

**U.S. Department of Labor**

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**Issue Date: 06 April 2010**

**CASE NO.: 2009-LDA-381**

**OWCP NO.: 02-170904**

**IN THE MATTER OF**

**DOUGLAS R. HONEA**  
**Claimant**

**v.**

**ITT INDUSTRIES, INC.**  
**Employer**

**and**

**INSURANCE CO. OF THE STATE OF**  
**PENNSYLVANIA**  
**Carrier**

**APPEARANCES:**

**GARY PITTS, ESQ.**  
**On behalf of Claimant**

**JERRY R. McKENNEY, ESQ.**  
**On behalf of Employer/Carrier**

**BEFORE: C. RICHARD AVERY**  
**Administrative Law Judge**

## DECISION AND ORDER

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, *et. seq.*, (the Act), brought by Douglas Honea (Claimant) against ITT Corporation (Employer) and Insurance Company of the State of Pennsylvania (Carrier). A formal hearing was held on October 21, 2009, in Houston, Texas. Each party was represented by counsel, and each presented documentary evidence, examined and cross-examined the witnesses, and made oral and written arguments.<sup>1</sup> The following exhibits were received into evidence: Joint Exhibit 1, Claimant's Exhibits 1-15, and Employer/Carrier's Exhibits 1-73. This decision is based on the entire record.<sup>2</sup>

### Stipulations

Prior to the hearing, the parties entered into the following joint stipulations of facts and issues:

1. This claim falls under the jurisdiction of the Act;
2. Claimant suffered a neck injury on November 26, 2007, in Doha, Qatar;
3. There was an employer/employee relationship between Employer/Claimant at the time of the injury;
4. Claimant's neck injury occurred in the course and scope of his employment;
5. Employer was timely notified of the injury;
6. The Notice of Controversion was timely filed;

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1 The parties were granted time to file post-hearing briefs.

2 The following abbreviations will be used throughout this decision when citing evidence of record: Trial Transcript (Tr. \_\_); Joint Exhibits (JX-\_\_, p. \_\_); Claimant's Exhibits (CX-\_\_, p. \_\_); and Employer/Carrier's Exhibits (EX-\_\_, p. \_\_).

7. An Informal Conference was held on April 22, 2009;
8. Claimant was temporarily totally disabled during the period from November 27, 2007, through October 13, 2008;
9. Employer/Carrier has paid to Claimant temporary total disability benefits for the period from November 27, 2007, through October 13, 2008, at a weekly compensation rate of \$1,105.33; and
10. Employer/Carrier has paid to Claimant medical benefits for his neck injury.

### **Issues**

The following issues have been presented for adjudication:

1. Whether Claimant sustained a work-related psychological injury or any secondary injuries;
2. The nature and extent of Claimant's disability;
3. Claimant's pre-disability average weekly wage;
4. Claimant's entitlement to Section 7 medical benefits; and

### **Statement of the Evidence**

#### **Claimant's Testimony**

Claimant is forty-five years old. He went through the eleventh grade, joined the Navy, and during his three years of service he completed high school. In the Navy, he was a machinist mate and began to weld. After the Navy, he had numerous jobs in various states, but most involved welding. He also took some advanced welding courses.

Claimant started working with Employer in 2005 in Doha, Qatar, and remained in that employment until 2008. In Doha, he worked both as a welder and as a mechanic, repairing equipment and vehicles damaged in Iraq. He worked six days a week, twelve hours a day, in extremely high temperatures, particularly when welding.

On November 26, 2007, Claimant got in a delivery truck, and while struggling with the seat belt, he turned in such a way he felt a sharp pain in his neck and experienced vertigo. He did not live on the base, nor was he permitted to be treated by military medical personnel. Instead, Claimant was forced to use local physicians, and he found treatment unsatisfactory. Consequently, at his own expense, Claimant flew home and sought treatment for his neck once he arrived.

