

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 08 July 2008**

CASE NO.: 2008-LDA-71

OWCP NO.: 02-159838

IN THE MATTER OF

A.S.<sup>1</sup>

Claimant

v.

SERVICE EMPLOYERS INTERNATIONAL ,  
Employer

and

INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,  
Carrier

**APPEARANCES:**

Michael Huey Esq.,  
The Huey Law Firm, LLC,  
On behalf of Claimant

P. Vincent Gaddy, Esq.,  
Grove E. Asmus, Esq.,  
Asmus & Gaddy, On behalf of Employer/Carrier

Before: Clement J. Kennington  
Administrative Law Judge

**DECISION AND ORDER**

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act (the Act), 33 U.S.C. § 901, et seq., and its extension, the Defense Base Act (DBA), 42 U.S.C. § 1651 et seq., brought by A.S.(Claimant) against Service Employers International (Employer) and

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<sup>1</sup> Pursuant to a policy decision of the 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.

Insurance Company of the State of Pennsylvania (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 a formal hearing. The hearing was held on March 17, 2008, in Mobile, Alabama.

At the hearing all parties were afforded the opportunity to adduce testimony, offer documentary evidence, and submit post-hearing briefs in support of their positions. Claimant testified and introduced 11 exhibits including the depositions of Dr. Linda S. Lindman, Ph.D. and Dr. John Cranton; medical records of Drs Lindman, Ilyas A. Shaikh, Daniel Spriggs; medical records of KBR Clinic, Family Medical of Jackson Alabama, Grove Hill Memorial Hospital; correspondence from DOL dated November 9, 2007 regarding Section 928 of the Act; wage information for Claimant for May, 2006 through April 2007.

Employer introduced 20 exhibits consisting of Claimant's pre-employment medical screening records, personnel file, wage records and statement concerning alleged injury; KBR Clinic records, letter of Lt. Col. Cheryl S. Scaglione; Logcap III Out-Processing Form dated April 11, 2007; medical records of Drs. Shaikh, Spriggs, Lindman, John D. Griffith; medical records from Family Medical, Grove Hill Memorial Hospital, Coffeville Medical Clinic, and Grove Hill Health Care Records; LS-207s; depositions of Crystal Curtis, Claimant, and Dr. Griffith; Claimant's responses to Employer's discovery.<sup>2</sup>

Post-hearing briefs were filed by the parties. Based upon the stipulations of the parties, the evidence introduced my observation of the witness demeanor and 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 and I find:

1. There was an employer/employee relationship at the time of the alleged injury.<sup>3</sup>
2. Employer filed Notices of Controversion on April 30, 2007 and July 17, 2007.
3. There was no informal conference as recommended by U.S. Department of Labor by letter dated November 9, 2007.
4. Claimant's average weekly wage at time of alleged injury was \$ 1,581.82.
5. Employer has not paid any compensation or medical benefits to Claimant.

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<sup>2</sup> . References to the record are as follows: Claimant's exhibits- CX-\_\_\_\_; Employer exhibits-\_\_\_\_; Joint exhibits-JTX-\_\_\_\_; transcript pages- TR\_\_\_\_.

<sup>3</sup> Claimant alleges that he was subjected to a series of traumatic events of which the most notable involved a shooting incident on April 8, 2004 while driving near Baghdad and other attacks on February 18 and 23, 2007 at Tallil Air Force Base (Tr. 20, 21).

## II. ISSUES

The following unresolved issues were presented by the parties:

1. Whether Claimant suffered from PTSD (post traumatic stress disorder) related to his employment in Iraq and Kuwait;
2. If not whether Claimant lied about events in his life including incidents in Kuwait and Iraq so as to obtain disability benefits;
3. If so, nature and extent of disability;
4. Section 7 medical benefits;
5. Attorney fees, expenses, and penalties.

## III. STATEMENT OF THE CASE

### A. Testimony of Claimant

Claimant is 51 year old male born on December 27, 1956 with a 12 grade education. Claimant testified he graduated from the University of Nevada at Reno in 1978 with a degree in electro mechanical engineering. However a transcript from the University of Nevada shows Claimant taking only two courses (algebra and English) in the Spring of 1977 and passing one, English. (CX-11, Tr. 43, 44, 175-187). Before working for Employer Claimant worked for Savan Corporation as a copy technician for about 3 years followed by truck driving for 18-20 years, and satellite dish installation for 12 to 18 months. (Tr. 45-48).

Claimant worked for Employer from December 23, 2003 to April 6, 2007, during which time he drove a flatbed for about 4 months from the end of December, 2003 to April, 2004 from Arifan, Kuwait to various locations in Iraq including camps Cedar, Scania, Anaconda, and Tahji and Baghdad International Airport (Tr. 58; EX-1, 16). Following this assignment Claimant worked as a logistic coordinator in Kuwait] for about 8 months during which he was responsible for servicing and maintaining trucks. (Tr.72,73). This was followed by short assignments of dispatcher and moving control team member (MCT) in Anaconda and Cedar where he separated trucks into different convoys depending upon destination. (Tr. 75-77). During Claimant's last 18 months of employment he drove a bus at Tallil Air Force Base.(Tr. 78).

Employer issued and required Claimant and other drivers to wear protective clothing and equipment consisting of a bio suit ,Kevlar vest and helmet during equipment tests and attacks by insurgents Excluding equipment tests from December 2003 to April 2004 Claimant wore protective equipment on only two to three occasions.(Tr. 50-52). Claimant worked 7 days a week, 12 hours per day, making \$2700.00 per month with increases for working in dangerous or hazardous conditions (Tr. 53).

