoring Servs. of America, 25 BRBS 100, 110 (1991). Thus, disability requires a causal connection between a worker's physical injury and his inability to obtain work. Under this standard, a claimant may be found to have either suffered no loss, a total loss or a partial loss of wage earning capacity.

Permanent disability is a disability that has continued for a lengthy period of time and appears to be of lasting or indefinite duration, as distinguished from one in which recovery merely awaits a normal healing period. Watson v. Gulf Stevedore Corp., 400 F.2d 649, pet. for reh'g denied sub nom. Young & Co. v. Shea, 404 F.2d 1059 (5th Cir. 1968) (per curiam), cert. denied, 394 U.S. 876 (1969); SGS Control Services v. Director, OWCP, 86 F.3d 438, 444 (5th Cir. 1996). A claimant's disability is permanent in nature if he has any residual disability after

reaching maximum medical improvement. Trask, supra, at 60. Any disability suffered by Claimant before reaching maximum medical improvement is considered temporary in nature. Berkstresser v. Washington Metropolitan Area Transit Authority, 16 BRBS 231 (1984); SGS Control Services v. Director, OWCP, supra, at 443.

The question of extent of disability is an economic as well as a medical concept. Quick v. Martin, 397 F.2d 644 (D.C. Cir. 1968); Eastern S.S. Lines v. Monahan, 110 F.2d 840 (1st Cir. 1940); Rinaldi v. General Dynamics Corporation, 25 BRBS 128, 131 (1991).

To establish a **prima facie** case of total disability, the claimant must show that he is unable to return to his regular or usual employment due to his work-related injury. Elliott v. C & P Telephone Co., 16 BRBS 89 (1984); Harrison v. Todd Pacific Shipyards Corp., 21 BRBS 339 (1988); Louisiana Insurance Guaranty Association v. Abbott, 40 F.3d 122, 125 (5th Cir. 1994).

Claimant's present medical restrictions must be compared with the specific requirements of his usual or former employment to determine whether the claim is for temporary total or permanent total disability. Curit v. Bath Iron Works Corp., 22 BRBS 100 (1988). Once Claimant is capable of performing his usual employment, he suffers no loss of wage earning capacity and is no longer disabled under the Act.

C. Maximum Medical Improvement (MMI)

The traditional method for determining whether an injury is permanent or temporary is the date of maximum medical improvement. See Turney v. Bethlehem Steel Corp., 17 BRBS 232, 235, n. 5 (1985); Trask v. Lockheed Shipbuilding Construction Co., supra; Stevens v. Lockheed Shipbuilding Company, 22 BRBS 155, 157 (1989). The date of maximum medical improvement is a question of fact based upon the medical evidence of record. Ballesteros v. Willamette Western Corp., 20 BRBS 184, 186 (1988); Williams v. General Dynamics Corp., 10 BRBS 915 (1979).

An employee reaches maximum medical improvement when his condition becomes stabilized. Cherry v. Newport News Shipbuilding & Dry Dock Co., 8 BRBS 857 (1978); Thompson v. Quinton Enterprises, Limited, 14 BRBS 395, 401 (1981).

In the present matter, nature and extent of disability and maximum medical improvement will be treated concurrently for purposes of explication.

It is well-settled that a worker entitled to permanent partial disability for an injury arising under the Section 8(c) schedule provision of the Act, such as here, may also be entitled to greater compensation under Sections 8(a) and (b) by showing that he is totally disabled. Potomac Electric Power Co. v. Director, OWCP, 449 U.S. 268, 277, n.17, 14 BRBS 363, 366-367 n.17 (CRT) (1980); Davenport v. Daytona Marine & Boat Works, 16 BRBS 196, 199 (1984). Unless the worker is totally disabled, however, he is limited to the compensation provided by the appropriate schedule provision of Section 8(c). Winston v. Ingalls Shipbuilding, Inc., 16 BRBS 168, 172 (1984). Accordingly, Claimant's entitlement to the scheduled and unscheduled provisions of the Act will be considered.