In addition to his neck injury, which Employer concedes, Claimant also claims a psychiatric injury. He denied ever having a panic attack before, but two months after his neck injury, and dissatisfied with his treatment, Claimant maintains he had a panic attack in a grocery store. He also said his anxiety following his neck injury was such that he had to be medicated to fly home from Doha.

Claimant also described other events that occurred while he was overseas. He said the vehicles he repaired had blood and body parts still inside, that he had once been falsely held by the local police, he received an electrical shock from a faulty socket, that a fellow employee in his care passed out in the heat, and another threatened to leap from the moving vehicle Claimant was driving.

Once stateside, Claimant came under the care of a psychiatrist. He has never had another panic attack, but is concerned he could. On cross-examination, Claimant agreed he had suffered anxiety years before working for Employer. He had a bad ten-year marriage that ended in divorce and resulted in him admitting himself to the state mental hospital. He also had a failed second marriage, experienced bankruptcy, and filed previous worker's compensation claims involving knee injuries and TMJ, which required surgery.

Despite his various complaints, Claimant acknowledges he can drive, use a computer, and could do light to sedentary work if offered a job. He also said if he had no neck pain he could go back to his previous work, and the fear of a panic attack would probably not prevent him from returning to his old job. However, due to his neck pain, Claimant denies he could go back to welding because he cannot turn, twist, or wear the welding helmet.

### **Medical Evidence**

Claimant was treated at American Hospital in Qatar on November 27, 2007, for neck pain and stiffness. He was examined, x-rayed, and diagnosed with a

possible herniation of C5-6. The doctors ordered an MRI and restricted Claimant to light duty for the next three weeks, which included restrictions against heavy lifting driving, and hyperextension of his neck. (CX-1, pp. 1-2; EX-3, pp. 18-19). The MRI of Claimant's cervical spine, which was performed on December 7, 2007, found multiple disc bulges at C3-4, C4-6, and C5-6. (CX-1, p. 4; EX-3, p. 20). Based on these results, Dr. Naddaf restricted Claimant from working until December 22, 2007. (CX-1, p. 5; EX-3, p. 21). Claimant returned to Dr. Naddaf on January 29, 2008, complaining of dizziness. (CX-1, p. 11). Claimant continued to see Dr. Naddaf until he returned to the United States; however, it does not appear he was able to obtain much relief from his symptoms. (CX-1, pp. 12-17). On February 9, 2009, Dr. Naddaf wrote a letter stating Claimant's required further treatment which his hospital was unable to provide. (CX-1, p. 11).

On April 1, 2008, Claimant underwent a cervical MRI at Tulsa Spine Hospital which revealed degenerative spondylosis and disc bulges at C3-4, C4-5, and C5-6. (CX-1, pp. 18-19; EX-16, pp. 9-10). Claimant began treatment with Dr. Christopher Covington of the Oklahoma Spine and Brain Institute on April 2, 2008, who diagnosed degenerative spondylosis and a C5-6 disc tear or protrusion and restricted Claimant from working. Dr. Covington also noted Claimant's complaints of increasing anxiety which was evident during his examination. Therefore, Dr. Covington referred Claimant to Dr. Faust Bianco for a psychological exam. (CX-1, pp. 20-21; EX-11, pp. 11-12). On April 21, 2008, Dr. Faust Bianco performed a psychological assessment of Claimant and diagnosed him with subsyndromal post-traumatic stress disorder (PTSD). (CX-1, pp. 25-32; EX-9, pp. 1-8).

On May 29, 2008, Claimant was treated by Dr. Jeff Halford, a board certified physical medicine and rehabilitation physician to whom Claimant had been referred by Dr. Covington, for neck pain, dizziness, and visual disturbance. Following a physical exam, Dr. Halford recommended Claimant receive an MRI of his brain and a second epidural steroid injection. (CX-1, pp. 33-34). On June 17, 2008, Claimant underwent an MR angiogram of his brain and neck, both of which were unremarkable. (CX-1, pp. 39-40).