On April 8, 2004, Claimant testified his convoy was attacked by RPG's, mortars and small arms fire near Baghdad. During the attack Claimant sustained a gunshot wound to his left arm. (Tr. 62-65). Claimant's truck caught fire requiring him to abandon it and jump into a Humvee. Claimant sought and received medical care from a medic following the attack. When the wound did not heal as expected Claimant sought additional medical care on April 20, and 28 2004 during which bullet fragments were removed and the arm re-bandaged. (Tr. 66-68, 70, 71).<sup>4</sup>

Claimant testified that during his initial driving assignment he made three to five trips a week from Kuwait to either Cedar. Anaconda or the airport in convoys of 30 trucks and three to four Humvees. Claimant estimated that his convoy was attacked by rocks on a daily basis and by guns on a weekly basis (Tr. 68). After the April 8, 2004 attack Claimant went on extended leave and upon his return was assigned to logistics about 60 kilometers from Arifan at the 605 maintenance center (Tr. 72). Later that year Claimant testified he left his room one day and came upon a gun battle between Kuwait police and insurgents (Tr. 74)

Concerning his last assignment Claimant described Tallil as a base surrounded by inner and outer perimeter wires with a 6 or 8 mile circumference. The inner wire was in poor condition. Both locations came under mortar attacks (Tr. 80). On two occasions Claimant had to travel outside the base to Cedar.(Tr. 80). Military escorts were provided on both occasions. (Tr. 81). While at Cedar and Tallil Claimant had to wear his vest and helmet on Thursday tests (Tr. 82). Claimant also wore this gear if the bases were attacked. (Tr.83). According to Claimant insurgents allegedly breached the first perimeter at Tallil on half a dozen occasions. (Tr. 87).

Claimant testified on February 18, 2007, right after reporting to work at Tallil he twisted his ankle and injured his knee as he was running to a bunker to escape a mortar attack. (Tr. 85). Claimant sought no immediate medical attention for the twisted ankle allegedly because the condition resolved itself after sitting in a bunker for several hours following which he resumed bus driving. However on February 20, 2007, he sought medical attention for his knee from a Todd Johnson who staffed one of Employer's clinics but never lost any time from work because of the incident. (Tr. 86-89).<sup>5</sup>

Claimant testified on February 23, 2007 insurgents attacked Tallil breaching both perimeters. Claimant stopped his bus and was approached by an Army sergeant who asked for his assistance. The sergeant handed him an M-16. Claimant declined asking instead for a "real gun" where upon a Marine sergeant handed Claimant a 50 caliber machine gun which he loaded and cocked for Claimant. Claimant began to shoot and was later told he had killed 30 insurgents. About 10 to 15 minutes later Army and Marine Corps sergeants approached Claimant and told him not to tell anyone about the incident (Tr.109-114). During the shooting four U.S. soldiers were killed including a female soldier who was shot in the soldier. Claimant did as instructed and told no one in Tallil about the incident. (Tr.115).<sup>6</sup>

Claimant testified he sought assistance from EAP representative and social worker Bonnie Tilton for job stress on several occasions.<sup>7</sup> Claimant also sought help for job stress from

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<sup>4</sup> On April 20, 2004, Claimant went to Family Medical in Jackson, Alabama and had a 3 mm metal object removed from his left arm. (EX-9).

<sup>5</sup> On June 15, 2006, Claimant had his right knee x-rayed. The results were normal (EX-12).

<sup>6</sup> Claimant wrote a description of the alleged February 23, 2007 incident which is attached as EX-3.

<sup>7</sup> From February 18 to March 30, 2007 Claimant allegedly lost 22 pounds while having diarrhea, sleeplessness, restlessness and inattention. (Tr.

Lieutenant Colonel Scaglione who worked in a combat stress clinic and from Todd Johnson as well (Tr. 100-,108, 116)<sup>8</sup>. On April 6, 2007, Col. Scaglione recommended Claimant receive immediate medical leave for 7 to 10 days to allow him to deal with job stress and home problems in dealing with a chronically ill spouse (EX-5). On April 9, 2007 Claimant went back to the Clinic and received a medical leave of absence (Tr. 120; CX-3). Claimant departed from Tallil on April 11, 2007 (EX-6, Tr. 122).<sup>9</sup> On April 10, 2007, Claimant filled out a complaint form (CX-3) on which he described the incident of February 23, 2007 which included a female soldier being shot and later dying. Before leaving Tallil Claimant gave CX-3 to his supervisor, Crystal Curtis. (Tr. 124-126).

Upon returning to the U.S. Claimant sought medical help for his feelings of anxiety and depression, restless nights and sleeplessness and in turn Employer sent him to Dr. Kaminski and then Dr. Lindman (Tr.132). Claimant's first saw Dr. Lindman on April 19, 2007 for symptoms of stress and during later sessions told her what had occurred in Tallil. (Tr.133, 134). Dr. Lindman administered several tests including the MPPI which Claimant repeated for Drs. Griffith and Cranton (Tr. 135) Dr. Lindman recommended relaxation, meditation, and breathing and referred Claimant to Dr. Spriggs who in turn prescribed Xanax and other medications (Tr. 136-138).<sup>10</sup>

Prior to seeing Dr. Lindman Claimant testified he had never seen a psychologist or psychiatrist (Tr. 141). On September 23, 2007 Claimant saw Dr. Shaikh, a neurologist, for seizures. (Tr. 142).<sup>11</sup> Dr. Shaikh prescribed Depakote and renewed Claimant's other medications (Tr.143). Since seeing Dr Shaikh Claimant has had one additional seizure (Tr. 144). Claimant testified that his post-traumatic stress (PTSD) symptoms have gotten worse with increased shakiness and nervousness (Tr. 145, 146). On occasion Claimant allegedly revisits the gun battle scene (Tr. 148). Claimant has tried to find work driving and janitorial without success (Tr. 149-150). Further Claimant does not intend to stop seeing doctors when this case ends and would like to return to work for Employer (Tr. 150, 151).

On a typical day Claimant goes to sleep at midnight and gets up between 6 a.m. and 9 a.m. Claimant takes his medications, putters around the house doing things his wife cannot do such as washing clothes and dishes. On occasion Claimant has night sweats. Loud noises startle him. On occasion he hears noises that are not there (Tr.156, 157). He also has a tendency to

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118). On April 1, 4, 2007, Claimant saw Dr. Reid who prescribed Klonopin. From May 2006 to April 2007, Claimant had reported income of \$82,254.96. (CX-9; EX-7).

<sup>8</sup> While in Tallil Claimant stated he received several job awards for troop movement including a Garrison Commander's certificate. (Tr. 105- 07).

<sup>9</sup> Employer clinic records show Claimant coming to the clinic on the following dates : January 10, 2007 (typhoid immunization; February 20, 2007 (right knee discomfort due to fall when running to bunker); March 26, 2007 for tinnitus) (EX-4, pp. 9, 10, 19, 30); March 30, April 1,9, 2007 for disequilibrium, depression, anxiety diarrhea from stress due to chronically ill wife in CONUS and from a personal relationship at work site (EX-4, pp.6, 7, 12, 13, 16,22, 26, 33- 37.42).