The Scheduled Injury

The scheduled permanent partial disability rates established by Sections 8(c)(1) through 8(c)(20) of the Act are the minimum levels of compensation to which an injured employee is automatically entitled as a result of his injury and no proof of actual loss of wage-earning capacity is required in order to receive at least the amount specified in the schedule for such injury. See Travelers Insurance Company v. Cardillo, 225 F.2d 137 (2d Cir. 1955), cert. denied, 350 U.S. 913 (1955); Greto v. Blakeslee, Arpaia & Chapman, 10 BRBS 1000 (1979).

In determining the appropriate impairment rating for a scheduled injury, the Board has held that the determination must be based upon a consideration of physical factors alone. Bachich v. Seatrains Terminals, 9 BRBS 184, 187 (1978). Any disability resulting from the impairment that results in economic loss is irrelevant. Masse v. Frank J. Holleran, Inc., 9 BRBS 1053, 1054-1055 (1978). Although any economic loss is irrelevant, I can properly consider Claimant's ability to return to work at his regular job as evidence in determining whether or not Claimant has sustained any measure of permanent physical impairment. Id.; Michael v. Sun Shipbuilding & Dry Dock Co., 7 BRBS 5 (1977).

In determining Claimant's impairment rating, I may also properly rely on medical evaluations as well as Claimant's own description of his symptoms and the physical effects of his injury. Amato v. Pittston Stevedoring Corp., 6 BRBS 537 (1977).

I cannot award benefits for pain and suffering, but I can consider Claimant's pain and its symptoms in determining the extent of his degree of impairment. Young v. Todd Pacific Shipyards Corp., 17 BRBS 201 (1985); Pimpinella v. Universal Maritime Service, Inc., 27 BRBS 154, 159-160 (1993).

In the absence of regulations, the Act does not require adherence to any particular guide or formula to determine disability. Rosa v. Director, OWCP, 33 BRBS 121 (CRT) (9th Cir. 1998); Fisher v. Strachan Fishing Co., 8 BRBS 578, 580 (1978). Thus, an administrative law judge is not bound to apply any particular edition of the AMA Guides, nor is he bound by any doctor's opinion. Rosa v. Director, OWCP, supra; Mazze, supra, at 1055. The Board has concluded that the Act does not require impairment ratings based on medical opinions using the criteria of the AMA Guides except in cases involving compensation for hearing loss and voluntary retirees. Pimpinella, supra, at 159 n.4; See 33 U.S.C. §§ 908(c)(13), 902(10).

The burden is on Claimant to establish the nature and extent of his impairment. Hunigman v. Sun Shipbuilding and Dry Dock Co., 8 BRBS 141, 145 (1978); see also, Harrison v. Potomac Electric Power Co., 8 BRBS 313, 314 (1978).

Two medical opinions have been offered in this matter regarding the level of Claimant's knee impairment. Dr. Zeman has opined that Claimant sustained a 50% impairment to his knee and Dr. Thomann assigned an 11% impairment. Although Dr. Zeman may be considered Claimant's treating physician, I find his impairment rating to be flawed and unpersuasive for lack of any explanation of its basis. Having reviewed the Tables relied upon by Dr. Thomann, I find his assigned impairment rating to be more reasonable and accurate.

Dr. Thomann considered the AMA Guides: table 17-6, which involves unilateral leg muscle atrophy; table 17-7, which involves muscle function; and table 17-33, involving deficiencies in the lower extremity impairments to conclude that Claimant should be assigned an impairment rating of 11%, which I find appropriate and the more-reasoned and well-documented opinion in this matter. I am not persuaded that Dr. Thomann's opinion should be discounted because he did not diagnose a healed partial rupture of the quadriceps muscle which did not appear diagnostically until March 11, 2008. Moreover, Claimant has undergone no meaningful treatment or therapy and no surgical procedures have been recommended or performed. Accordingly, I find and conclude that Claimant suffered an 11% permanent

impairment rating to his left knee/leg as a result of his work injury. Although, Dr. Thomann also opined that Claimant may only have a 9% impairment rating after therapy, no such regimen has been undertaken or completed by Claimant. Furthermore, I am not persuaded that Dr. Thomann correctly concluded that Claimant's injury was "unrelated to the accident" since no other plausible explanation has been established. (See EX-10, p. 1).

