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Office of Administrative Law Judges
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Issue Date: 08 June 2007

Case No.: 2007-LDA-00009
OWCP No.: 02-149294

In the Matter of

K.E.,
Claimant,

v.

CANINE ASSOCIATES INT'L,
Employer.

and

ACE AMERICAN INSURANCE CO.,
Carrier.

Appearances: David Linker, Esq.
For the Claimant

Scott Hymel, Esq.
For the Employer

Before: John M. Vittone
Chief Administrative Law Judge

DECISION

This matter arises under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 et seq., as extended by the Defense Base Act, 42 U.S.C. § 1651, et seq (Act), brought by K.E. (Claimant) against Canine Associates International (Employer), and Ace American Insurance Company (Carrier). The issues could not be resolved administratively and the matter was referred to the Office of Administrative Law Judges (OALJ) for a formal hearing. The hearing occurred on January 9, 2007, in Chicago, Illinois. The parties were afforded a full opportunity to call and cross examine witnesses, offer exhibits, make arguments, and submit post-hearing briefs. The parties offered nineteen Joint Exhibits (*JX*) labeled A through R. The

decision in this matter is based upon testimony at the hearing (*Tr.*), documentary evidence admitted into the record at the hearing, and the post-hearing arguments of the parties. The Claimant's brief was submitted on March 29, 2007. The Employer/Carrier's brief was submitted on April 16, 2007.

STIPULATIONS

At the hearing, the Claimant and employer stipulated to the following:

1. The OALJ has jurisdiction to hear the case under the Defense Base Act.
2. The Employer has not paid any medical or indemnity benefits in this case.
3. The Claimant's average weekly wage (AWW) for the purposes of this proceeding is \$1,730.57.

Tr. 8-9.

ISSUE

The sole issue in this matter is whether the Claimant is entitled to temporary total disability and medical benefits under the Act as a result of suffering from post traumatic stress syndrome.

STATEMENT OF THE CASE

*Claimant's Testimony*¹

The Claimant is a forty-four year old man who began working as a dog handler in 1992 and became an Explosive Detection Dog Team Handler in 2004. *Tr. 14 & 17.* His early employment in this field was in Qatar, where he examined vehicles as they entered a base and performed special details for dignitaries. *Tr. 17.* The Claimant testified that he was not exposed to any traumatic events such as firefights while he was in Qatar. *Tr. 16-18.* In February, 2005, when his contract with his previous employer ended, the Claimant began working for the Employer. *Tr. 18.* The Claimant initially worked in Iraq at the Bagdad International Airport area of Camp Liberty, where he examined vehicles at checkpoints and went on missions with units searching buildings. *Tr. 18-19.* The Claimant testified that he worked six to seven days per week, between four to sixteen hours per day. *Tr. 19.* His typical mission consisted of meeting a military unit, loading the vehicles, and going into a village or other area. *Id.* Military personnel would check the area first and then the Claimant would go through with his dog and check for hidden explosives. *Id.*

¹ The Claimant testified at the hearing and by deposition. The deposition was taken on November 13, 2006, in Chicago, Illinois. *JXN.*

The Claimant testified that he was never physically wounded while he was in Iraq but that he witnessed the aftermath of firefights where people had been blown up or shot. *Tr. 19-20*. The Claimant also testified that he experienced being fired upon by insurgents. *Id.* The Claimant described an instance when he was in a police station as two Iraqi police officers were shot. *Tr. 20*. In his deposition, the Claimant testified that he was not at the police station when the shooting occurred but returned to find that people had been killed by insurgents. *JX N at 101-102*. The Claimant also testified in his deposition and at the hearing that he did not see any other people injured or killed, but had been in a couple of firefights while in Sadr City, Iraq. *JX N at 102 & 106; Tr. 20*.

The Claimant testified about the Employer's operating procedures in Iraq. The Claimant and other handlers were supervised by a Kennel Master, Herman Hayes, who was, in turn, supervised by an In-Country Manager (ICM), Curtis Henthron. *Tr. 20-21, 27-28*. When an incident occurred on a mission, the handlers were required to file an After Action Report (AAR) with the Kennel Master. *Tr. 21-22, 78*. An AAR had to be filed for events such as weapon discharge, hostile fire, explosives finds, and an injury or death. *JX N at 121*. The Claimant testified that he had only one AAR from Iraq because four or five others were lost when he had to buy a new computer. *Tr. 23; JX N at 105*. The Claimant also testified that he and his co-workers sometimes used alcohol in Iraq. *Tr. 23*. Parties were given by the Kennel Masters and handlers who each contributed to buy beer and other alcohol. *Tr. 24*.

In August, 2005, the Employer's contract with the Defense Department to provide services in Iraq ended and the Claimant and twenty-two other handlers were offered positions in Afghanistan. *Tr. 25*. The Claimant had the same job title and performed the same duties in Afghanistan as he did in Iraq. *Tr. 26*. The Claimant testified that he lived at the Kandahar Airbase and that most of his work consisted of search missions where he would go out with the military to set up road blocks to check vehicles in the Kandahar area. *Tr. 26-27*.

The Claimant testified that in Afghanistan, as in Iraq, he was expected to file an AAR each time there was an incident while he was on a mission. *Tr. 28*. The Claimant testified that he was involved in "a couple" of miscellaneous firefights but that one taking place on October 9, 2005, was significant to him. *Tr. 29 & 37*. The Claimant testified that he was with a unit going through villages looking for explosives and insurgents. *Tr. 29-30*. The unit included four armored Humvee's and three pick-up trucks containing Afghan National Army soldiers. *Tr. 30*. The American personnel were ones the Claimant regularly worked with, including a sergeant and two other soldiers. *Tr. 31*.