At Employer/Carrier's request, Dr. Andrew Brylowski, a doctor of neurology and pain management, reviewed Claimant's medical records. He found Claimant did not suffer from post-traumatic stress disorder and there was no formal diagnosis of this in his records. Dr. Brylowski also opined Claimant could not be suffering from PTSD because he was not exposed to any traumatic events during his work with Employer. (CX-1, p. 43).

On July 5, 2008, Dr. Stephen Barnes, who had treated Claimant since 2003, wrote a letter indicating Claimant was now suffering from PTSD, panic disorder, and generalized anxiety disorder, stemming from his inability to receive appropriate medical care while working for Employer in Qatar. Dr. Barnes opined Claimant required treatment from a neuropsychiatrist. (CX-1, p. 61; EX-8, p. 1).

On July 18, 2008, Claimant returned to Dr. Covington complaining of lumbar pain which both Claimant and Dr. Covington believed was caused by the posture resulting from Claimant's neck pain. Dr. Covington recommended x-rays and an MRI. (CX-1, p. 62; EX-11, p. 6). The MRI, which was performed on August 11, 2008, found broad-based disc bulges at L4-5 and L5-S1, as well as moderate facet arthropathy and small posterior osteophytes at L3-4. (CX-1, p. 63).

On August 12, 2008, Claimant returned to Dr. Covington in severe discomfort. After reviewing the results of the MRI, Dr. Covington opined Claimant did not require surgical intervention, but was suffering from an aggravation of pre-existing degenerative changes. He recommended Claimant see Dr. Anthony for an epidural steroid injection and further evaluation of his lumbar spine. (CX-1, pp. 64-65; EX-11, pp. 4-5).

At Employer/Carrier's request, Claimant underwent a psychiatric evaluation by Dr. Griffith on August 30, 2008. Dr. Griffith concluded Claimant did not have PTSD, and suggested Claimant's trauma was "imaginary" or that he could be imitating symptoms he read about on the Internet. He also stated Claimant complained of depression but "is leading a life that would depress almost anyone." (EX-17, pp. 1-5).

On September 24, 2008, Claimant was examined by Dr. Framji, an orthopaedist, at Employer/Carrier's request. After examining Claimant and reviewing his medical history, Dr. Framji opined Claimant's cervical and lumbar spine did not require further medical treatment or surgical intervention, there was no evidence of a work-related injury, Claimant could return to his former position with no restrictions, and Claimant had reached maximum medical improvement. (CX-1, pp. 66-70; EX-21, pp. 1-5).

Dr. Covington referred Claimant to Dr. Meyers, who examined Claimant on October 2, 2008, and recommended Claimant undergo an MRI brain scan. (CX-1, pp. 71-72). An audiogram performed on October 13, 2008, found Claimant had no

signs of cervical vertigo, and all results were consistent with neck and disc issues. (CX-1, p. 73; EX-7, p. 1). The MRI of Claimant's brain was also unremarkable. (CX-1, p. 76). Although Dr. Meyers strongly recommended surgical intervention for Claimant's cervical spine, Claimant decided to seek a second opinion. (CX-1, p. 77).

On October 27, 2008, Dr. Covington wrote a letter to Employer/Carrier in which he opined Claimant had reached maximum medical improvement from a neurosurgical standpoint and could not return to his former job with Employer. Dr. Covington also placed permanent restrictions on Claimant against lifting more than forty pounds, working overhead, or frequent bending, stooping, or twisting. (CX-1, pp. 78-79; EX-11, pp. 1-2).

Claimant sought a second opinion from Dr. Boxell on November 21, 2008. (CX-1, p. 86; EX-10, p. 1). Dr. Boxell indicated surgery was an option. Moreover, he stated Claimant could not return to his former job with Employer. (CX-1, pp. 86-87; EX-10, p. 1-2). On January 21, 2009, Dr. Boxell placed Claimant at maximum medical improvement. (CX-1, pp. 92). On March 3, 2009, Dr. Thomas Marbury, an orthopaedist who examined Claimant at Employer/Carrier's request, placed him at maximum medical improvement. (CX-1, pp. 99-100).