Section 8(c)(2) of the Act sets the scheduled benefits for the permanent loss (or loss of use) of a leg at 288 weeks of pay at a rate of 66 2/3% of a claimant's average weekly wage. In this case, Claimant suffered a permanent impairment of 11% of his left leg, entitling him to a total of 11% of the 288 weeks scheduled for a total loss in accordance with Section 8(c)(19). Consequently, Claimant is entitled to 31.68 weeks of compensation (288 weeks x .11). Based on Claimant's average weekly wage of \$1,005.77 or a compensation amount of \$670.55 per week (\$1,005.77 x .6667), he is entitled to \$670.55 per week for 31.68 weeks which yields a total of \$21,243.02.

The record reveals that Employer/Carrier have already paid Claimant \$19,757.55 in compensation for a permanent impairment of 11%. (EX-7). Therefore, Employer/Carrier are entitled to a credit for the amount paid to Claimant. Claimant is due the remainder of \$1,485.47 as a scheduled permanent impairment rating benefit.

The Unscheduled Injury

However, as noted above, where a claimant with an injury to a scheduled member establishes total disability, the schedule set forth in Section 8(c) is inapplicable. Potomac Electric Power Co. v. Director, OWCP, supra; Fyall v. Delta Marine, Inc., 18 BRBS 241 (1986).

Claimant credibly testified that after the swelling in his knee subsided, he worked "special duty" which was an accommodation by Employer because of Claimant's inability to climb into the back of a military vehicle, walk upstairs or run. He earned his regular wages through his employment contract period which ended on March 17, 2005.

Claimant further credibly testified that he could not physically run or pass a fitness test as a force protection specialist. He could not have acted as a reinforcement if needed. He was not required to take or pass a fitness test after his injury. His testimony is uncontradicted.

I find Claimant could not fulfill the physical demands of his former job as a force protection specialist after his knee/leg injury, absent accommodation. Moreover, I find that the medical evidence, particularly the opinion of Dr. Pelnar regarding physical limitations/restrictions, establishes that Claimant is unable to resume his former employment as a force protection specialist for Employer due to his work-related injury. Therefore, Claimant has established a **prima facie** case of total disability.

Claimant continued working on special duty for Employer through the end of his employment contract on March 17, 2005, and earned his regular wages. From March 18, 2005, he was unable to acquire substantial gainful employment. He credibly testified that a job offer was received from DynCorp International for a substantially equivalent position as force protection specialist, which he was unable to accept because of the physical fitness test requirement. I further find that Claimant's estimated earnings of \$50.00 per month on average teaching English following the conclusion of his employment contract does not constitute substantial gainful employment or suitable alternative employment. Such earnings do not fairly and reasonably represent Claimant's wage-earning capability because of the residual of his work-related injury. See 33 U.S.C. § 908(h).

Accordingly, I find Claimant was temporarily totally disabled from March 18, 2005 until March 3, 2007, when he reached maximum medical improvement based on Dr. Zeman's opinion and assigned permanent impairment rating and is entitled to temporary total disability compensation benefits based on his average weekly wage of \$1,005.77.

Given the inconsistency in Dr. Thomann's opinion that maximum medical improvement had not yet been reached on November 21, 2007, when he also assigned a permanent impairment rating for Claimant's left leg, I place greater probative weight on the opinion of Dr. Zeman regarding maximum medical improvement. Therefore, I find and conclude that Claimant reached maximum medical improvement on March 3, 2007, and became permanently totally disabled.

Since Claimant is due both scheduled and unscheduled benefit payments, the combined payments cannot exceed the statutory limit set forth in Section 8(a) of the Act for permanent total disability. Brady-Hamilton Stevedore Co. v. Director, OWCP, 58 F.3d 419, 29 BRBS 101 (CRT)(9th Cir. 1995). Claimant will be entitled to the scheduled award if, and when, he is no longer totally disabled since he cannot receive more than 66 2/3% of his average weekly wage in compensation payments.

D. Suitable Alternative Employment

If the claimant is successful in establishing a **prima facie** case of total disability, the burden of proof is shifted to employer to establish suitable alternative employment. New Orleans (Gulfwide) Stevedores v. Turner, 661 F.2d 1031, 1038 (5th Cir. 1981). Addressing the issue of job availability, the Fifth Circuit has developed a two-part test by which an employer can meet its burden:

(1) Considering claimant's age, background, etc., what can the claimant physically and mentally do following his injury, that is, what types of jobs is he capable of performing or capable of being trained to do?