<sup>10</sup> On June 15, 2007 Claimant saw family physician Dr. Daniel Spriggs, for anger outbursts and an internal right knee derangement for which Dr. Spriggs prescribed Mobic (an anti-inflammatory. This was followed by additional visits on June 28,29, July 27,2007 during which Dr.Spriggs prescribed Seroquel. At the last visit Claimant was also taking Xanax and Depakote which apparently helped with anxiety symptoms. (CX-7).

<sup>11</sup> Dr. Shaikh's treating records appear at EX-8. On September 23, 2007, Claimant had a brain CT scan at Grove Hill Memorial Hospital in connection with an alleged seizure disorder. The CT scan was normal as were other tests for a seizure disorder. Claimant's son was the only person to witness the alleged seizure. (EX-10, p. 8).

argue more with his wife than he did before going over. On cross Claimant admitted applying for Social Security disability benefits based on PTSD and being denied (Tr. 160). Claimant also admitted that there was no documentation to support his claim about any deaths at Tallil on February 23, 2007 (Tr. 164-165). Claimant admitted he could not refer Employer to any person who could confirm the February 23, 2007 incident (Tr. 166-171). He also acknowledged that his supervisor, Crystal Curtis, testified that Claimant's co-workers considered Claimant to be dishonest and in fact he had filed 6 claims against his co-workers (Tr. 173-175) Claimant admitted that he suffered no physical impairment from his work overseas for Employer (Tr. 188). Further he drove a flat bed for Employer in Iraq about 4 months and not 3 years hauling fuel and equipment as reported by Dr. Lindman (Tr.189-195). Concerning the April 8, 2004 incident, Claimant admitted returning to Iraq after the incident and working there almost 3 years without reporting any symptoms of anxiety or hyper-vigilance (Tr.202, 203). In fact until the alleged February 23, 2007 incident he considered himself both physically and mentally fit to work. According to Claimant insurgents allegedly breached the first perimeter at Tallil on half a dozen occasions. (Tr. 87).<sup>12</sup>

On cross Claimant asserted that he engaged in a 30 minute gun battle using a 50 caliber machine gun without any alarm going off despite a breach in two perimeters walls and without support troops coming to his assistance (Tr. 204-212). Claimant also asserted that Crystal Curtis told him that four Americans died in the fight but admitted Curtis in her deposition denied making any such statement and also stated alarms would not have sounded with a breach in the outer perimeter (Tr. 215, 216). Claimant admitted that there were no news reports about the alleged deaths and that contrary to Dr. Lindman's report he was not under mortar fire, small arms fire on a daily basis (Tr. 218, 219, 224). In fact Tallil came under mortar attack not more than once every two months. (Tr. 224,225). Claimant admitted receiving Rand R due to stress over issues with a chronically ill spouse and a personal relationship he developed on site with a female employee, Jessica. (Tr. 232,233). Claimant also admitted never reporting the February 23, 2007 incident when he initially sought help from Employer's clinic or combat stress clinic (Tr. 235).

## **B. Testimony of Crystal Curtis**

Ms. Curtis is currently unemployed, has a 12<sup>th</sup> grade education and served in the U.S. Army for 3 ½ years. Upon leaving the Army she went into restaurant management and eventually was hired by Employer in 2004 to work at Camp Cedar as a truck driver which she did for 4 months. (EX-18, pp. 9, 10). Following this she returned to the U.S. and began working at Ft. Bragg as a transportation team leader for about a year during which she dispatched buses for the military. Employer then rehired her as a bus driver at Tallil Air Force Base (Id.at 11). Ms. Curtis drove buses for about 6 to 8 months after which Employer promoted her to bus foreman where she dispatched and maintained busses. (Id.at 12).

As a bus foreman she supervised about 20 to 30 employees assigning them to different routes covering 5 to 6 miles with 25 to 27 stops. Bus drivers were confined generally to driving on the base except in those instances where the military lacked enough vehicles to transport

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<sup>12</sup> On April 20, 2004 Claimant was treated at Family Medical Clinic of Jackson, Alabama. There he had a small, 3 mm metal object removed from his left forearm. (CX-5).

troops from Tallil Air Force Base to Camp Cedar. (Id. at 17). Claimant worked under Ms. Curtis' supervision for about a year. (Id. at 20, 21). Ms. Curtis testified that she never heard of any bus driver coming under small arms fire while driving at Tallil. However the base on occasion did come under mortar attack but no driver was injured. During drill and mortar attacks drivers were required to stop their bus, put on protective equipment and go to a bunker (Id. at 22-26). Ms. Curtis had no knowledge of any insurgents coming inside the inner perimeter (Id. at 28, 29). Ms. Curtis had no knowledge of a February 23, 2007 incident as described by Claimant which would have caused sirens to go off (Id. at 33). Further army personnel had no authority or need to enlist Claimant's support in a fire fight with insurgents (Id. at 34). In addition no marines were stationed at the base (Id. at 35).

Ms Curtis testified she had no knowledge of 30 insurgents being killed inside the inner perimeter, of 4 soldiers dying in a battle inside the inner perimeter, or telling Claimant about 4 soldiers dying inside the perimeter (Id. 38-42). Further Claimant had a reputation among co-workers as being dishonest (Id. at 43). Ms. Curtis testified Claimant was seeking medical leave due to stress caused by his wife's illness (multiple sclerosis) (Id. at 45, 46).

### **C. Testimony of Dr. Linda S. Lindman, Ph.D.<sup>13</sup>**

Dr. Lindman is a clinical psychologist practicing for the past three years in Mobile, Alabama. (CX-1, p.7). During this period Dr. Lindman has diagnosed and treated about 30 patients for PTSD. (Id. at 13). Of these cases Claimant is the only civilian who had worked in either Iraq or Afghanistan. (Id. at 14). Dr. Lindman has never served as an expert witness before in PTSD cases, never given a deposition or testified in court. (Id. at 15). Claimant was referred to Dr. Lindman by Comp. Psych., an insurance company that handles EAPs for various companies. (Id. at 16).

