

U.S. Department of Labor

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Issue Date: 31 March 2009

CASE NO.: 2008-LDA-00331
OWCP NO.: 02-161987

In the Matter of:

T. W.¹,
Claimant,

v.

SERVICE EMPLOYERS INTERNATIONAL
Employer,

and

INSURANCE COMPANY OF THE STATE
OF PENNSYLVANIA,
Carrier.

Appearances: Kurt A Gronau, Esq.
For Claimant

Jerry R. McKenney
Legge, Farrow, Kimmitt, McGrath & Brown, LLP
For Employer/Carrier

Before: Paul C. Johnson, Jr.
Administrative Law Judge

DECISION AND ORDER DENYING BENEFITS

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. § 1651(a). In this case, Claimant T.W. alleges that he suffered a compensable psychological injury while working for a defense contractor in Iraq in May of 2007.

¹ Effective August 1, 2006, the Department of Labor instituted a policy that decisions and orders under the Defense Base Act that will be available on this Office's website shall not contain the claimant's name. Accordingly, this final decision shall refer to the claimant by initials only.

I held a formal hearing in this matter on October 14, 2008. At that time, Administrative Law Judge Exhibit 1, Claimant's Exhibits ("CX") 1-21, and Employer's Exhibits ("EX") 1-22, were received. Subsequent to the hearing, the court reporter who recorded the proceedings disappeared, along with the tapes of the hearing; consequently, no transcript was prepared or received. At the suggestion and with the agreement of counsel for the parties, post-hearing depositions were conducted of the two witnesses who had testified at the formal hearing: Claimant and John W. Griffith, MD. Transcripts of those depositions were submitted on February 16, 2009 as EX 26 and 27, along with an unopposed motion to supplement the trial record. In accordance with the agreement of the parties and with my Order of December 23, 2008, EX 26 and 27 are received in evidence.² Both parties have submitted written arguments, and this matter is ripe for decision.

Issues

Employer did not controvert, and the parties stipulated to, the following:

1. Claimant's alleged injury occurred on May 20, 2007;
2. The alleged injury occurred in Iraq while Claimant was working in support of U.S. military operations;
3. Employer was timely notified of the alleged injury;
4. Claimant timely filed his claim for benefits; and
5. An employer/employee relationship existed between Claimant and Employer at the time of the alleged injury.

The following issues remain for resolution:

1. Fact of injury;
2. Causation;
3. Nature and extent of disability;
4. Average weekly wage;
5. Entitlement to temporary total disability benefits; and
6. Entitlement to medical benefits.

² EX 24 and EX 25 are designated as "pending" in the Amended Exhibit List accompanying EX 26 and EX 27. They consist of Claimant's Social Security earnings record and IRS tax records respectively. The exhibits themselves, however, have not been submitted. The record is now closed, and EX 24 and EX 25 are not part of the record and will not be considered.

As will be more fully discussed below, I conclude that Claimant has failed to meet his burden to show that he suffers from Posttraumatic stress disorder (“PTSD”). Accordingly, I will not address issues 2-6 above in this Decision and Order.

Findings of Fact

A. BACKGROUND

Claimant testified in two depositions, one taken before loss of the hearing tapes and one taken afterwards. [EX 13 and EX 27.] The following facts were taken from his deposition testimony.

Claimant lives in Cheboygan, Michigan. [EX 13 at 16:1-5; EX 27 at 9:13-15.] He graduated from high school in Cheboygan in 1983. [EX 13 at 4:15-16; ex 27 AT 6:14-17.] Before beginning employment with Employer, Claimant worked as a carpenter, building trusses and framing homes in Texas, Florida, and Michigan. [EX 13 at 19:22-20:17.] In addition, Claimant worked as a pit boss in casinos in St. Ignace and Petoskey, Michigan before working for Employer. [EX 13 at 18:11-19:21; EX 27 at 11:4-21.]