After dark, the unit headed back to the base, driving through a washout area on a hillside. *Tr. 31*. The second vehicle in the line became stuck and everyone got out to move it. *Id.* The unit was shot at from compounds at the left and in front of the vehicles. *Id.* When the shooting stopped, members of the Afghan National Army were sent ahead to clear the area while the rest of the unit freed the stuck vehicle. *Tr. 32*.

The Claimant testified that the commander in charge decided to set up camp for the night rather than try to continue going through the village and risk more attacks. *Tr. 32*. The unit set up camp at the compound and worked to clear the area and ensure that the perimeter was safe.

Tr. 32-33. The Captain ordered the sergeant, two other soldiers and the Claimant to sweep a pomegranate grove near the compound. *Tr. 33.* When the rest of the group reached the other end of the grove, they called to the Claimant to come to them. *Tr. 33-34.* When the Claimant got closer to the group, he heard the sergeant shooting his rifle and yelling for him to stop moving forward. *Tr. 34.* The Claimant dropped to the ground and he heard an explosion followed by people screaming for a medic. *Id.* The Claimant returned his dog to the vehicle and then assisted the sergeant and the two soldiers with their injuries. *Id.* One soldier had shrapnel in his arm and leg, the other soldier had a broken arm and injuries to his leg, and the sergeant's body was "riddled with shrapnel all long [sic] his side and basically his legs were blown off." *Id.* The Claimant put tourniquets on the sergeant's legs and started an IV in his arm. *Tr. 35.* Upon removing the sergeant's vest, the Claimant discovered that his entire left side was "pierced with shrapnel from a grenade." *Id.* The medic was eventually able to get to the injured men but firefights continued during the two and a half hours that the injured waited to be airlifted. *Tr. 35-36.* The Claimant testified that the sergeant died before the helicopter arrived and one of the soldiers was airlifted for further medical attention. *Tr. 36.* The Claimant and the remainder of the unit spent the rest of the night on the lookout and returned to the base in the morning. *Id.*

The Claimant testified in his deposition that he did not seek counseling after the October 9th incident while in Afghanistan because he had a "[f]ear of showing weakness." *JX N at 133.* He would speak about the missions with his friends, "have a couple of drinks and then go to sleep on it." *JX N at 135; Tr. 106-107.* The Claimant testified that he was never unable to work and even completed another mission the next day. *JX N at 135; Tr. 82-83.* The Claimant testified that he was involved in other firefights when he left the base on missions and, in November, 2005, completed a seven-day mission with the Special Forces Rangers in the area of Afghanistan called the Belly Button – an insurgent stronghold in the Southeast Region. *Tr. 37, 83-84.* The Claimant's AARs relating to that mission reflect that a firefight took place on November 18, 2005, and, on November 19, 2005, the Claimant had to shoot a dog that was attacking him. *Tr. 91 & 93.* The Claimant also testified that he assisted in a rescue mission to free members of the French Foreign Legion on November 22, 2005. *Tr. 97-98.* The Claimant stated that he helped investigate a separate incident where a vehicle had been exploded. *Tr. 94.* When asked in his deposition how many dead people he had seen while working for the Employer, the Claimant responded "Probably maybe a hundred." *JX N at 149.* The Claimant noted that AARs about incidents involving dead bodies would not include a description of the dead unless the Claimant and his dog were told to check them. *JX N at 151.* The Claimant testified that he reported all incidents in AARs unless the commander of the group he was with instructed him not to do so. *Tr. 97.*

The Claimant testified that the handlers in Afghanistan were supervised by the Team Leader, who was supervised by a general Supervisor, and then by the ICM. *Tr. 27.* According to the Claimant, there was a complete prohibition on alcohol in Afghanistan, unlike in Iraq. *Tr. 38.* Despite this, the Claimant drank alcohol with some of his co-workers and the Rangers that he went on the mission with in November, 2005. *Tr. 38 & 100.* The ICM informed Claimant that the handlers had to follow the same rules as the soldiers which included a total ban on alcohol. *Tr. 38-39.* The Claimant was written up for drinking alcohol and was told that he would be terminated if he violated any more rules. *Tr. 39.* The Claimant then told the ICM he would not work under those conditions. *Id.* The ICM gave the Claimant two weeks leave, but

on January 22, 2006, the Claimant sent an email letter of resignation. *Tr. 39-40; JX R.* The Claimant left Afghanistan for the United States at the end of February, 2006. *Tr. 41.*

The Claimant then testified about his health, noting that his mental and physical health were “[e]xcellent” when he first began working for the Employer. *Tr. 43.* He had passed his physical and was only on medication for sinus problems and joint problems. *Id.* The Claimant testified that Dr. Robert Rozner, his family physician, has prescribed Vicodin for the Claimant’s joint problems since 1998. *Id.* The Claimant testified that he had never sought treatment for mental health issues prior to working for the Employer. *Tr. 44.*

The Claimant testified that he was “depressed, upset” when he returned to the United States from Afghanistan. *Tr. 42.* He complained of having difficulty sleeping, which he admitted had been a problem for him before the October 9th incident, but became more of an issue after the event. *Tr. 44 & 107.* The Claimant admitted that his sleeping problems would not have prevented him from performing his job duties while working for the Employer. *Tr. 108.* The Claimant testified that upon his return from Afghanistan, Dr. Rozner prescribed Ambien and an additional medication, but that it did not help him. *Tr. 44-45.* The Claimant testified that he became “more enclosed,” went out less and less, and spent more time alone. *Tr. 46.* He testified that he began having anxiety attacks in March, 2006. *JX N at 178-79.* In October, 2006, the Claimant began experiencing nightmares which consisted of “reliving the situation of October 9th, trying to come up with some other different scenario . . . that would have worked better, that would have resulted in somebody not dying.” *Tr. 47.* The Claimant testified that he continues to experience the nightmares “every now and then.” *Id.* The Claimant indicated that he experiences flashbacks to the October 9th incident but when asked if the flashbacks would prevent him from going back to work in Afghanistan, he said they would not. *Tr. 101 & 103.* The Claimant also testified that his normal weight is 175 to 180 pounds and that he weighed 178 pounds when he returned from Afghanistan. *Tr. 14-15.* The Claimant testified that he weighed 158 pounds on the day of the hearing. *Tr. 14.*