On March 4, 2009, Claimant underwent a psychiatric evaluation by Dr. Montero who found Claimant to be suffering from severe panic disorder and agoraphobia. He opined Claimant was suffering from a disabling psychiatric illness related to his November 26, 2007 work-related injury and had not reached maximum medical improvement. (CX-1, pp. 102-109).

Dr. Framji, the orthopedic surgeon who had examined Claimant at Employer/Carrier's request, was deposed on December 21, 2009. (EX-72, p. 2). Dr. Framji confirmed he examined Claimant on September 24, 2008 and did not find any neurological deficits related to Claimant's neck problems. (EX-72, p. 3). According to Dr. Framji, Claimant's lower back pain was unrelated to the seat belt incident. (EX-72, p. 4). He stated that, upon clinical examination of the Claimant, he found no evidence of distress, and there was no medical explanation for Claimant's stated inability to move his neck. (EX-72, pp. 4-5). He stated Claimant had underlying degenerative changes which did not appear to have been aggravated by any trauma. (EX-72, pp. 5). Based on Claimant's subjective complaints, Dr. Framji opined Claimant could have suffered a sprain or strain as a

result of the seat belt incident, but that should only have lasted about ten days at most. (EX-72, p. 6). Therefore, he indicated Claimant should have reached maximum medical improvement within two weeks of the November 26, 2007 injury and did not suffer any further disability as a result. (EX-72, p. 6).

Dr. Griffith, the psychiatrist who examined Claimant at Employer/Carrier's request, was deposed on December 22, 2009. (EX-73, p. 1). He stated he examined Claimant on August 30, 2008, and compiled his report on December 13, 2008. According to Dr. Griffith, the exam took between four and five hours. (EX-73, p. 5). He stated Claimant had a history of emotional problems dating back to at least the 1990s. (EX-73, p. 6). He opined the diagnosis of subsyndromal PTSD was "ridiculous." (EX-73, p. 10). He also indicated there was no work related cause for Claimant's depression. (EX-73, p. 11). Finally, Dr. Griffith concluded there was no work-related cause for Claimant's psychological abnormalities, and Claimant did not require further psychiatric treatment. (EX-73, p. 12).

### **Wage Evidence**

During the period from November 30, 2006, through November 15, 2007, Claimant earned \$86,216.03 through his employment with Employer. (EX-2, pp. 1-4).

## **Findings of Fact and Conclusions of Law**

### **Fact of Injury**

Section 20(a) of the Act provides a claimant with a presumption his disabling condition is causally related to his employment if the claimant can prove the following two elements: (1) he suffered an injury or harm, and (2) employment conditions existed which could have caused, aggravated, or accelerated his condition. *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 287 (5th Cir. 2003) (citing *Conoco v. Director, OWCP*, 194 F.3d 684, 687 (5th Cir. 1999)). Once a claimant has made this *prima facie* showing, the burden shifts to the employer to rebut the presumption with substantial evidence employment conditions did not cause the injury. *Ortco Contractors, Inc.*, 332 F.3d at 287. "Substantial evidence" has been defined as "such evidence as a reasonable mind might accept as adequate to support a conclusion." *Sprague v. Director, OWCP*, 688 F.2d 862, 865 (1st Cir. 1982) (quoting *Parsons Corp. v. Director, OWCP*, 619 F.2d 38, 41 (9th Cir. 1980); *Diamond M. Drilling Co. v. Marshall*, 577 F.2d 1003,

1006 (5th Cir. 1978)). If the employer meets this burden, he rebuts the Section 20(a) presumption, and the administrative law judge must then weigh all the evidence and render a decision supported by substantial evidence. *Noble Drilling Co. v. Drake*, 795 F.2d 478, 481 (5th Cir. 1986).