Dr. Lindman identified the diagnostic criteria for PTSD (309.81) as set forth in Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Edition (DSM-IV). They include:

1. The person has been exposed to a traumatic event which was life threatening, involved serious injury, or threat to physical integrity of self or others followed by the person's response of intense fear, helplessness or horror.
2. The traumatic event is persistently re-experienced by recurrent and intrusive recollections of the event; recurrent distressing dreams of the event; acting or feeling

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<sup>13</sup> Dr. Lindman's treatment records appeared as CX-2 and EX-13 and show visits on April 19, 27; May 4, 11, 18, 25; June 8, 29; July 13, 20, 27, ; August 3, 10, 17, 27; September 7, 21; October 5, 19; November 13, 28, 2007. On September 4, 2007 Dr. Lindman performed a psychological evaluation which included background information from Claimant. The background information erroneously showed Claimant hauling equipment and fuel by truck for 3 years in Iraq, coming under small arms and rocket propelled grenade attack on April 8, 2004 after he abandoned his truck and was riding in a Humvee on April 8, 2004, and participating in a gun battle with insurgents on February 23, 2007. Except for an April 8, 2004 incident none of these alleged incidents was supported by any documentation from either military or civilian sources. The background information also erroneously showed Claimant being subjected to mortar fire, small arms fire, and bombing on a "nearly daily basis (CX-2, pp.22).

During the psychological evaluations Dr. Lindman administered Clinician Administered PTSD scale for DSM-IV (CAPS), PTSD checklist, Life Events Stress Scale, MMPI-2, Trauma Related Guilt Inventory, Trauma Symptom Inventory. These tests were completed on July 27, 2007 (EX-13, p. 14). Dr. Lindman initially diagnosed PTSD on her first meeting with Claimant on April 19, 2007.

as if the traumatic event were recurring.

3. Intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event; physiological reactivity on exposure to internal or external cues that resemble an aspect of the traumatic event.
4. Persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness as indicated by efforts to avoid thoughts, feelings, conversations, activities, places or people that arouse recollections of the trauma; inability to recall an important aspect of the trauma; markedly diminished interest or participation in significant activities; feelings of detachment or estrangement from others; sense of foreshorned future.
5. Persistence symptoms of increased arousal including difficulty falling or sustaining asleep, irritability, difficulty concentrating, hyper vigilance, exaggerated startled response
6. Duration of disturbance more than one month.
7. The disturbance causes clinically significant distress or impairment in social, occupational or other areas of functioning.

Dr. Lindman testified that Claimant asserted he was involved in a traumatic event of February 23, 2007 and another one on April 8, 2004 (Id. at 21-23). Dr. Lindman believed Claimant had PTSD between April 8, 2004 and February 23, 2007 although Claimant testified he had no problems at work or with interpersonal relationships or anxiety during this period. (Id. At 25). Dr. Lindman testified she accepted what Claimant told her without making any independent inquiry (Id. at 28). Further her diagnosis of PTSD was based on Claimant asserting he was exposed to bombing and rocket fire on a daily basis for almost the entire time he was in Iraq (Id.. at 30). Dr. Lindman also testified that Claimant could develop PTSD based not on what he experienced but on what he heard. (Id. at 31).<sup>14</sup>

Dr. Lindman admitted not ruling out malingering although it was required by DSM-IV when a court or secondary gain is at issue (Id. at 36)<sup>15</sup>. However on cross Dr. Lindman stated she found no evidence of secondary gain, no gross exaggeration of symptoms. (Id. at 71-74). Dr. Lindman found Claimant capable of working but avoiding a lot of customer contact and a work environment with loud noises (Id. at 83). Claimant could do computer data entry. (Id. at 84).

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<sup>14</sup> Claimant's clinic visit records (CX-3) show Claimant reporting to the Combat Stress Clinic with complaints of anxiety, depression with stomach cramps and diarrhea which Claimant attributed to stress relate to a chronically ill spouse in CONPUS and from a personal relationship with a 20 year old female on the jobsite for which Claimant requested and received medical leave.(Id. at 28-23).

Claimant saw Dr. Ilyas A. Shaikh, a neurologist, on September 21, October 1, 19, November 12, 2007, for diagnosis and treatment of syncope and seizure. (CX-4). Claimant also was treated at Grove Hill Memorial Hospital for a seizure Claimant had one hour prior to his arrival. (CX-5). On September 23, 2007, Claimant underwent a brain CT which was normal. (CX-6).

<sup>15</sup> Under the DSM IV malingering is defined at V65.2 as "... the intentional production of false or grossly exaggerated physical or psychological symptoms, motivated by external incentives such as avoiding military duty, avoiding work, obtaining financial compensation, evading criminal prosecution or obtaining drugs."

According to Dr. Lindman Claimant had the following PTSD symptoms: sleep interruption, tremors, memory problems, hyper vigilance. (Id. at 105).

#### **D. Testimony of Dr. John Cranton**

Dr. Cranton, a board eligible psychiatrist, who has treated a number of persons with PTSD, testified that PTSD is an emotional and behavioral response that has varying degrees of disability due to psychological stress. (CX-10, p.17). Dr. Cranton testified that persons like A. S. who are in a support capacity in combat zone may experience PTSD vicariously by over identifying with others who experience traumatic events. Dr Cranton met with Claimant on two occasions and talked with his wife and son. (Id. at 25). Dr. Cranton first met Claimant on March 5, 2008, during which Dr. Cranton took Claimant's history, observed Claimant and gave a diagnostic impression of PTSD, chronic (Id. at 26). Claimant was having psychotic perceptions wherein he reported seeing a female soldier die of wounds, concocted a story of killing 40 insurgents, and allegedly had a seizure due to stress which lowers seizure thresholds. (Id. at 28). As a result Claimant has been unable to work.

Dr. Cranton attributed Claimant's PTSD to listening to and identifying with soldiers who rode in his bus. (Id. at 33). Both wife and son provided information about Claimant's personality change which went from a fun loving individual to one who argued a lot and had a short temper. (Id. at 34). On the second meeting of March 24, 2008, Dr. Cranton confirmed his initial diagnosis of PTSD. (Id.at37). Dr. Cranton was asked to assume Claimant witnessed mortar attacks, fire fights in Kuwait, helicopter gunships firing on insurgents at Anaconda, and was shot in the arm and was subject to rock throwing incidents and asked if such incidents could cause Claimant's PTSD to which Dr. Cranton responded affirmatively. (Id. at 39).

Dr. Cranton testified he did not see any sign of malingering. (Id. at 44). Further there was a lot of uncertainty whether Claimant could work due to PTSD and a seizure disorder (Id. at 47). Dr.Cranton disagreed with Dr. Griffith's diagnosis of malingering (Id. at 50). In Dr. Cranton's opinion Claimant's condition was permanent. (Id. at 53).