In February of 2005, Claimant was told of employment opportunities in Iraq by customers at the casino where he worked. [EX 13 at 20:5-10; EX 27 at 14:2-10.] He applied on line, and thereafter went to Houston, Texas for a job interview. A short time later, he was hired and returned to Houston for orientation and in-processing. [EX 13 at 30:11-37:18; EX 27 at 16:7-10 and 18:5-14.] He departed for Iraq on February 28, 2005 to begin work as a labor foreman for Employer. [EX 13 at 38:10-13.]

Claimant’s first employment site was at Camp Remagen in Iraq. [EX 13 at 41:2-3; EX 27 at 33:4-81.] His duties consisted of supervising third-party (non-Iraqi and non-U.S.) nationals who worked at the base as laborers. He also performed other tasks on occasion, including preparation of a cement pad for a gate at the camp and spreading gravel. [EX 13 at 43:1-44:20; EX 27 at 33:24-35:20.] He stayed at Camp Remagen for eight to nine months, after which he transferred to Camp Danger at his request because of conflicts with the camp manager at Camp Remagen. [EX 13 at 55:10-56:23; EX 27 at 43:11-23.] His duties at Camp Danger were similar to his duties at Camp Remagen, except that he also drove trucks for Employer. [EX 13 at 58:5-16; EX 27 at 45:16-24.] After Claimant worked at Camp Danger for about a year, control of the camp was returned to the Iraqi people, and Claimant transferred to Camp Warrior. [EX 13 at

70:8-16 and 61:13-14; EX 27 at 58:12-13.] He continued to perform the duties he had performed at the previous camps while assigned to Camp Warrior. [EX 13 at 74:18-19; EX 27 at 59:20-25.] On May 20, 2007, after threatening the life of his camp manager, Claimant was forcibly removed from Camp Warrior and ultimately was returned to his home in Michigan. [EX 13 at 99:5-105:8; EX 27 at 82:12-89:1.]

Claimant alleges that his cumulative experience in Iraq resulted in his developing Posttraumatic stress disorder (PTSD). According to Claimant, he was exposed to various job pressures while assigned to Camp Remagen and Camp Warrior. For the most part, the job difficulties were related to a mutual inability between him and his camp manager to get along. Specifically, Claimant believes that the camp manager disliked him because he was a “Yankee,” while many of the other workers were southerners. Additionally, the camp manager objected to Claimant’s apparent friendship with an African-American co-worker, referring to the co-worker by a racial epithet and using racially-charged language to refer to Claimant. Finally, the camp manager told Claimant that he believed Claimant was not qualified for promotion when Claimant sought his recommendation. [EX 13 at 48:10-53:11; EX 27 at 39:7-40:3.] While Claimant worked at Camp Remagen, he was exposed to occasional mortar attacks and small arms fire. [EX 27 at 44:19-45:12.]

After eight or nine months, Claimant sought and received a transfer to Camp Danger. [EX 13 at 55:10-56:23; EX 27 at 43:11-23.] Removed from the camp manager’s supervision, Claimant no longer felt as though his work was underappreciated by management. At Camp Danger, however, Claimant’s exposure to life-threatening military operations increased: Camp Danger was subjected to mortar and rocket attacks three times a day, on average, for the entire period that Claimant worked there. [EX 13 at 67:13-68:21; EX 27 at 50:11-51:3.] In addition, Claimant witnessed three soldiers under mortar fire, resulting in the immediate death of one soldier, the immediate injury of the others, with one eventually dying. [EX 13 at 64:8-65:6; EX 27 at 53:25-54:10.] He also was part of the response in the aftermath of a mortar attack that killed six third-country nationals, and that he helped in the cleanup of the area. [EX 27 at 52:14-53:23.]

After Claimant had worked at Camp Danger for about a year, Camp Danger was returned to Iraqi control. [EX 13 at 70:8-16 and 71:13-14; EX 27 at 58:12-23.] Claimant assisted in closing down the base, canceling an R&R period that had been scheduled. [EX 13 at 70:5-9.]