The Claimant testified that his primary physician, Dr. Rozner, referred him to Dr. Chondra for treatment for PTSD. *Tr. 47-48.* The Claimant said that he complained to Dr. Chondra about feeling irritable, having difficulty sleeping, experiencing nightmares, and “not getting out, not socializing well.” *Tr. 48.* The Claimant noted that little things that normally would not bother him started to upset him. *Id.* The Claimant testified that Dr. Chondra prescribed medication to help him sleep and suggested that the Claimant go through a three week outpatient care program. *Id.* The Claimant is currently on Zaproxin, Chronopin, and Dyonasin, and complains that the medications make it difficult to wake up in the morning and that he feels “like a zombie most of the day.” *Tr. 49.*

The Claimant has not been gainfully employed since his return from Afghanistan. He testified that he has searched without success for a new canine handler job with law enforcement agencies in Illinois. *Tr. 45.* Since his return, he has borrowed money, used saved money, and has occasionally tattooed for money. *Tr. 49.* When asked if he could return to the same kind of work he did in Afghanistan, the Claimant responded

A: Well, it, I could do the work, but I don't think it would help my thought process and how I'm feeling. I can do the work when, I would still be putting myself in the same position that I'm in now. I mean, I need, I need to get better and rethink things before I can start doing combat mission work again.

Q: In your view, would you be able to sustain it to give it a try?

A: Probably.

Q: How so?

A: I'd have to.

Q: Why?

A: I have to work in order to support my family. I have to do something to support my family.

Tr. 49-50.

The Claimant testified that he attempted to find work with the Employer upon his return from Afghanistan. *Tr. 50-51.* The Claimant admitted that he sent an email to the Employer on June 12, 2006, stating that he would like to go back to work. *Tr. 51, JX P.*² The Claimant testified that he also sent his resume to the Employer on July 19, 2006, because he heard the Employer had contracts in the Chicago area. *Tr. 52-53.* In his deposition, the Claimant testified that he would have turned down an overseas job "because of the way [he has] been," but did not disclose to the Employer that he would not be willing to work overseas. *JX N at 162-63.* He then stated that he was interested in the Employer's contracts for sports facilities, doing explosives detecting work. *JX N at 165.* At the hearing, the Claimant admitted that he would probably still be working in Afghanistan today if he had not resigned after a reprimand for violating the Employer's alcohol policy. *Tr. 53.*

The Claimant has also attempted to find work with other canine handling companies, including ones that work in Iraq. *Tr. 54.* The Claimant testified that he underwent a pre-employment physical to work for one company which contracts with the Department of Defense to send dog handlers overseas. *Tr. 56-57.* The Claimant is waiting to hear from that company about a position. *Tr. 58.* The Claimant also applied for a position in Iraq with Blackwater but did not pass the State Department portion of the application process. *Id.* The Claimant testified that he would go back to Iraq if he could be a Kennel Master and that he "want[s] to do what [he is] trained to do." *Tr. 58 & 81.*

Employer's Testimony

Curtis Henthorne, the ICM for the Employer while the Claimant was in Iraq, testified on behalf of the Employer. *Tr. 116.* Henthorne testified that he was initially unaware that the Claimant used prescription Vicodin but was notified by the Claimant's immediate supervisor in Iraq. *Tr. 122.* The supervisor reported the Claimant's use of Vicodin to him because he was

² The email read, in part, that the Claimant "would like to see about coming back and working now that things have changed their [sic]." *JX P.*

concerned that the Claimant was “less productive” because of it. *Id.* The Claimant explained to Henthorne that he took the medication as needed and that it would not affect his work. *Id.*

Henthorne then testified about the Employer’s Iraq and Afghanistan alcohol policies. *Tr. 123.* He explained that the Iraq group was initially allowed to consume alcohol because it was not housed on a military base amongst soldiers. *Id.* Once the Employer’s staff moved to Camp Victory and lived with the soldiers, alcohol was no longer allowed. *Id.* Henthorne explained that there were some zones in Iraq where civilian contractors could have alcohol. *Tr. 124.* Henthorne went on to explain that the handlers in Afghanistan were strictly within the confines of the Kandahar Airfield, where alcohol was not allowed and anyone violating that policy was subject to termination. *Tr. 125.* The Employer testified that the intent was to give the Claimant a written reprimand for violation of the alcohol policy but the Claimant resigned. *Tr. 130.*

Henthorne testified that the handlers were expected to submit AARs for every mission, which is defined as any trip into a red zone with a military unit. *Tr. 131-32.* AARs are completed so that the Employer can calculate the mission success rate. *Tr. 132.* Henthorne explained that an AAR is passed from the Kennel Master to the ICM and then it is copied for a log book and kept in an electronic file. *Tr. 143-44.* Henthorne explained that the AARs from Iraq would eventually be sent to the corporate office through the mail. *Tr. 145.* Henthorne testified that there were two AARs filed by the Claimant while he was in Iraq. *Tr. 146.* The Employer has no record of the Claimant’s assertion that he was involved in a car bomb incident while he was in Iraq. *Tr. 132.* Additionally, the Employer has no AAR by the Claimant concerning the rescue of a French Foreign Legion unit or a finding of a weapons cache in Afghanistan. *Tr. 133 & 146.*