While Employer stipulated Claimant suffered a neck injury on November 26, 2007, they argue Claimant has not sustained a compensable work-related psychological injury. (JX-1). Employer relies on the opinions of Drs. Brylowski and Griffith, while Claimant has offered those of Drs. Bianco and Barnes.

Dr. Bianco, the psychologist to whom Claimant was referred by Dr. Covington in April 2008, diagnosed Claimant with subsyndromal PTSD. (CX-1, pp. 25-32; EX-9, pp. 1-8). Dr. Barnes, a psychologist who had treated Claimant for years prior to his November 2007 injury, wrote a letter in July 2008 stating Claimant suffered from PTSD, severe panic disorder, and generalized anxiety disorder. However, Dr. Barnes linked these conditions to Claimant's inability to receive proper medical treatment in Doha, rather than to Claimant's employment conditions abroad. (CX-1, p. 61; EX-8, p. 1). Based on this evidence, I find Claimant is not entitled to the Section 20(a) presumption of causation. While he may have suffered some sort of psychological harm, Claimant has offered no evidence of work conditions that may have caused this harm.

Even if Claimant had established a *prima facie* case for causation, I find Employer/Carrier has offered sufficient evidence to rebut the presumption any psychological harm to Claimant was caused by his employment. Dr. Brylowski, a doctor of neurology and pain management who reviewed Claimant's records in 2008 found Claimant could not be suffering from PTSD because there was no evidence on the record of Claimant experiencing any traumatic events while in employed in Doha. (CX-1, p. 43). This opinion was reiterated by Dr. Griffith, a psychiatrist who examined Claimant in August 2008. (EX-17, pp. 1-5).

With the presumption rebutted, the evidence when weighed as a whole at best presents true doubt as to the compensability of any psychological harm suffered by the Claimant. Therefore, based on all of the evidence, I find any psychological harm suffered by Claimant was not caused by the event of November 26, 2007.

Alternatively, Claimant argues his alleged psychological harm should be viewed as a secondary injury to his neck injury. In order to be compensable as a secondary injury, Claimant would have to prove his psychological harm was the

“natural or unavoidable result” of his November 2007 neck injury. *Amerada Hess Corp. v. Director, OWCP*, 543 F.3d 755, 763-64 (5th Cir. 2008). As stated above, Dr. Barnes stated Claimant’s psychological conditions were the result of Claimant’s perceived inability to receive proper medical treatment. (CX-1, p. 61; EX-8, p. 1). Drs. Brylowki and Griffith, who were unconvinced Claimant actually suffered from PTSD, also failed to link any psychological harm suffered by Claimant to his November 2007 neck injury. (CX-1, p. 43; EX-17, pp. 1-5). Therefore, I find any psychiatric harm suffered by Claimant is not compensable as a secondary injury because it did not naturally or unavoidably result from Claimant’s compensable neck injury.

In addition to Claimant’s alleged psychological injury, there is the matter of the lumbar pain for which Claimant sought treatment in late 2008. In order for this lumbar pain to be compensable as a secondary injury, it must be the “natural or unavoidable” result of the neck injury. Though Claimant sought several opinions regarding this pain, he ultimately did not undergo surgical intervention. Though Dr. Covington, Claimant’s treating doctor believed this pain was caused by the posture resulting from Claimant’s neck injury, Dr. Framji, Employer/Carrier’s orthopedist, found Claimant’s lumbar pain was unrelated to the November 2007 at-work incident. (CX-1, p. 62; EX-11, p. 6; EX-72, p. 4). Based on this evidence, true doubt again exists as to the cause of Claimant’s lumbar pain, and consequently, I find Claimant has failed to show the lumbar pain naturally or unavoidably resulted from his neck injury. Therefore, I find the lumbar pain is not compensable under the Act.