After the turnover was completed in November of 2006, Claimant was transferred to Camp Warrior. [EX 13 at 74:13-17.] A few months after Claimant's transfer, the camp manager from Camp Remagen was also transferred to Camp Warrior, where he took over as camp manager. [EX 13 at 77:18-25; EX 27 at 62:13-19.] After the camp manager appeared, Claimant again began having difficulties with management. In particular, the camp manager routinely required Claimant to violate what Claimant believed were requirements of his job: as an escort of local and third-country nationals, Claimant was permitted to escort no more than seven laborers at a time. The camp manager, however, routinely directed Claimant to escort more than the seven allowed, and routinely added laborers to Claimant's work crews in violation of the numerical limits. Claimant objected verbally and in writing, believing that the camp manager was setting him up for disciplinary action and placing him in personal danger. [EX 13 at 81:24-82:10; EX 27 at 62:20-69:4.] Eventually, Claimant developed the intent to kill the camp manager. To that end, he fashioned a sword out of a piece of scrap metal, filing the blade to sharpness in his quarters and making a handle out of string. [EX 13 at 82:24-83:23; EX 27 at 73:1-74:12.] Over time, he practiced using the sword by slicing apples. Claimant started following the camp manager to discern his daily habits and form a plan to kill him. [EX 13 at 85:21-87:9.]

Claimant testified that he called Employer's Employee Assistance Program three times for help, so that he would not in fact hurt the camp manager. [EX 13 at 89:7-91:5; EX 27 at 77:20-79:13.] The EAP counselor told Claimant to seek medical help from the Army; however, when he attempted to do so, he was told that he needed approval from the camp manager, who declined to give permission in spite of Claimant's assertion that he was going to hurt someone if he did not get help. [EX 13 at 89:7-91:5; EX 27 at 77:20-79:13.] On May 19, 2007, Claimant made the last of his calls to EAP, and told them that he needed help. The person he spoke with laughed at him. [EX 13 at 97:10-22; EX 27 at 79:15-80:10.] Between that time and about 4:00 the following morning, Claimant called the United States twice and spoke with two of his brothers about his intention to kill the camp manager. Thereafter, at about 4:00 in the morning, Claimant was taken into custody by Air Force and Employer's security forces. [EX 13 at 97:23-101:12; EX 27 at 80:10-18.] He was sedated and removed from Iraq to Greece, Germany, and ultimately to Cheboygan, Michigan. [EX 13 at 101:13-105:8; EX 27 at 84:8-89:1.]

B. OPINIONS OF MEDICAL PROFESSIONALS

Claimant has been treated and/or examined by five different medical professionals, each of whom has submitted a report or treatment records that are included in the record.

1. Ronald C. Marshall, Ph.D.

Shortly after being returned from Iraq, Claimant began treatment with Dr. Marshall, who is a clinical psychologist in Petoskey, Michigan. [EX 15 at 3:12-15 and Exhibit 1.] Dr. Marshall first saw Claimant on June 11, 2007 after treatment was authorized by Employer, and saw Claimant for a total of 24 sessions. [EX 9.]

After his initial session with Claimant, Dr. Marshall prepared a psychological evaluation. [EX 9, pp. 50-56.] He interviewed Claimant and administered the Millon Clinical Multiaxial Inventory-III (“MCMI-III”) test. Dr. Marshall reviewed Claimant’s symptoms and conducted a mental status assessment, and identified treatment goals to be attempted over a planned 10-session course of treatment. After conducting his initial evaluation, Dr. Marshall arrived at a diagnosis of PTSD and Major Depression Disorder.

Dr. Marshall summarized Claimant’s representations to him in his initial report. [EX 9.] Those representations are:

The patient is a 42 year old male who is presently [*sic*] lives with spouse and children. He is unemployed. The history was provided by client.