Non-medical Evidence

On August 9, 2006, the Claimant filed his claim for compensation, stating “[a]fter coming back home my [doctor] said that I have PTSD.” *JX A.* He listed Dr. Rozner as the physician who had provided medical attention for PTSD. *Id.* The Employer’s First Report of Injury or Occupational Illness (Form LS-202) stated that it was first informed that the Claimant asserted he had PTSD on August 9, 2006. *JX B.*

The record also included the Claimant’s AARs from Iraq and Afghanistan. *JX D.* There is one AAR from Iraq which describes a finding of a cache of weapons on July 1, 2005. *Id.* There is no AAR relating to firefights in Sadr City or a shooting at a police station. The first AAR in Afghanistan is from August 31, 2005, when the Claimant performed a search of buildings and surrounding area of a Mayor’s home in Kandahar. *Id.* There is no mention of any firefights in the August 31, 2005, AAR. The next AAR for Afghanistan is from September 11 through 20, 2005, when the Claimant participated in an election mission. *Id.* The AAR provides a detailed description of the Claimant’s activities, including drills and the number of vehicles he checked. *Id.* There is no mention of any firefights during the September mission. The next AAR is from the Claimant’s open area and compound searches on October 2 and 3, 2005. *Id.* This AAR mentions that a “suspected [Improvised Explosive Device] [was] found in road . . . turned out not to be.” *Id.* In his AAR for October 5, 2005, the Claimant described a building

and open air search he completed. *Id.* There is no mention of firefights or vehicle bombings. The next AAR is for the events of October 9-10, 2005, which the Claimant describes in great detail. *Id.* The AAR lists the events noted above and also states that gunfire was exchanged thirteen times over the course of the night. *Id.* The next AAR is for the Claimant's search of a grove and crowd control efforts on October 11, 2005. *Id.* There is no mention of gunfire in the October 11 report. In his October 25, 2005, AAR, the Claimant describes a search of a village and groves. *Id.* There is no mention of exchanging fire with anyone. In the November 8, 2005, AAR, the Claimant describes vehicle checks in Kandahar. *Id.* No mention of firefights is made. The final AAR describes the Claimant's search of Belly Button region of Afghanistan from November 15 to 23, 2005. *Id.* The Claimant describes exchanging fire with someone on November 16 and 18 and shooting a dog on November 19. *Id.* On November 22, the Claimant describes being called to assist Gun Devils after their vehicle was hit with an Improvised Explosive Device. *Id.* The remainder of the AAR describes checks of vehicles and locations and daily routines. *Id.*

Vocational Rehabilitation Report from Nancy Favaloro

Nancy Favaloro, a Licensed Rehabilitation Counselor, provided a Vocational Rehabilitation Report on December 22, 2006. *JX Q.* She reviewed the Claimant's November 13, 2006, deposition for background information. *Id.* Ms. Favaloro noted that the Claimant was a semi-skilled worker and his skills are transferable into many work settings. *Id.* Ms. Favaloro determined that the Claimant "is employable in a number of work settings." *Id.* "Given the information obtained in his deposition, [the Claimant] can return to his past work as a canine handler and indicates that he would like to return overseas." *Id.* Ms. Favaloro also suggested that the Claimant could find stateside canine handler jobs with an annual earning of \$52,000 per year. *Id.*

Medical Records of Dr. Robert Rozner

Dr. Robert Rozner, who is the Claimant's primary care physician, provided medical records dating from June, 1994, through August 22, 2006. *JX M.* There are several entries made after the Claimant returned from Afghanistan. On March 6, 2006, Dr. Rozner noted that the Claimant complained of insomnia. *Id.* On March 24, 2006, Dr. Rozner noted that the Claimant was there for "paperwork for deployment to Iraq" and noted that the Claimant had no complaints or anxiety or depression. *Id.* On April 19, 2006, the Claimant was treated for sinusitis. *Id.* No mention of any potential PTSD symptoms were made in Dr. Rozner's notes on that visit. Dr. Rozner sent an email to the Claimant on May 4, 2006, stating

Dude, I've been giviong [sic] a lot of thought to what you said about stuff you've seen and been through. Also, you told me you have been having problems with sleep. Maybe is its [sic] bothering you so much, you should see a shrink or something. Post traumatic stress disorder and all. What do you think? Bob

JX S. On June 26, 2006, the Claimant visited Dr. Rozner for a medical problem, but there was no mention of any potential PTSD symptoms. *JX M.*

On August 17, 2006, eight days after the Claimant filed his claim for benefits, Dr. Rozner noted that the Claimant was “requesting psych that deals [with] PTSD.” *JX M.* Dr. Rozner referred the Claimant to Dr. Babar, an associate of Dr. Chandra. The remainder of Dr. Rozner’s medical records address the Claimant’s joint pain and other physical problems he experienced before he began working for the Employer. *Id.*

Medical Report of Dr. Tanmoy Chandra

Dr. Chandra began seeing the Claimant for psychiatric services on September 5, 2006, and wrote a one-page letter on January 4, 2007. *JX I.* In his letter, Dr. Chandra stated that the Claimant displayed multiple symptoms of PTSD and that his

diagnosis was based on [the Claimant] having spent a lot of time in Afghanistan. [The Claimant] has been working with the K-9 Unit and has been exposed to multiple situations in which his life or others lives were threatened. Some examples of this include firefights, [the Claimant] being a passenger in an automobile that was blown up, he himself has been injured by shrapnel, and has witnessed as many as 20 to 30 people killed.

Id.