### **Nature and Extent**

A claimant bears the burden of proving the nature and extent of his work-related injuries. *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56, 59 (1986). A claimant’s disability is permanent in nature if he has any residual disability after reaching maximum medical improvement (MMI). *Id.* at 60 (citing *McCray v. Ceco Steel Co.*, 5 BRBS 537, 540 (1977)). The date of MMI is defined as the date on which the employee has received the maximum benefit of medical treatment such that his condition will not improve. *Trask*, 17 BRBS at 60. The date of MMI is a question of fact based upon the medical evidence of record, regardless of economic or vocational consideration. *La. Ins. Guar. Ass’n v. Abbott*, 40 F.3d 122, 125 (5th Cir. 1994). If MMI has not yet been reached, the disability is temporary.

With respect to Claimant's neck injury, his treating physician, Dr. Covington, placed Claimant at maximum medical improvement on October 27, 2008. (CX-1, pp. 78-79; EX-11, pp. 1-2). Though Employer/Carrier's orthopaedist, Dr. Framji, had previously placed Claimant at maximum medical improvement on September 24, 2008, I place more credibility on the opinion of the treating physician, and therefore, I find Claimant reached maximum medical improvement on October 27, 2008. (CX-1, pp. 66-70; EX-21, pp. 1-5).

The question of extent of disability is an economic as well as medical concept. *Quick v. Martin*, 397 F.2d 644, 648 (D.C. Cir. 1968). A claimant must make a *prima facie* case of disability by showing he is unable to return to his former job due to his work-related injury. Once he has done so, the burden shifts to the employer to show the existence of suitable alternative employment. *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 1038 (5th Cir. 1981). The claimant remains entitled to total disability compensation until the date upon which the employer establishes the availability of such employment, at which point the disability becomes partial. *Rinaldi v. General Dynamics Corp.*, 25 BRBS 128, 131 (1991).

To establish suitable alternative employment, an employer must prove the existence of realistically available job opportunities. The employer must take into account factors such as the claimant's age, education, employment history, and physical capabilities. *Turner*, 661 F.2d at 1042. The employer must also demonstrate the claimant could realistically secure the alternative employment if he diligently tried. *Id.* at 1042-43. The *Turner* standard does not require the employer to seek out specific job offers for the claimant, but the employer must outline the specific terms, nature, and availability of the identified suitable alternative employment. *Id.* at 1041. Failure to present evidence of job availability supports a determination of total disability if the claimant is incapable of returning to his former job. *Roger's Terminal & Shipping Co. v. Director, OWCP*, 784 F.2d 687, 691 (5th Cir. 1986) (citing *Odom Construction Co. v. U.S. Dept. of Labor*, 662 F.2d 110, 116 (5th Cir. 1980)).

Following his injury, Claimant was restricted from work by Dr. Naddaf, and this restriction was maintained stateside by Dr. Covington. (CX-1, pp. 5, 20-21). When Dr. Covington placed Claimant at maximum medical improvement on October 27, 2008, he gave Claimant permanent restrictions against lifting more than forty pounds, working overhead, or frequent bending, stooping, or twisting. In addition, he specifically stated Claimant could not return to his former position

with Employer. (CX-1, pp. 78-79; EX-11, pp. 1-2).<sup>3</sup> Based on this evidence, I find Claimant has made his *prima facie* case for total disability. Because Employer/Carrier has failed to offer a labor market survey or any other evidence of suitable alternative employment, I find Claimant remains entitled to total disability compensation benefits from the date of his injury and continuing.

### **Average Weekly Wage**

Section 10(a) of the Act sets forth three alternative methods for determining a claimant's average annual earnings, which are then divided by fifty-two, pursuant to Section 10(d), to arrive at an average weekly wage. 33 U.S.C. § 910(d)(1). Each of these methods seeks to establish a claimant's earning power at the time of the injury. *Johnson v. Newport News Shipbuilding & Dry Dock Co.*, 25 BRBS 340, 343 (1992).