Chief Complaint/History of Present Illness: Client referred for evaluation for treatment.

Client bought [*sic*] back from Iraq in last two weeks due to homicidal ideation. Client admitted having thoughts of hurting others, especially individuals back in Iraq who [*sic*] he disliked due to either they being incompetent or trying to get him sent home.

Client admits to being irritable, gets headaches or get dizzy when he around [*sic*] to [*sic*] many people. Usually stays home. He states he lacks interest in doing anything, avoids socializing. He has trouble falling asleep and waking up. He states his head feels very prickly at times, has tension in his neck and lower portion of his head.

Client admits loss of libido and that he doesn’t trust anybody. He admits to fatigue. He reports thinking about Iraq a lot. He has thoughts about gun fire, incoming missiles, and fears of being hit by shrapnel.

He is third oldest of five boys. His two younger brothers are deceased. His second youngest committed suicide several years ago. His youngest brother died from cancer last year.

Client admits to being married before and they adopted two children. His ex-spouse lets him see his son but not his daughter.

There is [*sic*] current legal proceedings about visitation. Client has remarried and has two children from that marriage of nine years. His first marriage last [*sic*] five years. The marriage ended over both parties cheating on each other.

[EX 9, p. 50.] Dr. Marshall thereafter claims that Claimant “appears to have been confronted with an event or events in which he was exposed to a severe threat to his life, a traumatic experience that precipitated intense fear or horror on his part.” [*Id.* at p. 54.]

In the following 23 sessions, Dr. Marshall continued to diagnose PTSD, and treated Claimant for that disorder. He noted some improvement in Claimant’s symptoms over time until treatment ended in January of 2008. [EX-9, pp. 4-49.]

2. John Dorland Griffith, MD

Dr. Griffith, who is a board-certified psychiatrist, conducted a psychiatric evaluation of Claimant on October 19, 2007. [EX 17.] He interviewed Claimant, had a Minnesota Multiphasic Personality Inventory-2 (MMPI-2) administered, took a history of current symptoms, and evaluated Claimant’s mental status. [*Ibid.*]

To Dr. Griffith, Claimant described his Iraq experience as follows:

He stated that he was first stationed at Camp Remogan [*sic*] where he observed soldiers returning tracer fire and a soldier being “nicked” by enemy action. His chief complaint, however, was a personality conflict with the Chief of Staff, “Joe” and Camp Supervisor, “Vick.”... He attempted to solve this by moving to Camp Danger where he got along with everyone and then to Camp Warrior where he again met up with his alleged persecutors, Joe and Vick and a new vexation, “Darrel,” whom [*sic*], he said threatened to get him. When asked to whom he told this, he could think of only “David.” His complaints lacked specificity. He could not describe a single act for which he has been reprimanded but had a long list of “policies” that he (among others) was expected to follow such as not fraternizing with soldiers.

He says that while he was at Camp Danger he was subjected to mortar fire of three or more rounds three or more times a day. He said he was in his hooch when a bus exploded nearby and debris fell, some of which was human parts. He

also has a bullet that he carries in a necklace which he said penetrated his living quarters, his pillow, and became stuck in a nearby wall. At the time he thought someone had thrown a rock at the wall and didn't discover the incident until he awoke the next day. He says KBR has pictures of this. When asked to describe the worst of the mortar attacks, he said he could not decide.

[EX 17, pp. 2-3.] Additional information provided to Dr. Griffith by Claimant includes his having seen a soldier "evaporated by some explosion" and seeing other people killed. [EX 26 at 39:10-25.] Claimant said, however, that the killing "didn't affect him." [*Id.* at 39:16-17.] What affected him, instead, was Vic who, in Claimant's opinion, was unfair to him and did not appreciate him. [*Id.* at 40:10-15.] When asked specifically whether any incident caused him to feel horror, Claimant first "blew up" at Dr. Griffith, and then said that "it didn't affect him." [*Id.* at 40:3-16.]