Dr. Chandra’s notes indicate that the Claimant had stated that he had shot “at least four people himself.” *Id.* Dr. Chandra noted that the Claimant has experienced nightmares and incursive thoughts, difficulty adjusting to civilian life, and “does not feel like he fit [sic] in society anymore.” *Id.* Dr. Chandra also noted that the Claimant experienced “depressed moods, social isolation, lost as much as 30 pounds, has reoccurring crying spells, decrease in self worth, and feels things are never going to be the same again.” *Id.* Dr. Chandra stated that “[t]hese are all symptoms that are often seen in people that have experienced traumatic events and are diagnosed with posttraumatic stress disorder.” *Id.* Dr. Chandra concluded that

[the Claimant’s PTSD] is continuing to cause him impairment in his personal life as well as his ability to find a job and more than likely will have difficulties maintaining the job. I would be supported [sic] of [the Claimant] getting disability benefits.

Id. Dr. Chandra prescribed four medications and noted that the Claimant “may benefit from partial hospitalization if [he] does not see improvement.” *Id.*

Medical Report of Dr. Bill H. Grimm

Dr. Bill H. Grimm – a Licensed Clinical Psychologist – provided a psychological evaluation of the Claimant on November 9, 2006, using the clinical interview and history, Minnesota Multiphasic Personality Inventory-2, Trauma Symptom Inventory, and a review of the Claimant’s medical, psychological, personal, and employment background. *JX C.* Dr. Grimm met with the Claimant on October 30, 2006. *Id.* In the initial interview findings, Dr. Grimm noted that the Claimant was an “explosives detection canine handler and combat mission specialist” in Afghanistan. *Id.*

Dr. Grimm wrote a detailed description of the Claimant’s life experiences based on his interview with the Claimant. *JX C.* He noted that the Claimant had been “kicked out” of high school for being rebellious. *Id.* The Claimant “indicated that he ‘cussed out’ one teacher” over a debate and that he questions authority. *Id.* The Claimant entered the Army in 1982 and was honorably discharged in less than a year, being told by the Army, in the Claimant’s words, “we are not getting along – so take a hike.” *Id.* The Claimant told Dr. Grimm that he worked in the food service and security industry for several years before becoming a canine handler. *Id.*

Dr. Grimm then detailed the Claimant’s description of the October 9, 2005, event. *JX C.* The Claimant told Dr. Grimm that he began having sleeping difficulties while he was in Afghanistan but did not report it to anyone. *Id.* In regards to events the Claimant experienced in Iraq, Dr. Grimm noted that he was in “at least five fire fights” and that he “witnessed other soldiers and police officers being injured” and three to four people close to him had died because of hostile action. *Id.* Dr. Grimm noted that the Claimant was “braggadocios” about his missions and claimed to have made his manager cry during their argument about the Claimant’s use of alcohol. *Id.* Dr. Grimm indicated that the Claimant “more or less bragged about being so good at what he did that he was usually given ‘problem children,’ or dogs that were vicious and/or difficult to handle.” *Id.* Dr. Grimm noted that the Claimant admitted to experiencing financial and marital stress upon his return from Afghanistan. *Id.* Dr. Grimm also noted that the Claimant told him that he has used Vicodin for three to four years and takes it between one and two times per week. *Id.*

Dr. Grimm noted that the Claimant visited Dr. Rozner because of difficulty sleeping and that Dr. Rozner had “diagnosed him with [PTSD].” *JX C.* The Claimant complained to Dr. Grimm of difficulty sleeping and that he was “very ‘uncomfortable,’ felt as though he did not belong [sic] anywhere, did not feel like doing anything, and basically stayed at home.” *Id.* The Claimant also complained of a decreased appetite, weight loss, and nightmares. *Id.* The Claimant told Dr. Grimm that he was “not handling crowds very well, experiences occasional anxiety attacks, and gets a ‘stifling feeling’ accompanied by a need to get away.” *Id.* The Claimant stated that “life is not fun.” *Id.* The Claimant then stated to Dr. Grimm that he would “love” to go back to Afghanistan and that he is “good at what [he does].” *Id.* The Claimant informed Dr. Grimm that he drank “up to 3 bottles of Captain Morgan” per week upon returning from Afghanistan but had stopped at Dr. Rozner’s request. *Id.* The Claimant admitted that he has nightmares three to four times per week, sometimes rehashing firefights as well as the October 9, 2005, incident. *Id.*

In observing the Claimant’s behavior, Dr. Grimm noted that there was “no indication of any thought disorder,” and that the Claimant “evidenced a rather cocky though completely

controlled interpersonal demeanor, and obviously demonstrated some narcissistic, inflated attitudes towards about [sic] his talents and skills.” *JX C.* Dr. Grimm noted that the Claimant’s major concern is to find “appropriate vocational opportunity involving dog handling and explosives detection, preferably back in Afghanistan, to satisfy not only financial needs but also to gratify his need for excitement and adulation.” *Id.*

Dr. Grimm then reviewed the Claimant’s record from Dr. Rozner’s office. Dr. Grimm noted that the Claimant had a variety of pre-existing problems, including difficulty sleeping due to chronic joint pain. *JX C.* Dr. Grimm also noted that the Claimant’s use of Vicodin was “more extensive and chronic than [the Claimant] related during the present evaluation.” *Id.* Dr. Grimm noted that on August 14, 2003, the Claimant filled a prescription for 480 tablets since the beginning of the previous month. *Id.* Dr. Grimm further noted that, upon the Claimant’s return from Afghanistan, he complained to Dr. Rozner of insomnia, but there was no record of complaints about anxiety or depression after he returned. *Id.*

Dr. Grimm determined that

[i]nspection of the validity scales associated with the Trauma Symptom Inventory showed a significant elevation on the Atypical Response Scale, which reflects some attempt to present himself as especially symptomatic. Additionally, [the Claimant’s] responses to items with like content was [sic] more inconsistent than usually found in the general population. Although not necessarily invalidating the overall profile, these response characteristics suggest some concern over the severity and/or representativeness of symptom reporting vis-à-vis this inventory.