On cross Dr. Cranton admitted that Claimant had concocted the February 23, 2007 fight. and that he had relied upon Dr. Lindman's deposition and her interpretation of test data(Id. at 55, 62). Dr. Cranton also admitted that when he tested Claimant he (Claimant) was not psychotic nor did he exhibit impaired judgment or impaired insight. (Id. at 65). Dr Cranton testified that he ruled out malingering by reviewing the records, meeting with Claimant and his family and evaluating Claimant. (Id. at 86). Dr. Cranton also admitted there was no objective medical evidence showing Claimant had a seizure and in fact there were different versions of the seizure disorder with Claimant asserting he bit his tongue in half with medical records showing Claimant only biting his tongue (Id. at 92-94). Further Dr. Cranton was not diagnosing PTSD based on specific event but rather being in a war zone, not getting enough sleep, and listening to soldiers who had been in combat. (Id.at107, 108).

## **E. Testimony of Dr. John D. Griffith**

Dr. Griffith, is a board certified psychiatrist and pharmacologist with past experience as Director of Mental Health Planning for the State of Oklahoma; clinical instructor in psychiatry and associate professor at Vanderbilt University Medical School, associate professor of clinical psychiatry at University of California, San Diego, Baylor College of Medicine V.A. Hospital at M.D. Anderson, and University of Texas Medical School at Houston. Dr Griffith has treated numerous patients with PTSD at various VA hospitals since 1955. (EX-20, pp. 10-12, 179). In treating PTSD patients Dr. Griffith has administered the MMPI-2 along with a clinical evaluation to rule in or rule out malingering which is a diagnosis recognized by the DSM-IV as lying for gain (Id. at 13)<sup>16</sup>. Under the DSM-IV, practioners (psychologists and psychiatrists) are required to rule out malingering or symptom magnification for gain because the PTSD symptoms are for the most part entirely subjective. (Id. at 14).

At Employer's request Dr. Griffith conducted a psychiatric examination of Claimant on March 3, 2008. This involved an interview of Claimant in which Dr. Griffith quizzed Claimant concerning his upbringing, background, marital history and education, details of his traumatic events, symptoms, medications, past medical history, typical day events. Dr. Griffith diagnosed malingering, personality disorder NOS. (Id. at 23-25).

Dr Griffith testified that to have PTSD one has to undergo a major traumatic event causing significant distress or impaired social or occupational functioning. (Id. at 26,27).<sup>17</sup> The trauma must be verified. (Id. at 28). In addition the long form of the MMPI should be administered to score the validity section (Id. at 29). However even before getting the results of the MMPI, Dr. Griffith opined Claimant was malingering due to the fantastic story of the trauma in which he, contrary to most PTSD persons, painted himself as a hero rather than a lucky survivor(Id. at 32,33). Upon review of additional data including a review of the MMPI as verified by clinical psychologist, Dr. Rebenzer, Dr. Griffith confirmed his original opinion of malingering. (Id. at 36). Dr. Griffith disagreed with the diagnosis of vicarious PTSD which applied to health workers. Further there was no evidence of psychosis due to the lack of extraneous symbolism or auditory hallucinations other symptoms. (Id. at 38-40). Indeed there is no medical evidence to show Claimant had a seizure disorder. (Id. at 44). In Dr. Griffith's opinion Claimant suffered from no psychiatric disability related to his employment in Iraq or Kuwait (Id.at 47).

On cross Dr. Griffith admitted (1) he told a reporter for the Los Angles Times he was not an expert on MMPI or PTSD since he had not authored articles on such (Id. at 49, 179-185); (2) he had treated a number of PTSD patients and attended numerous conferences and seminars on such (Id. at 75,76); (3) he had testified almost exclusively for the defense but received less than 10% of his income from such work (Id. at 83, 84,90); (4) he did not believe Claimant being shot in the arm was a sufficient trauma to cause PTSD because at the time of the incident Claimant

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<sup>16</sup> Dr. Griffith has administered the long version of the MMPI-IV consisting of 600 questions. This version is more comprehensive than the shorter version of the MMPI-IV. (EX-20, p. 13)

<sup>17</sup> The first criteria for PTSD as defined in the DSM-IV requires the person in question to be exposed to a traumatic event in which the person experiences , witnesses or is confronted with an event or events involving actual or threatened death or serious injury to the physical integrity of self or others producing a response of intense fear , helplessness or horror.

did not know he had been shoot(Id at 95, 147); (5) Claimant twisted his knee getting into a bunker following an a base attack (Id. at 96, 104); (6) Claimant does not need psychiatric care (Id.at116); (7) Claimant worked in potentially stressful situations of not being armed, not knowing when the next bomb or attack would occur (Id. at 119); (8) it was not typical of patients with PTSD to exaggerate either their symptoms or battle service (Id. at 124); (9)Dr. Lindman was not better trained than Dr. Rubenzer to interpret MMPIs ( Id. at 160, 161); (10) on a fake bad scale Claimant had one of the highest scores (30) indicating faking(Id. at 182, 183).<sup>18</sup>

## IV DISCUSSION

### A. Contention of the Parties

Claimant contends that while employed by Employer in Kuwait and Iraq he was constantly subject to rocket, mortar, IED and RPG attacks, shot in the arm and fell trying to run into a bunker. In addition he has been under chronic stress due to his wife illness with MS. As a result Claimant has suffered with PTSD which prevents him from performing his past work. In addition he suffers from seizures directly related to his PTSD condition which also prevents him from working. Inasmuch as Claimant has not reached maximum medical improvement for either condition, Claimant is entitled to temporary total disability. Based upon a pre-injury average weekly wage of \$1,581.82 with a weekly compensation rate of \$1,054.55.