Dr. Griffith concluded that Claimant does not suffer from PTSD, but rather is malingering, has a personality disorder, and has certain stressors including a pending lawsuit, marital difficulties, and child-support issues. [EX 17, p. 4.] In determining that Claimant does not suffer from PTSD, Dr. Griffith noted that Claimant could not identify a trauma sufficient to warrant the diagnosis. He also noted that Dr. Marshall had failed to rule out symptom magnification and malingering, as is required by the DSM-IV (Diagnostic and Statistical Manual, 4th Edition) in cases involving claims for compensation. [*Ibid.*]

3. Dale van Holla, MD

Dr. van Holla, who is board certified in general psychiatry, conducted an independent medical examination of Claimant on April 26, 2008. [EX 15.] The examination lasted for one hour. [*Ibid.*] Dr. van Holla interviewed Claimant, taking histories of his current complaint, past psychiatric history, past medical history, family/developmental/social history, and medications, and conducted a mental status examination.

To Dr. van Holla, Claimant gave the following description of his Iraq experience:

[After training in Houston, Claimant] was sent to Camp Victory in Baghdad, which was a very brief stay until he was allocated to Camp Remagen in Tikrit, Iraq. He stayed there for a few months, later to be transferred to Camp Danger in Tikrit for upwards to a year. Then from there he went to Camp Warrior in Kirkuk for just over a year. He says that is when he began "losing it" in May of 2007.

He says he began to experience a building hatred towards people. He began to not care about his own sense of self. He did not care if he lived or died. He

began to cry at nighttime. He began to have profound dysfunction with the obtaining of sleep in a restful fashion. He began to develop panic attacks, poor concentration, outbursts of anger, irritability, nightmares on an ongoing fashion, and he began to feel on guard and hypervigilant at all points in time. He says if anybody dropped any piece of equipment behind him or made any sudden movement or loud noise in his periphery or behind him, he had a very intense and profound exaggerated startle response.

He says he thinks and knows that it was from the type of environment that he was living in while in these camps. He says that the camp that he stayed in was always subject to mortar attacks morning, noon, and night. He says the level of combat and the potential for bodily harm and victimization an dloss due to death was on a daily basis.

He says he began to feel very unsupported by those that were military based in their background, because he himself did not have a military background. He could certainly see that he was called a “Yankee”. He was not from the south. He says there was a Louisville clan and there was also a more Deep South kind of Louisiana clan of workers there and he did not seem to fit in. He says there were a number of them that did not fit into this and this was his first sign of not feeling supported.

When he began to experience these symptoms; [*sic*] however, he began to feel even more unsupported and he pursued treatment with a military M.D. However, the medics there had given him a denial, telling him that he was not allowed to in pursuit of the symptoms described above. He went to visit Vic, the camp manager, and received yet another denial or permission for seeing the military physician for treatment. Then he had pursued human resources and was denied again. He says at this point in time, he began to “lose it”.

He says he began to feel as though he needed help, was unable to get it, and began to devise a plot to kill the camp manager. He says he no longer cared for himself or for whatever would happen to him, so he believed that this would have been done without any remorse. He began to watch his camp manager’s every move in what he thinks was probably an attempt at suicide. He states that he certainly knows now, in hindsight, that he was not in his right mind.

One of the days in which he was doing this, he began to talk with his “brothers” and his “brothers” had recognized the concern or the plot that was going on in his mind. At 4:00 a.m. in the morning, when he was asleep, the forestry police,³ the equivalent of the military police, arrived at his door and handcuffed him and brought him to an army psychiatrist.

³ *Sic*; probably the “force police,” or uniformed Air Force security.

[EX 16, pp. 2-3.] Dr. van Holla provided an Axis I diagnosis of posttraumatic stress disorder, severe, classic, responding to treatment. [*Id.*, p. 9.]