JX C. Dr. Grimm stated that the Claimant “is currently depressed, unhappy, and irritable . . . tends to feel somewhat worthless and inadequate, and views the future as somewhat hopeless.” *Id.* Dr. Grimm determined that the Claimant experienced an extreme stress on October 9, 2005, and has some symptoms such as nightmares and intrusive thoughts, which reflect “some degree of post-traumatic stress.” *Id.* “Considering [the Claimant’s] need for excitement and, what appears to be a narcissistically driven desire to return to duties in a combat area such as Afghanistan, he does not appear to experience a full-blown post-traumatic stress disorder.” *Id.* Dr. Grimm recommended individual and possibly group therapy, the development of a “more adaptive response to his experience,” and continued use of psychotropic medication. *Id.*

Dr. Grimm determined that the Claimant has other issues and problems unrelated to his work experience that “complicat[e] the clinical picture.” *JX C.* He determined that the Claimant is experiencing financial stress, familial stress, and “conflicting goals,” all of which “contribute to his anxious, dysphoric mood and general dissatisfaction in life.” *Id.* Dr. Grimm concluded that when the Claimant lost his job, he lost something that “derived not only excited [sic] and personal satisfaction, but also apparently [the job] became a major component of his self-identity and sense of self-worth.” *Id.* Dr. Grimm determined that the Claimant’s

sense of emptiness, worthlessness, and associated efforts to regain the type of job which had provided him with a positive self-image are clearly part of the clinical picture, and are not related to his work-related duties, but are common

psychological consequences following a job loss when that occupation has become an integral part of his personal identity.

Id. Dr. Grimm also noted that some features of the Claimant's clinical presentation reflect "long-standing personality characteristics which are in no way related to exposure to work-related traumatic experiences, but which account for other behavioral and attitudinal patterns used habitually to deal with difficulties or conflict." *Id.* Dr. Grimm described such characteristics as "readiness to question authority, somewhat distorted disclosure of certain aspects of his medical history, need for excitement and corresponding restlessness when bored." *Id.* Dr. Grimm also diagnosed the Claimant with alcohol abuse. *Id.* Dr. Grimm took issue with Dr. Chandra's recommendation that the Claimant complete a partial hospitalization program. *Id.* Dr. Grimm went further to state that

[w]hether his statements concern exposure to other traumatic events, particularly in Iraq, are accurate and play some role in the intrusive experiences, or whether they represent some type of narcissistic embellishment to promote a sense of importance or uniqueness, cannot be determined with any certainty, given records which suggest [the Claimant] was not exposed to any fire fights while in Iraq.

Id. Dr. Grimm finally concluded that

[d]espite some of the symptoms being reported, it is also evident that [the Claimant] is fully capable of working, has been working recently and intermittently in a handyman or construction capacity. By his own admission, he has been seeking additional opportunities to work in the security and explosives detection industry, which by itself would attest to his own perceptions of being able to work. It also stands to reason that, in view of the disruption to his sense of worth and self-identity as a result of being terminated from his previous job, returning to work and making a commitment to that work would be expected to facilitate his adjustment and resolution of the sense of dysphoria associated with being out of work.

Id.

Independent Medical Report of Dr. William S. Brasted

On December 15, 2006, Dr. William S. Brasted, a Clinical Psychologist, provided an independent medical review based on Dr. Grimm's psychological evaluation, the Claimant's deposition transcript, and the treatment records from Dr. Chandra. *JXL.* Dr. Brasted explained that the diagnosis of PTSD requires a number of criteria, starting with exposure to a traumatic event and the person's response to the event involving "intense fear helplessness and horror." *Id.* Dr. Brasted noted that the record contained the description of the events of October 9, 2005, but also noted that

[w]hile [the Claimant's] description of the event certainly meets the criteria of a traumatic event, his further description of his initial response in the event indicates that he did not experience any intense fear, helplessness or horror during the time of the incident. In fact he describes himself as very proficient in combat situations with previous training in the role of a medical corpsman.

Id. Dr. Brasted explained that the second group of criteria required for diagnosing PTSD involves the person re-experiencing the trauma and noted that the Claimant re-experiences the trauma in the form of flashbacks and dreams. *Id.*

The third group of criteria required for the diagnosis of PTSD “involves the persistent avoidance of stimuli associated with the trauma,” including “efforts to avoid activities, places or people that arouse recollection, and efforts to avoid thoughts, feelings, or conversations about the trauma.” *JX L.* Dr. Brasted noted that the Claimant told Dr. Grimm that he wanted to return to Iraq or Afghanistan, but said in the deposition that he only wanted to work in the United States. *Id.* Dr. Brasted also noted that the Claimant continued to contact the Employer seeking overseas positions. *Id.* Dr. Brasted determined that the “desire to return to work in a war zone is obviously in stark contrast to the expectation of what one would see in [PTSD].” *Id.* Dr. Brasted determined that the Claimant “clearly fails to meet the third criteria for this diagnosis though he is reporting some of the actual symptoms associated with the diagnosis, such as sleep disturbances, anxiety, and dysphoria.” *Id.*