Claimant also contends (1) he had to wear protective Kelvar helmet and vest when under attack or driving outside his base to various bases including Camps Cedar, Scania, Anaconda as well as Tahji and Baghdad International Airport; (2) on occasion rocks and sticks were thrown at trucks and windows busted; (3) he saw rocket and mortar attacks while stationed at Camps Cedar and Anaconda; (4) on April 8, 2004 he was shot in the left arm while driving near Baghdad and received a 60 day leave ; (5) attacks could come day after day or weeks or months apart; (6) on February 18, 2007 Claimant twisted his ankle and hurt his knee when he fell attempting to get into a bunker during an attack on Tallil AFB; (6) Claimant believed but did not experience an attack on February 23, 2007 at Tallil; (7) Dr. Griffith is not an expert on the MMPI or PTSD; (8) “indirect hostile action” can be deadly; (9) Claimant was treated for and given a medical leave of absence for work related stress on April 6, 2008; (10) PTSD diagnostic involves an event or series of events that involve actual or threatened death or serious injury or a threat to the physical integrity of self of others; (11) Dr. Griffith made a diagnosis of malingering before reviewing objective data from MMPI-2; (12) Dr. Cranton is qualified as an expert in diagnosing and treating PTSD patients and does not try to interpret psychological testing but instead relies upon psychologist for such interpretation;(13) Dr Cranton diagnosed Claimant as having PTSD based upon two clinical interviews of Claimant, individual interviews with Claimant’s spouse and son and review of extensive records including Dr. Lindman’s records ; (14) Claimant experienced a psychotic episode when he concocted the February 23, 2007 event; (15) the psychotic episode appeared to be the result of listening to and over identifying with American soldiers; (16) Claimant has developed a seizure disorder which may be related to emotional stress associated with PTSD; (17) Claimant’s PTSD came from chronic stress as opposed to a acute stressful event; (18) in Dr. Cranton’s opinion Claimant’s PTSD and seizure disorder raises a lot of uncertainty over Claimant’s ability to work and he (Dr. Cranton) would not recommend

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<sup>18</sup> Dr. Griffith’s evaluation of Claimant appears as EX-17.

Claimant becoming a parking lot attendant; (19) Dr. Lindman despite Claimant's inaccurate description of a February 23, 2007 attack would still find Claimant suffering from PTSD based on Claimant's overall experience of the Iraqi war whether he actually witnessed an event or merely heard of an event; (20) Dr. Lindman found no lack of cooperation during treatment or evaluation, no evidence of an antisocial personality disorder or evidence of secondary gain by Claimant; and (21) Dr. Lindman opined that Claimant's PTSD was directly related to his Iraq experience and would restrict Claimant from truck driving, work overseas or having direct customer contact or loud noises.

Employer on the other hand contends Claimant did not present sufficient evidence to establish a *prima facie* case of disability. Rather Claimant is malingering and does not suffer from PTSD or any work-related psychological condition having fabricated the primary event which made the basis of his PTSD claim. More specifically Employer contends (1) Claimant testified he suffered no anxiety or other mental health problems as of February 20, 2007 or until a gun battle of February 23, 2007; (2) Claimant's co-workers considered Claimant to be dishonest; (3) No gun battle occurred on February 23, 2007 as confirmed by supervisor Curtis and the lack of any documentation to support such activity; (4) Claimant fabricated other details about his experiences in Iraq including allegedly daily bombing, rocket, and small arms fire attacks; (5) Claimant's anxiety in his last days in Iraq were related to a close relationship he had with Jessica, a 20 year old soldier, who he admitted kissing and buying birth control pills; (6) this anxiety was alleviated when Jessica was transferred to Germany; (7) Claimant's own psychiatrist (Dr. Cranton) less than two weeks before trial found no evidence of psychosis; (8) Dr. Griffith testified Claimant was not psychotic and did not suffer from work related seizures but rather fabricated the February 23, 2007 gun battle for monetary gain ; (9). Dr. Lindman did not initially rule out malingering (10) Dr. Lindman based her diagnosis of PTSD upon Claimant's self reported four years of trauma in Iraq which made him constantly alert and vigilant due to daily mortar, small arms fire and bombing attack; (11) Claimant admittedly was not exposed to daily attacks, worked only 4 months as a truck driver and never hauled fuel; (12) Claimant came under direct fire on only one occasion April 9, 2004 and claimed no mental health problems as a result until more than 3 ½ years later; (13) there was no evidence despite medical testing to confirm a seizure disorder which Claimant concocted like the February 23, 2007 gun battle and his degree in electromechanical engineering; (14) Claimant intends to stop seeing Dr; Lindman when this case is over; (15) no doctor has ever told Claimant he could not work; (16) Claimant's 6 months driving restriction is self imposed; (17) supervisor Curtis refuted Claimant's allegations of a February 23, 2007 gun battle, frequent attacks on Tallil AFB and established Claimant's reputation for dishonesty telling workers Curtis said things she did not say; (18) PTSD symptoms are for the most part entirely subjective giving rise to many cases of malingering; (19) Claimant's own physician opined Claimant concocted the February 23, 2007 gun fight allegedly because of a psychosis that occurred only one time and was not present two weeks before trial; (20) there is no evidence that Claimant's PTSD came from vicarious trauma, i.e., Claimant's listening to soldier war stories; (21) Dr. Lindman did not do any testing for malingering as required by the DSM-IV; (22) according to Dr. Lindman seizures are not associated with PTSD.

## B. Credibility of Parties

It is well-settled that in arriving at a decision in this matter the finder of fact is entitled to determine the credibility of the witnesses, to weigh the evidence and draw his own inferences from it, and is not bound to accept the opinion or theory of any particular medical examiner. *Banks v. Chicago Grain Trimmers Association, Inc.*, 390 U.S. 459, 467 (1968); *Louisiana Insurance Guaranty Ass'n v. Bunol*, 211 F.3d 294, 297 (5<sup>th</sup> Cir. 2000); *Hall v. Consolidated Employment Systems, Inc.*, 139 F.3d 1025, 1032 (5<sup>th</sup> Cir. 1998); *Atlantic Marine, Inc. v. Bruce*, 551 F.2d 898, 900 (5<sup>th</sup> Cir. 1981); *Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9, 14 (2001). Any credibility determination must be rational, in accordance with the law and supported by substantial evidence based on the record as a whole. *Banks*, 390 U.S. at 467; *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 945 (5<sup>th</sup> Cir. 1991); *Huff v. Mike Fink Restaurant, Benson's Inc.*, 33 BRBS 179, 183 (1999).