Dr. van Holla supplemented his report by way of testimony at a deposition taken on September 5, 2008. [EX 14.] In the course of his testimony, he identified the “work environment” in Iraq as the most significant stressor on Claimant. [*Id.* at 23:19-23.] He clarified that remark to mean “traumatic exposure to ... possible loss of life while in Iraq.” [*Id.* at 24:18-22.] A close review of the deposition transcript shows that he was not asked, and did not offer an opinion on, whether Claimant suffered from intense fear, horror, or helplessness as a result of his exposure to the significant stressor identified by Dr. van Holla.

Based on his examination, Dr. van Holla diagnosed Claimant with PTSD (severe, classic, responding to treatment) and alcohol and marijuana self-medication. In Dr. van Holla’s opinion, Claimant’s PTSD was related to his employment in Iraq, in light of his lack of pre-Iraq psychiatric problems and the intense adjustment reaction he developed while in country. [*Ibid.*]

4. Steven Reppuhn, Ph.D.

Claimant was evaluated by Dr. Reppuhn on August 28, 2008. [EX 26, exhibit 3.] This evaluation was for purposes of determining Claimant’s eligibility for Social Security disability benefits. Dr. Reppuhn interviewed Claimant, taking histories of Claimant’s current complaint, personal history, medication and treatment, daily functioning, and interests and activities, and conducting a mental status examination.

Claimant provided the following “History of Illness” to Dr. Reppuhn:

[Claimant] last worked during May 2007 as a contractor in Iraq. This first time application for disability benefits alleges disability due to Post Traumatic Stress Disorder (PTSD), anxiety, panic attacks and major depression.

In person, [Claimant] reported that he felt unable to work because, “I don’t want to be around people anymore and I get very angry”. He noted he was even uncomfortable with the people in the examiner’s waiting room. He noted he feels that somebody is always following him or watching him. If he is around a crowd he gets hyper. He noted he is not sure what anxiety is but he can’t focus. When he shops for groceries he goes late at night to avoid others. He had been doing better when he was seeing psychologist Ronald Marshall. He noted that Dr. Marshall taught him a breathing exercise that helped. [Claimant] indicated he was in Iraq beginning in February 2005. He noted that he was handcuffed in May 2007 because he wanted to kill the camp manager where he was stationed. He indicated they took him to a psychiatrist and he was sedated, put on a helicopter

and taken to Germany. He had been driving trucks and was a labor foreman in Iraq.

[EX 26, Exhibit 3, p. 2.] Dr. Reppuhn reviewed additional information, including Dr. van Holla's report of April 26, 2008 [EX 16.] Dr. Reppuhn particularly noted Dr. van Holla's finding that Claimant did not suffer from any psychiatric illness before going to Iraq, and that Claimant began building hatred toward people in May of 2007. [EX 26, Exhibit 3, p. 7.] Dr. Reppuhn made no reference to particular traumatic events or to any feeling of horror, intense fear, or helplessness on Claimant's part.

Dr. Reppuhn diagnosed Claimant with PTSD, depressive disorder, social phobia, and history of alcohol/marijuana dependence.

5. David Oram, MD

Dr. Oram is Claimant's regular physician, and is board certified in family medicine.⁴ Dr. Marshall, as a psychologist, does not have the authority to prescribe medication, and recommended to Claimant that he see his regular physician for the purpose of obtaining medication. Dr. Oram met with Claimant on June 21, 2007 and conducted an evaluation; he thereafter prescribed sertraline (Zoloft) and recommended that Claimant continue treatment with Dr. Marshall. [EX 10, p. 4.] Dr. Oram's assessment of Claimant was that he suffered from PTSD and a major depressive episode. [*Ibid.*] Dr. Oram saw Claimant twice more after June 21, 2007, and continued to believe that Claimant suffered from PTSD. [*Id.*, pp. 2-3.]