Dr. Brasted then went on to express concern over Drs. Rozner and Chandra's diagnoses of PTSD. Dr. Brasted noted that Dr. Rozner diagnosed PTSD due to the Claimant's work history and his complaints of sleep disturbances and anxiety. *JX L.* Dr. Brasted noted that Dr. Chandra's notes on the Claimant's history do not suggest he took a “forensic approach in his evaluation to rule out other possible etiologies for his symptoms.” *Id.* On the other hand, Dr. Brasted noted that Dr. Grimm used psychometric testing to compare the Claimant to PTSD victims. *Id.* Dr. Brasted noted that the Claimant's answers to Dr. Grimm's questions “indicated that he was deliberately attempting to exaggerate his symptoms.” *Id.* Dr. Brasted also noted that in all of his experience with Vietnam, Iraq, and Afghanistan war veterans, he has “never before seen an individual suffering from posttraumatic stress with the desire to return to a combat zone.” *Id.*

Additionally, Dr. Brasted expressed concern over “other factors” that may be responsible for the Claimant's symptoms. *JX L.* Dr. Brasted stated that the Claimant's history is “consistent with an individual with an antisocial personality disorder.” *Id.*

[The Claimant's] history includes being expelled from two schools, having been asked to leave the military in the midst of boot camp, an inconsistent job history, multiple marriages, bankruptcy, and frequent conflict with authorities throughout his life.”

Id. Dr. Brasted went on to state

My opinion is that [the Claimant] has an antisocial personality structure with a strong need for sensation seeking. I believe he was extremely comfortable in his job position in combat zones. When he lost his job and was unable to return to either Iraq or Afghanistan he was extremely frustrated by both the loss of his role and self identity and loss of the substantial increase in pay for being in a high-risk area . . . Therefore, it is more likely that the symptoms are a function of this loss of identity and the financial loss of substantial income after losing his job. Psychometric testing suggested he is exaggerating his symptoms and his presentation is inconsistent with the specific criteria for [PTSD]. Therefore, testing and interview data do not support a causal relationship between his symptoms and the incident that occurred October 9, 2005.

Id.

DISCUSSION

The lone issue in this case is whether the Claimant is entitled to an award of ongoing temporary total disability benefits and related medical expenses as a result of any psychological injury he may have sustained while employed as a canine handler with the Employer. Under Section 20(a) of the Act, a claimant is entitled to the presumption that his injury is causally related to his employment if he establishes that he sustained physical harm or pain, and that an accident occurred in the course of employment or that conditions existed at work that could have caused the harm or pain. *Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984); *Kelaita v. Triple A Mach. Shop*, 13 BRBS 326 (1981), aff'd sub nom. *Kelaita v. Director, OWCP*, 799 F.2d 1308 (9th Cir. 1986).

In order to avail himself of the Section 20(a) presumption, the Claimant must first establish that he suffered an injury. Section 2(2) of the Act defines an injury as

Accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

33 U.S.C. § 902(2). A psychological impairment can be an injury under the Act if it is work-related. *American Nat'l Red Cross v. Hagen*, 327 F.2d 559 (7th Cir. 1964) (work environment precipitates acute schizophrenia reaction); see also *Turner v. Chesapeake & Potomac Tel. Co.*, 16 BRBS 255 (1984) (benefits allowed for depression due to work-related disability). In order to invoke the presumption, the Claimant must prove not only that he has a psychological impairment, but that an accident occurred or working conditions existed which could have caused the impairment. *Adams v. General Dynamics Corp.*, 17 BRBS 258 (1985); *Kelaita v. Triple A Mach. Shop*, 13 BRBS 326 (1981). It is well settled that the judge, in arriving at a decision in a claim, is entitled to determine the credibility of the witnesses, to weigh the evidence, and draw inferences from it, and is not bound to accept the opinion or theory of any

particular medical examiner. *Banks v. Chicago Grain Trimmers Ass'n*, 390 U.S. 459 (1968); *Scott v. Tug Mate, Inc.*, 22 BRBS 164, 165, 167 (1989); *Hughes v. Bethlehem Steel Corp.*, 17 BRBS 153 (1985); *Brandt v. Avondale Shipyards*, 8 BRBS 698 (1978).

The record in this matter does not support the conclusion that the Claimant suffers from PTSD arising out of and in the course of his employment with the Employer. First, there are inconsistencies in the record that bring the Claimant's credibility into question. The Claimant gives conflicting information about the experiences he had while in Iraq and Afghanistan in his deposition, at the hearing, in his AARs, and when speaking to his physicians. In regards to his experiences in Iraq, the Claimant testified at the hearing that he witnessed the aftermath of firefights and explosions and exchanged fire with insurgents. The Claimant also testified at hearing that he was at a police station when two Iraqi police officers were killed but did not otherwise experience being in situations where people were injured or killed.³ In his deposition, the Claimant indicated that he was in firefights while in Sadr City, Iraq. In the Claimant's medical report, Dr. Grimm noted that the Claimant asserted that he was in at least five firefights, had witnessed soldiers and police officers get injured, and that three or four people close to him had died in hostile action. There are no AARs in the record supporting the Claimant's statements that he was involved in any firefights at all while in Iraq or that he was involved in an incident at a police station where two police officers were killed.

In regards to the Claimant's experiences in Afghanistan, Dr. Chandra's medical report and treatment notes indicate that the Claimant stated he had been a passenger in a vehicle that was blown up, had witnessed twenty to thirty people killed, and had shot at least four people while in Afghanistan. These statements are different from the Claimant's testimony at trial and in his deposition, and in his own AAR reports. The Claimant testified at the hearing that he came upon a vehicle that had been blown up. There is no record in the AARs that the Claimant was in a vehicle that exploded although there is a notation that the Claimant came upon a vehicle that had been hit on November 22, 2005. The AARs for October 9, and November 16 and 18, 2005, and the Claimant's testimony that he had been in "miscellaneous firefights" in Afghanistan are the only indication that the Claimant exchanged gunfire with anyone during his time in either Iraq or Afghanistan. After reviewing the AARs where the Claimant describes his activities in detail, including training drills, periods where he waited for instruction, and the number of cars he checked, it is difficult to believe that the Claimant's conflicting statements made several months after his return are credible portrayals of events that occurred. These inconsistent statements about the Claimant's experiences while working for the Employer affect his credibility and raise doubts about his statements concerning his mental health upon returning to the United States.