(2) Within the category of jobs that the claimant is reasonably capable of performing, are there jobs reasonably available in the community for which the claimant is able to compete and which he reasonably and likely could secure?

Id. at 1042. Turner does not require that employers find specific jobs for a claimant; instead, the employer may simply demonstrate "the availability of general job openings in certain fields in the surrounding community." P & M Crane Co. v. Hayes, 930 F.2d 424, 431 (1991); Avondale Shipyards, Inc. v. Guidry, 967 F.2d 1039 (5th Cir. 1992).

However, the employer must establish **the precise nature and terms** of job opportunities it contends constitute suitable alternative employment in order for the administrative law judge

to rationally determine if the claimant is physically and mentally capable of performing the work and that it is realistically available. Piunti v. ITO Corporation of Baltimore, 23 BRBS 367, 370 (1990); Thompson v. Lockheed Shipbuilding & Construction Company, 21 BRBS 94, 97 (1988).

The administrative law judge must compare the jobs' requirements identified by the vocational expert with the claimant's physical and mental restrictions based on the medical opinions of record. Villasenor v. Marine Maintenance Industries, Inc., 17 BRBS 99 (1985); See generally Bryant v. Carolina Shipping Co., Inc., 25 BRBS 294 (1992); Fox v. West State, Inc., 31 BRBS 118 (1997). Should the requirements of the jobs be absent, the administrative law judge will be unable to determine if claimant is physically capable of performing the identified jobs. See generally P & M Crane Co., supra at 431; Villasenor, supra. Furthermore, a showing of only one job opportunity may suffice under appropriate circumstances, for example, where the job calls for **special skills** which the claimant possesses and there are few qualified workers in the local community. P & M Crane Co., supra at 430. Conversely, a showing of one unskilled job may not satisfy Employer's burden.

Once the employer demonstrates the existence of suitable alternative employment, as defined by the Turner criteria, the claimant can nonetheless establish total disability by demonstrating that he tried with reasonable diligence to secure such employment and was unsuccessful. Turner, supra at 1042-1043; P & M Crane Co., supra at 430. Thus, a claimant may be found totally disabled under the Act "when physically capable of performing certain work but otherwise unable to secure that particular kind of work." Turner, supra at 1038, quoting Diamond M. Drilling Co. v. Marshall, 577 F.2d 1003 (5th Cir. 1978). The claimant's obligation to seek work does not displace the employer's **initial** burden of demonstrating job availability. Roger's Terminal & Shipping Corp. v. Director, OWCP, 784 F.2d 687, 691, 18 BRBS 79, 83 (CRT) (5th Cir.), cert. denied, 479 U.S. 826 (1986); Manigault v. Stevens Shipping Co., 22 BRBS 332 (1989).

The Benefits Review Board has announced that a showing of available suitable alternate employment may not be applied retroactively to the date the injured employee reached MMI and that an injured employee's total disability becomes partial on the earliest date that the employer shows suitable alternate employment to be available. Rinaldi v. General Dynamics Corporation, supra, at 131 (1991).

Employer/Carrier have made no showing of any suitable alternative jobs available to Claimant. No modified internal positions have been shown to exist in the instant record. The earnings derived from sporadic work in which Claimant engaged after his employment contract with Employer, such as teaching English, does not constitute substantial gainful employment and is not considered to be suitable alternative employment. Accordingly, when Claimant reached maximum medical improvement on March 3, 2007, he continued to be totally disabled in the absence of a demonstration of available suitable alternative employment and is entitled to permanent total disability compensation benefits based on his average weekly wage of \$1,005.77.

E. Average Weekly Wage

Section 10 of the Act sets forth three alternative methods for calculating a claimant's average annual earnings, 33 U.S.C. § 910 (a)-(c), which are then divided by 52, pursuant to Section 10(d), to arrive at an average weekly wage. The computation methods are directed towards establishing a claimant's earning power at the time of injury. SGS Control Services v. Director, OWCP, supra, at 441; Johnson v. Newport News Shipbuilding & Dry Dock Co., 25 BRBS 340 (1992); Lobus v. I.T.O. Corp., 24 BRBS 137 (1990); Barber v. Tri-State Terminals, Inc., 3 BRBS 244 (1976), aff'd sum nom. Tri-State Terminals, Inc. v. Jesse, 596 F.2d 752, 10 BRBS 700 (7th Cir. 1979).