In this case I find Claimant's testimony concerning the events leading up to the alleged PTSD to be truly incredible. For example the alleged attack on February 23, 2007 wherein (1) no alarm was sounded despite insurgent penetration of two perimeters around Tallil; (2) no record was made of the event by either military or civilian sources despite the alleged killing of 30 insurgents; (3) the military involved Claimant in the fight when such was prohibited under military protocol; (4) marines appeared on the base during the alleged fight when no marines were stationed there; (5) Claimant failed to report the February 23 incident while employed by Employer and sought medical leave for personal reasons unrelated to combat stress; (6) supervisor Curtis testified she had no knowledge of the alleged incident but was aware Claimant had a reputation among his peers for dishonesty. In addition Claimant misstated his education claiming he had an engineering degree when in fact he completed only one college course and misstated his contact with hostile fire telling Dr. Lindman he had almost daily contact with such when the opposite was much more accurate.

I was also not impressed with Dr. Lindman's testimony concerning Claimant having PTSD when in fact she never ruled out malingering as require by the DSM-IV. Further her diagnosis of PTSD was based in part on Claimant's false testimony he had been exposed to hostile fire on almost a daily basis and false testimony about the February 23, 2007 fire fight. In fact Dr. Lindman testified it was not necessary for Claimant to have actually been exposed to life threatening situations but to believe he had been exposed to such or to listen to others who had been exposed to life threatening situations. In view of Claimant's misrepresentation of his work background, education and trauma exposure I do not credit Claimant's assertion of being exposed to life threatening situations in Iraq and Kuwait and thus do not credit Dr. Lindman's diagnosis.

Dr. Cranton's testimony about Claimant having PTSD was equally suspect being based not upon actual exposure to trauma but to listening to others who had been exposed to trauma when in fact there is no evidence to suggest Claimant listen to soldier trauma stories. Further there was no evidence to support Dr. Cranton's belief that Claimant had a psychotic episode when he related the February 23, 2007 gun fight at Tallil. In fact when examined by Dr. Cranton two weeks before trial Claimant demonstrated no evidence of any psychosis.

While Claimant attacks Dr. Griffith's lack of expertise in administering and evaluating psychological testing, I do not find this to be controlling inasmuch as the MMPI he gave Claimant was evaluated by a clinical psychologist, Dr. Rubenzer who agreed with Dr. Griffith's assessment. Rather I find Dr. Griffith's assessment of Claimant lying for monetary gain to be consistent with his reputation for dishonesty and false statements regarding his education, work for Employer in Iraq and Kuwait, events of February 23, 2007, and exposure to daily rocket, mortar and small arms attacks.

### C. Causation

In establishing a causal connection between the injury and claimant/s work, the Act should be liberally applied in favor of the injured worker in accordance with its remedial purpose. *Staffex Staffing v. Director, OWCP*, 237 F.3d 404, 406 (5<sup>th</sup> Cir. 2000), *on reh'g*, 237 F.3d 409 (5<sup>th</sup> Cir. 2000); *Morehead Marine Services, Inc. v. Washnock*, 135 F.3d 366, 371 (6<sup>th</sup> Cir. 1998)(quoting *Brown v. ITT/Continental Baking Co.*, 921 F.2d 289, 295 (D.C. Cir. 1990)); *Wright v. Connolly-Pacific Co.*, 25 BRBS 161, 168 (1991). Ordinarily the claimant bears the burden of proof as a proponent of a rule or order. 5 U.S.C. § 556(d) (2002). By express statute, however, the Act presumes a claim comes within the provisions of the Act in the absence of substantial evidence to the contrary. 33 U.S.C. § 920(a) (2003). Should the employer carry its burden of production and present substantial evidence to the contrary, the claimant maintains the ultimate burden of persuasion by a preponderance of the evidence under the Administrative Procedures Act. 5 U.S.C. 556(d) (2002); *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 281 (1994); *American Grain Trimmers, Inc. v. Director, OWCP*, 181 F.3d 810, 816-17 (7<sup>th</sup> Cir. 1999).

Section 20 provides that 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 - - (a) that the claim comes within the provisions of this Act. 33 U.S.C. § 920(a). To establish a prima facie claim for compensation, a claimant need not affirmatively establish a connection between work and harm. Rather, a claimant has the burden of establishing only that: (1) the claimant sustained a physical harm or pain; and (2) an accident occurred in the course of employment, or conditions existed at work, which could have caused, aggravated, or accelerated the harm or pain. *Port Cooper/T. Smith Stevedoring Co., Inc., v. Hunter*, 227 F.3d 285, 287 (5<sup>th</sup> Cir. 2000); *O'Kelly v. Department of the Army*, 34 BRBS 39, 40 (2000); *Kier v. Bethlehem Steel Corp.*, 16 BRBS 128, 129 (1984). Once this prima facie case is established, a presumption is created under Section 20(a) that the employee's injury or death arose out of employment. *Hunter*, 227 F.3d at 287. The mere existence of a physical impairment is plainly insufficient to shift the burden of proof to the employer. *U.S. Industries/Federal Sheet Metal Inc., v. Director, OWCP*, 455 U.S. 608 (1982). See also *Bludworth Shipyard Inc., v. Lira*, 700 F.2d 1046, 1049 (5<sup>th</sup> Cir. 1983) (stating that a claimant must allege an injury arising out of and in the course and scope of employment); *Devine v. Atlantic Container Lines*, 25 BRBS 15, 19 (1990) (finding the mere existence of an injury is insufficient to shift the burden of proof to the employer).

Once the presumption in Section 20(a) is invoked, the burden shifts to the employer to rebut it through facts - not mere speculation - that the harm was not work-related. *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 687-88 (5<sup>th</sup> Cir. 1999). Thus, once the presumption applies,

the relevant inquiry is whether the employer has succeeded in establishing the lack of a causal nexus. *Gooden v. Director, OWCP*, 135 F.3d 1066, 1068 (5<sup>th</sup> Cir. 1998); *Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84, 89-90 (1995) (failing to rebut presumption through medical evidence that claimant suffered an prior, unquantifiable hearing loss); *Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141, 144-45 (1990) (finding testimony of a discredited doctor insufficient to rebut the presumption); *Dower v. General Dynamics Corp.*, 14 BRBS 324, 326-28 (1981) (finding a physician's opinion based of a misreading of a medical table insufficient to rebut the presumption). The Fifth Circuit further elaborated:

To rebut this presumption of causation, the employer was required to present substantial evidence that the injury was not caused by the employment. When an employer offers sufficient evidence to rebut the presumption--the kind of evidence a reasonable mind might accept as adequate to support a conclusion--only then is the presumption overcome; once the presumption is rebutted it no longer affects the outcome of the case.