Section 10(a) applies when a claimant worked "substantially the whole of the year" for either the same or another employer. 33 U.S.C. § 910(a). When Section 10(a) is inapplicable, Section 10(b) uses the earnings of a substitute employee engaged in the same or similar employment to determine the earning power of the claimant. 33 U.S.C. § 910(b). Both Section 10(a) and Section 10(b) only apply to claimants who work five or six days per week. 33 U.S.C. § 910. Section 10(c) applies when neither Section 10(a) nor Section 10(b) would provide a fair and reasonable calculation of the claimant's earning power at the time of the injury. 33 U.S.C. § 910(c).

Both parties are in agreement that Section 10(a) should be applied to this claim because Claimant worked for Employer for substantially the whole of the year preceding his November 2007 injury, and he worked six days per week. (Tr. 30). Under the formula prescribed by Section 10(a), a claimant's average daily earnings are multiplied by three hundred (in the case of a six-day worker) in order

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<sup>3</sup> Though Dr. Framji expressed a differing opinion in his deposition, I find Dr. Covington's opinion more credible because he is Claimant's treating physician. Moreover, Employer/Carrier previously stipulated Claimant was temporarily totally disabled during the period from November 27, 2007, through October 13, 2008. (JX-1; Tr. 73). It was not until their post-hearing brief, which was submitted after the deposition of Dr. Framji, that Employer/Carrier attempted to offer a contradictory argument that Claimant had only been disabled from his job for a period of two weeks following his injury.

to reach Claimant's average annual earnings. 33 U.S.C. § 910(a). In this case, both parties agree that figure is \$86,216.03. (EX-2, pp. 1-4). The average weekly wage is then found by dividing this figure by fifty-two. 33 U.S.C. § 910(d). Here, this results in an average weekly wage of \$1,658.00. Therefore, I find Claimant's pre-injury average weekly wage to be \$1,658.00.

### **Medicals**

In order for medical expenses to be assessed against an employer, the expenses must be both reasonable and necessary. *Parnell v. Capitol Hill Masonry*, 11 BRBS 532, 539 (1979). A claimant establishes a *prima facie* case for treatment necessary for the claimant's work-related injury. *Turner v. Chesapeake & Potomac Telephone Co.*, 16 BRBS 255, 257-58 (1984). When an employer or carrier learns of an employee's injury, it must authorize medical treatment by the employee's chosen physician. Once a claimant has made his initial, free choice of physician, he may change physicians only with prior written approval from his employer or carrier, or from the district director. 33 U.S.C. § 907(c).

In this case, Employer/Carrier has offered no argument that Claimant's treatment by Dr. Covington has been unreasonable or unnecessary. Therefore, I find Claimant is entitled to medical compensation benefits for such continued reasonable and necessary treatment of his neck injury.

### **ORDER**

It is hereby **ORDERED, ADJUDGED, and DECREED** that:

(1) Employer/Carrier shall pay to Claimant temporary total disability compensation benefits for the period from November 27, 2007, through October 27, 2008, based on Claimant's pre-injury average weekly wage of \$1,658.00;

(2) Employer/Carrier shall pay to Claimant permanent total disability compensation benefits for the period from October 28, 2008, and continuing, based on Claimant's pre-injury average weekly wage of \$1,658.00;

(3) Employer/Carrier shall pay or reimburse to Claimant all reasonable and necessary past and future medical expenses resulting from Claimant's neck injury;

(4) Employer/Carrier shall be entitled to a credit for all payments of compensation previously made to Claimant;

(5) Employer/Carrier shall pay interest on all of the above sums determined to be in arrears as of the date of service of this ORDER at a rate provided for in 28 U.S.C. § 1961;

(6) Claimant's counsel shall have twenty days from receipt of this ORDER in which to file a fully-supported attorney fee petition and simultaneously serve a copy on opposing counsel. Thereafter, Employer/Carrier shall have ten days from receipt of the fee petition in which to file a response; and

(7) All computations of benefits and other calculations which may be provided for in this ORDER are subject to verification and adjustment by the District Director.

**So ORDERED** this 6<sup>th</sup> day of April, 2010, at Covington, Louisiana.

**A**

**C. RICHARD AVERY**  
**Administrative Law Judge**