Section 10(a) provides that when the employee has worked in the same employment for substantially the whole of the year immediately preceding the injury, his annual earnings are computed using his actual daily wage. 33 U.S.C. § 910(a). Section 10(b) provides that if the employee has not worked substantially the whole of the preceding year, his average annual earnings are based on the average daily wage of any employee in the same class who has worked substantially the whole of the year. 33 U.S.C. § 910(b). But, if neither of these two methods "can reasonably and fairly be applied" to determine an employee's average annual earnings, then resort to Section 10(c) is appropriate. Empire United Stevedore v. Gatlin, 935 F.2d 819, 821, 25 BRBS 26 (CRT) (5th Cir. 1991).

Subsections 10(a) and 10(b) both require a determination of an average daily wage to be multiplied by 300 days for a 6-day worker and by 260 days for a 5-day worker in order to determine average annual earnings.

Arguably, Claimant worked "substantially the whole of the year immediately preceding his injury" pursuant to Section 10(a). However, by express statutory language, Section 10(a) cannot be applied to calculate Claimant's average weekly wage since the record does not demonstrate he was either a five-day or six-day worker. See Duhagon v. Metropolitan Stevedore Company, 31 BRBS 98, 101 (1997). I conclude, given the language of Section 10(a), the use of Section 10(a) as suggested by Claimant in computing average weekly wage is not supported by the Act. Moreover, there is no record evidence of the applicability of Section 10(b) of the Act since no earnings of similarly situated employees are contained in the record. Accordingly, Section 10(c) of the Act may be invoked when the method set forth in Sections 10(a) and 10(b) cannot reasonably and fairly be applied.

Section 10(c) of the Act provides:

If either [subsection 10(a) or 10(b)] cannot reasonably and fairly be applied, such average annual earnings shall be such sum as, having regard to the previous earnings of the injured employee and the employment in which he was working at the time of his injury, and of other employees of the same or most similar class working in the same or most similar employment in the same or neighboring locality, or other employment of such employee, including the reasonable value of the services of the employee if engaged in self-employment, shall reasonably represent the annual earning capacity of the injured employee.

33 U.S.C § 910(c).

The Administrative Law Judge has broad discretion in determining annual earning capacity under subsection 10(c). Hayes v. P & M Crane Co., supra; Hicks v. Pacific Marine & Supply Co., Ltd., 14 BRBS 549 (1981). It should also be stressed that the objective of subsection 10(c) is to reach a fair and reasonable approximation of a claimant's wage-earning capacity at the time of injury. Barber v. Tri-State Terminals, Inc., supra. Section 10(c) is used where a claimant's employment, as here, is seasonal, part-time, intermittent or discontinuous. Empire United Stevedores v. Gatlin, supra, at 822.

In Miranda v. Excavation Construction Inc., 13 BRBS 882 (1981), the Board held that a worker's average wage should be based on his earnings for the seven or eight weeks that he worked for the employer rather than on the entire prior year's earnings because a calculation based on the wages at the employment where he was injured would best adequately reflect the Claimant's earning capacity at the time of the injury.

Claimant earned \$39,214.96 from March 17, 2004, when his employment contract began through December 31, 2004, a total of 41 2/7 weeks or \$949.74 per week ($\$39,214.96 \div 41.29$ weeks). (CX-7). In 2005, Claimant worked 2 6/7 weeks (2.86) until his work injury of January 18, 2005. Claimant earned \$18,145.73 in 2005 through the end of his employment contract on March 18, 2005.³ Thus, Claimant earned \$1,814.58 per week during the ten-week period of 2005. No explanation for the increased wages was offered in the instant record. For the period from January 1, 2005, until the date of his work injury, a period of 2.86 weeks, Claimant thus earned \$5,189.70 ($\$1,814.58 \times 2.86$ weeks). Therefore, Claimant earned \$44,404.66 ($\$39,214.96 + \$5,189.70$) during the 44.15 weeks of employment with Employer before his work accident/injury of January 18, 2005, or an average of \$1,005.77 per week ($\$44,404.66 \div 44.15$ weeks), which I find to be his average weekly wage.