In addition to the Claimant's credibility issues, the physicians' opinions about the Claimant's mental health do not support a finding that the Claimant suffered a psychological injury while working for the Employer. Dr. Robert Rozner's medical records give very little indication that the Claimant was suffering from any PTSD symptoms in the months following his return from Afghanistan. The Claimant complained of insomnia on March 6, 2006, a condition he admitted at the hearing that he had experienced before he began working for the Employer. The Claimant visited Dr. Rozner three more times before he filed this action and never

³ In his deposition, the Claimant testified that he had left the station and returned to find the police officers shot.

complained of potential PTSD symptoms. The closest Dr. Rozner comes to diagnosing the Claimant with PTSD is his rather unconventional and informal email in which he addresses the Claimant as “Dude,” mentions the Claimant’s problems with sleeping, and finishes the email by suggesting the Claimant “see a shrink or something . . . Post traumatic stress disorder and all . . . What do you think?” At the Claimant’s request, Dr. Rozner referred him to a mental health professional after this action was filed. Beyond the referral, Dr. Rozner’s medical records do not credibly address the possibility that the Claimant may have PTSD.

The Claimant then went to Dr. Tanmoy Chandra, whose letter diagnosing the Claimant with PTSD was not persuasive. Dr. Chandra relied on the Claimant’s expressed symptoms and his descriptions of events in Afghanistan and Iraq that have been called into question by the Claimant’s own conflicting statements. Dr. Chandra does not offer the evaluation criteria upon which he made the diagnosis and seems to diagnose the Claimant on the basis of limited information surrounding his time in Afghanistan and Iraq.

On the other hand, Dr. Bill Grimm conducted a thorough evaluation of the Claimant by taking the Claimant’s social, psychological, medical, and combat history. Dr. Grimm uses psychological testing criteria and compares the Claimant to individuals diagnosed with PTSD. Dr. Grimm’s opinion is well-documented, thoroughly reasoned, and notes inconsistencies and embellishments in the Claimant’s statements. While Dr. Grimm notes that the Claimant’s symptoms reflect some degree of PTSD, he has concerns that the Claimant was trying to present himself as “especially symptomatic” and was not experiencing full-blown PTSD. Dr. Grimm expressed doubt that the Claimant suffers from PTSD because his symptoms are “common psychological consequences following a job loss” and because of the Claimant’s own desire to return to the canine explosives detection industry in war zones such as Iraq and Afghanistan.

Additionally, Dr. William Brasted’s independent medical review supports the conclusion that the Claimant does not suffer from PTSD. Dr. Brasted notes that PTSD cannot be diagnosed because the Claimant did not exhibit intense fear, helplessness or horror during the time of the incident and because the Claimant has not tried to avoid stimuli associated with the trauma. Key to Dr. Brasted’s diagnosis is the fact that the Claimant has continued to contact the Employer and other similar companies to return to Iraq or Afghanistan or other positions overseas where the Claimant would be involved in explosives detection. Dr. Brasted noted that, although the Claimant is reporting some symptoms associated with PTSD, his desire to return to a war zone is “in stark contrast” to what is expected from someone with PTSD.

Overall, the opinions of the four physicians do not support a determination that the Claimant suffers from PTSD. Drs. Rozner and Chandra offer little evidence or explanation for their opinions. On the other hand, Drs. Brasted and Grimm looked at the Claimant’s entire history and addressed specific criteria used to determine whether a person suffers from PTSD. Both Drs. Grimm and Brasted expressed doubt about any evidence of PTSD, noting that the Claimant appeared to be magnifying his symptoms and presented in a way inconsistent with PTSD. The physicians’ well-documented doubts support the conclusion that the Claimant does not suffer from PTSD arising out of or in the course of his employment in Iraq or Afghanistan.

And, finally, the circumstances surrounding the Claimant's decision to leave the Employer and his repeated efforts to return to Iraq or Afghanistan do not support the conclusion that the Claimant suffers from PTSD. The Claimant worked without complaint for four months after the October 9th incident and has repeatedly stated that he left Afghanistan because he disagreed with the Employer's enforcement of the alcohol policy. This is confirmed by the Employer as the reasons for the Claimant's resignation. Although the Claimant testified at one point during the hearing that working in Afghanistan would not be healthy for him, the Claimant has continuously sought employment with the Employer and other companies that would send him overseas to war zones such as Iraq and Afghanistan. In fact, the Claimant's last known attempt to contact the Employer for a job was less than a month before he filed his claim for benefits. The Claimant's testimony at the hearing that he would have turned down an overseas job is incongruous with his efforts to find overseas work and with the Claimant's statements at the hearing that he would go back to Iraq if he were promoted to Kennel Master and that he would still be in Afghanistan if he had not resigned over the alcohol policy.

In summary, the record does not support the conclusion that the Claimant suffers from a psychological injury sustained while employed as a canine handler with the Employer. Doubts about the Claimant's credibility, the weight of the medical opinions, and the Claimant's own efforts and desire to return to work in hazardous war zones prevent a finding that the Claimant suffers from PTSD. As a result, the Claimant's request for benefits is must be denied.

ORDER

Accordingly, it is hereby ORDERED that K.E.'s claim for benefits is hereby DENIED.
SO ORDERED.

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John M. Vittone
Chief Administrative Law Judge