*Noble Drilling v. Drake*, 795 F.2d 478, 481 (5<sup>th</sup> Cir. 1986) (emphasis in original). *See also, Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 290 (5<sup>th</sup> Cir. 2003) *cert. denied* 124 S.Ct. 825 (Dec. 1, 2003) (stating that the requirement is less demanding than the preponderance of the evidence standard); *Conoco, Inc.*, 194 F.3d at 690 (stating that the hurdle is far lower than a ruling out standard); *Stevens v. Todd Pacific Shipyards Corp.*, 14 BRBS 626, 628 (1982), *aff'd* mem., 722 F.2d 747 (9<sup>th</sup> Cir. 1983) (stating that the employer need only introduce medical testimony or other evidence controverting the existence of a causal relationship and need not necessarily prove another agency of causation to rebut the presumption of Section 20(a) of the Act); *Holmes v. Universal Maritime Serv. Corp.*, 29 BRBS 18, 20 (1995) (stating that the unequivocal testimony of a physician that no relationship exists between the injury and claimant's employment is sufficient to rebut the presumption).

If the presumption is rebutted, it no longer controls and the record as a whole must be evaluated to determine the issue of causation. *Del Vecchio v. Bowers*, 296 U.S. 280, 286-87 (1935); *Port Cooper/T Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 288 (5<sup>th</sup> Cir. 2000); *Holmes v. Universal Maritime Serv. Corp.*, 29 BRBS 18, 20 (1995). In such cases, I must weigh all of the evidence relevant to the causation issue. If the record evidence is evenly balanced, then the employer must prevail. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 281 (1994).

It is well-settled that a psychological impairment can be an injury under the Act if it is work-related. *Lazarus v. Chevron, USA*, 958 F.2d 1297, 1299 (5<sup>th</sup> Cir. 1992); *Director, OWCP v. Potomac Electric Power Co.*, 607 F.2d 1378, 1385 (D.C. Cir. 1979); *Sewell v. Noncommissioned Officers' Open Mess, McChord Air Force Base*, 32 BRBS 127, 129 (1997); *Konno v. Young Brothers, Ltd.*, 28 BRBS 57, 61 (1994). Psychological impairments include depression due to a work-related disability, *Hargrove v. Strachan Shipping Co.*, 32 BRBS 11, 15 (1998), anxiety conditions, *Moss v. Norfolk Shipbuilding & Dry Dock Corp.*, 10 BRBS 428 (1979), headaches, *Sanders v. Alabama Dry Dock & Shipbuilding Co.*, 22 BRBS 340, 341-42 (1989); and stress. *Marinelli v. American Stevedoring, Ltd.*, 34 BRBS 112, 117 (2000), *aff'd* 248 F.3d 54 (2<sup>nd</sup> Cir. 2001). Where a work-related accident has psychological repercussions it is also compensable. *Tampa Ship Repair & Dry Dock v. Director, OWCP*, 535 F.2d 936, 938 (5<sup>th</sup> Cir.

1976); *Tezeno v. Consolidated Aluminum Corp.*, 13 BRBS 778, 782 (1981). A psychological injury stemming from a legitimate personnel action, however, is not compensable. *Army & Air Force Exchange Service v. Drake*, 172 F.3d 47 (6<sup>th</sup> Cir. 1998) (unpub.) (stating that justified discriminatory acts cannot form the basis for a claim under the Act); *Marino v. Navy Exchange*, 20 BRBS 166 (1988) (finding that a reduction in force is not a working condition that can form the basis of a compensable injury).

In the case of *Sewell v. Noncommissioned Officers Open Mess, McChord Air Force Base*, 32 BRBS 127, 127-28 (1997), the Board held that the ALJ erred in denying benefits for a psychological injury due to stressful working conditions. On the first appeal, *Sewell v. Noncommissioned Officers' Open Mess, McChord Air Force Base*, BRB No. 89-1075 (July 27, 1995) (unpub.), the Board remanded noting that the ALJ was correct in stating that legitimate personnel actions could not form the basis for a claim under the Act, but a determination was needed by the ALJ to ascertain whether the claimant met her burden of establishing a *prima facie* case in light of testimony that claimant was harassed, intimidated, and on one occasion struck by her manager. *Sewell*, 32 BRBS at 128. On remand the ALJ determined that the stress claimant was exposed to was not outside the realm of ordinary workplace experiences and the ALJ reaffirmed his conclusion that claimant failed to establish a *prima facie* case. *Id.* On her second appeal, the Board reversed, noting a difference between legitimate personnel actions and work related cumulative stress. *Id.* at 129. The Board reasoned that under the working conditions prong of the *prima facie* case requirements, the proper inquiry was not whether the employer's actions were legitimate or justified, but whether claimant's working conditions, on a day to day basis, were so cumulatively stressful that they would have caused or aggravated her psychological injury. *Id.* at 130.

In this case Claimant in order to establish a *prima facie* case must show Claimant sustained either a psychological or physical harm and a work related condition that caused or could have caused or aggravated the harm. Claimant contends he met that burden by showing he suffered from both PTSD and/or seizure disorders as a result of his work for Employer. To rebut that assertion Employer must present substantial evidence to the contrary that Claimant's condition was neither caused by, aggravated, accelerated, nor rendered symptomatic by work conditions. I do not credit Claimant's assertion that he had either PTSD or a seizure disorder related to work conditions. Claimant concocted or made up a story about a February 23, 2007 fire fight with insurgents. Claimant misrepresented himself to Drs. Lindman and Cranton claiming almost daily encounters with mortar, rocket, and gun fire when in fact he suffered only one such encounter on April 9, 2004 wherein he was wounded in the arm but suffered no continuing trauma or symptoms thereafter. In addition Claimant misrepresented his educational and work background to Drs. Lindman and Cranton indicating a college degree in electromechanical engineering and three and one half years of truck driving for Employer when in fact he passed only one college course and drove a flatbed and not fuel truck for Employer. There was no objective evidence of any seizure. Moreover Dr. Griffith testified Claimant suffered from no seizure disorder or PTSD condition and that the February 23, 2007 gun battle was no psychotic episode.

Accordingly I find Claimant failed to show he suffered either PTSD or seizure disorders and thus did not establish a *prima facie* case of disability.

## **V. ORDER**

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

Claimant does not suffer from either PTSD or a seizure disorder as a result of his employment with Employer in Kuwait or Iraq and thus is not entitled to compensation or medical benefits under the Act.

**A**

CLEMENT J. KENNINGTON  
Administrative Law Judge