F. Entitlement to Medical Care and Benefits

Section 7(a) of the Act provides that:

The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require.

33 U.S.C. § 907(a).

The Employer is liable for all medical expenses which are the natural and unavoidable result of the work injury. For medical expenses to be assessed against the Employer, the expense must be both reasonable and necessary. Pernell v. Capitol Hill Masonry, 11 BRBS 532, 539 (1979). Medical care must also be appropriate for the injury. 20 C.F.R. § 702.402.

³ CX-8 reveals the 2005 earnings period covered as January 14, 2005 through March 25, 2005, a ten-week period. No explanation for a lack of earnings for the two weeks before January 14, 2005, has been offered.

A claimant has established a **prima facie** case for compensable medical treatment where a qualified physician indicates treatment was necessary for a work-related condition. Turner v. Chesapeake & Potomac Tel. Co., 16 BRBS 255, 257-258 (1984).

Section 7 does not require that an injury be economically disabling for claimant to be entitled to medical benefits, but only that the injury be work-related and the medical treatment be appropriate for the injury. Ballesteros v. Willamette Western Corp., 20 BRBS 184, 187.

Entitlement to medical benefits is never time-barred where a disability is related to a compensable injury. Weber v. Seattle Crescent Container Corp., 19 BRBS 146 (1980); Wendler v. American National Red Cross, 23 BRBS 408, 414 (1990).

In view of the stipulations of the parties that Claimant sustained a compensable work-related injury, Employer Carrier are responsible to Claimant for reasonable and necessary medical care and treatment for his left knee/leg injury. Additionally, Employer/Carrier are responsible to Claimant for the transportation costs of \$253.00 incurred by Claimant to travel to Frankfort, Germany to undergo a medical examination by Dr. Thomann at the behest of Employer/Carrier.

V. SECTION 14(e) PENALTY

Section 14(e) of the Act provides that if an employer fails to pay compensation voluntarily within 14 days after it becomes due, or within 14 days after unilaterally suspending compensation as set forth in Section 14(b), the Employer shall be liable for an additional 10% penalty of the unpaid installments. Penalties attach unless the Employer files a timely notice of controversion as provided in Section 14(d).

In the present matter, Employer/Carrier failed to file a notice of controversion. An Employer/Carrier's liability pursuant to Section 14(e) ceases on the date of the filing of their notice of controversion or on the date of the informal conference. See National Steel & Shipbuilding Co. v. U.S. Department of Labor, OWCP, 606 F.2d 875, 11 BRBS 68 (9th Cir. 1979), aff'g in part & rev'g in part Holston v. National Steel & Shipbuilding Co., 5 BRBS 794 (1977); Spencer v. Baker Agricultural Co., 16 BRBS 205 (1984). An informal conference was held in this matter on April 27, 2006.

In accordance with Section 14(b), Claimant was owed compensation on the fourteenth day after Employer was notified of his injury or compensation was due.⁴ Thus, Employer was liable for Claimant's disability compensation payment on February 1, 2005. Claimant continued to work modified duty through March 17, 2005. A notice of controversion should have been filed at the latest by March 31, 2005, to be timely and prevent the application of penalties. Consequently, I find and conclude that Employer did not file a timely notice of controversion on February 1, 2005, and is liable for Section 14(e) penalties from February 1, 2005 to April 27, 2006, the date on which the Department of Labor had notice of the present controversy through the informal conference.

VI. INTEREST

Although not specifically authorized in the Act, it has been an accepted practice that interest at the rate of six per cent per annum is assessed on all past due compensation payments. Avallone v. Todd Shipyards Corp., 10 BRBS 724 (1974). The Benefits Review Board and the Federal Courts have previously upheld interest awards on past due benefits to insure that the employee receives the full amount of compensation due. Watkins v. Newport News Shipbuilding & Dry Dock Co., aff'd in pertinent part and rev'd on other grounds, sub nom. Newport News v. Director, OWCP, 594 F.2d 986 (4th Cir. 1979). The Board concluded that inflationary trends in our economy have rendered a fixed six per cent rate no longer appropriate to further the purpose of making Claimant whole, and held that ". . . the fixed per cent rate should be replaced by the rate employed by the United States District Courts under 28 U.S.C. § 1961 (1982). This rate is periodically changed to reflect the yield on United States Treasury Bills . . ." Grant v. Portland Stevedoring Company, et al., 16 BRBS 267 (1984).