At the first visit, Dr. Oram summarized Claimant's "chief complaint" as "Here to evaluate psychological symptoms." He noted that Claimant had been referred by Dr. Marshall with a diagnosis of PTSD and major depressive disorder. Claimant told Dr. Oram that he had worked for 2½ years as a truck driver in Iraq with a private corporation, and during the first year had been exposed to nearby explosives. He noted that Claimant had been extracted from Iraq for verbalizing threats to coworkers. [EX 10, p. 4.] Claimant saw Dr. Oram twice more, on July 20 and August 23, 2007. At the July 20 appointment, Claimant did not further describe his experiences in Iraq. [EX 10, p. 3.] At the August 23 appointment, Claimant described that he recalls mistreatment by the company while he was in Iraq, having been "unable to see military physicians as promised." [*Id.*, p. 2.]

⁴ See www.abms.org.

Conclusions of Law

A. Section 20(a) Presumption

Under Section 20(a) of the Act, 30 U.S.C. § 920(a), a claim brought under the Act is presumed, in the absence of substantial evidence to the contrary, to come within the provisions of the Act. To fall within the Section 20(a) presumption, a claimant must establish a *prima facie* claim. To do so in this matter, Claimant must show (1) that he was injured, and (2) that an accident occurred at his place of employment which could have caused the harm. *Bath Iron Works Corp. v. Brown*, 194 F.3d 1 (1st Cir. 1999); *Gooden v. Director, OWCP*, 135 F.3d 1066 (5th Cir. 1999); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981).

1. Posttraumatic Stress Disorder

PTSD is a psychiatric illness described under Code 309.81 in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Washington, DC, American Psychiatric Association 1994 (“DSM-IV”). A proper diagnosis requires the evaluation of six criteria, summarized as follows:

The essential feature of Posttraumatic Stress Disorder is the development of characteristic symptoms following exposure to an extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death or serious injury, or other threat to one’s physical integrity; or witnessing an event that involves death, injury, or a threat to the physical integrity of another person; or learning about unexpected or violent death, serious harm, or threat of death or injury experienced by a family member or other close associate (Criterion A1). The person’s response to the event must involve intense fear, helplessness, or horror (or in children, the response must involve disorganized or agitated behavior) (Criterion A2). The characteristic symptoms resulting from the exposure to the extreme trauma include persistent reexperiencing of the traumatic event (Criterion B), persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness (Criterion C), and persistent symptoms of increased arousal (Criterion D). The full symptom picture must be present for more than 1 month (Criterion E), and the disturbance must cause clinically significant distress or impairment in social, occupational, or other important areas of functioning (Criterion F).

DSM-IV, p. 424. With regard to Criterion A1, the DSM-IV further explains:

Traumatic events that are experienced directly include, but are not limited to, military combat, violent personal assault (sexual assault, physical attack, robbery,

mugging), being kidnapped, being taken hostage, terrorist attack, torture, incarceration as a prisoner of war or in a concentration camp, natural or manmade disasters, severe automobile accidents, or being diagnosed with a life-threatening illness...

Claimant has identified several stressors that may fall within the above definition of traumatic events that may support a diagnosis of PTSD. First, Claimant testified that there were a few incoming mortar or missile attacks while he was at Camp Remagen, but “not too much” while he worked there. [EX 27 at 44:19-25.] After transferring to Camp Danger, Claimant was subjected to incoming mortar rounds of “two to three every morning one to three every afternoon, and one to three or four in the evening. Sometimes we’d get six or eight. But it was an average of three I’d say every round.” [*Id.* at 50:19-51:3.] Claimant also testified that two of the mortar attacks resulted in the deaths of six civilian workers and two soldiers. [*Id.* at 52:14-20.] He further testified that he assisted in cleaning up the bodies of the six civilian workers. [*Id.* at 53:13-17.]