Effective February 27, 2001, this interest rate is based on a weekly average one-year constant maturity Treasury yield for the calendar week preceding the date of service of this Decision and Order by the District Director. This order incorporates by reference this statute and provides for its specific administrative application by the District Director.

⁴ Section 6(a) does not apply since Claimant suffered his disability for a period in excess of fourteen days.

VII. ATTORNEY'S FEES

No award of attorney's fees for services to the Claimant is made herein since no application for fees has been made by the Claimant's counsel. Counsel is hereby allowed thirty (30) days from the date of service of this decision by the District Director to submit an application for attorney's fees.⁵ A service sheet showing that service has been made on all parties, including the Claimant, must accompany the petition. Parties have twenty (20) days following the receipt of such application within which to file any objections thereto. The Act prohibits the charging of a fee in the absence of an approved application.

VIII. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, and upon the entire record, I enter the following Order:

1. Employer/Carrier shall pay Claimant compensation for temporary total disability from March 18, 2005 to March 2, 2007, based on Claimant's average weekly wage of \$1005.77, in accordance with the provisions of Section 8(b) of the Act. 33 U.S.C. § 908(b).

2. Employer/Carrier shall pay Claimant compensation for permanent total disability from March 3, 2007, to present and continuing thereafter based on Claimant's average weekly wage of \$1005.77, in accordance with the provisions of Section 8(a) of the Act. 33 U.S.C. § 908(a).

3. Employer/Carrier shall pay Claimant compensation for permanent partial disability for an 11% scheduled impairment to his left knee/leg based on two-thirds of Claimant's average weekly wage of \$1005.77 for 31.68 weeks or a total of \$21,243.02, in accordance with the provisions of Section 8(c) of the Act. 33 U.S.C. § 908(c)(2) and (19).

⁵ Counsel for Claimant should be aware that an attorney's fee award approved by an administrative law judge compensates only the hours of work expended between the close of the informal conference proceedings and the issuance of the administrative law judge's Decision and Order. Revoir v. General Dynamics Corp., 12 BRBS 524 (1980). The Board has determined that the letter of referral of the case from the District Director to the Office of the Administrative Law Judges provides the clearest indication of the date when informal proceedings terminate. Miller v. Prolerized New England Co., 14 BRBS 811, 813 (1981), aff'd, 691 F.2d 45 (1st Cir. 1982). Thus, Counsel for Claimant is entitled to a fee award for services rendered after **August 23, 2007**, the date this matter was referred from the District Director.

4. Employer/Carrier shall pay to Claimant the annual compensation benefits increase pursuant to Section 10(f) of the Act effective October 1, 2007, for the applicable period of permanent total disability.

5. Employer/Carrier shall pay all reasonable, appropriate and necessary medical expenses arising from Claimant's January 18, 2005, work injury, pursuant to the provisions of Section 7 of the Act, including transportation costs incurred traveling to a medical examination in Frankfort, Germany at the behest of Employer/Carrier.

6. Employer shall be liable for an assessment under Section 14(e) of the Act from February 1, 2005 through April 27, 2006.

7. Employer shall receive credit for all compensation heretofore paid, as and when paid.

8. Employer shall pay interest on any sums determined to be due and owing at the rate provided by 28 U.S.C. § 1961 (1982); Grant v. Portland Stevedoring Co., et al., 16 BRBS 267 (1984).

9. Claimant's attorney shall have thirty (30) days from the date of service of this decision by the District Director to file a fully supported fee application with the Office of Administrative Law Judges; a copy must be served on Claimant and opposing counsel who shall then have twenty (20) days to file any objections thereto.

ORDERED this 12th day of August, 2008, at Covington, Louisiana.

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LEE J. ROMERO, JR.
Administrative Law Judge