The stressors identified by Claimant that fall within the DSM-IV definition of traumatic events include (1) being subjected to frequent mortar attacks while working at Camp Danger; (2) witnessing the death of one soldier and injury to two others in a mortar attack at Camp Danger; and (3) exposure to bodies and body parts following a mortar attack, and helping to clean up the area where the bodies were found. These stressors satisfy Criterion A1.

However, Claimant has not stated in his testimony or to any of the physicians who evaluated him that he felt intense fear, helplessness, or horror from his exposure to the traumatic events. In his deposition, Claimant testified that he “thought about” the deaths he observed “for a little bit [after the event], but then it went away.” [EX 27 at 54:24-55:15.] Claimant was not asked at deposition about his reaction to the consistent incoming mortar fire.

2. Discussion

Of the doctors who evaluated Claimant, either as treating physicians or in a forensic setting, Drs. van Holla, Reppuhn, and Oram made no findings as to Criterion A2. Only Drs. Marshall and Griffith addressed that criterion.

Although Dr. Marshall states that Claimant felt intense fear or horror, there is nothing in Claimant’s statements to him that supports that finding; and, as discussed above, there is no affirmative by statement in either of Claimant’s depositions that he suffered from such fear or horror. In fact, when specifically asked, Claimant consistently stated that exposure to mortar fire

and to the deaths of soldiers and other workers in Iraq did not affect him in anyway. It appears that Dr. Marshall was predisposed to find that Claimant suffered from PTSD, and made assumptions that fit that predisposition without any basis for doing so. Based on the foregoing, I do not credit Dr. Marshall's opinion that Claimant suffered the horror, intense fear, or helplessness required for a diagnosis of PTSD.

Dr. Griffith directly addressed the issue with Claimant, who denied any effect on him by his exposure to traumatic events. Although Dr. Griffith initially found that Claimant had not identified any stressor significant enough to cause PTSD, he revised that finding in the course of his deposition, admitting that seeing deaths caused by enemy attack could qualify. He continued to say, however, that Claimant denied feeling the horror, fear, or helplessness required for a diagnosis of PTSD. Dr. Griffith's conclusions are consistent with Claimant's statements to him and Claimant's deposition testimony that he "thought about" the deaths for a little while, but then "it went away."

What is abundantly clear is that the most significant adverse experience Claimant underwent in Iraq was his inability to get along with the camp manager. This type of stressor does not, however, qualify as the type of traumatic event that could lead to a diagnosis of PTSD. Thus, Claimant either has shown exposure to a qualifying traumatic event without showing the accompanying fear, helplessness, or horror, or a reaction to a non-qualifying traumatic event. In either case, he has not shown the foundation for a diagnosis of PTSD. It is significant that Claimant had requested transfer out of Camp Remagen to get away from his hostile supervisor – establishing that he knew how to get out of a bad situation if he wanted to – but did not request a transfer at any time to escape the mortar attacks at Camp Danger. It is significant as well that in testifying at his second deposition, Claimant addressed the mortar attacks and the deaths he observed in a matter-of-fact way, with no evident emotional response. Taken as a whole, therefore, the evidence shows that Claimant did not, in fact, react with horror, intense fear, or helplessness to the incoming mortar attacks or the deaths that he witnessed.

4. Conclusion

Because a reaction of intense fear, horror, or helplessness is required for a finding of PTSD, and because that reaction is not present in this case, Claimant has not established that he suffers from PTSD. Therefore, Claimant has not met his burden to show a *prima facie* claim. The opinions of Drs. Marshall, van Holla, Reppuhn, and Oram do not establish the existence of

PTSD because the credible, objective evidence does not support their conclusions. Therefore, Claimant has not shown that he suffers from an injury, compensable or not. Accordingly, he is not entitled to benefits under the Act.

ORDER

Based on the foregoing, IT IS ORDERED that Claimant's claim for benefits be, and the same hereby is, DENIED.

SO ORDERED.

A

PAUL C. JOHNSON, JR.
Administrative Law Judge