



Issue Date: 06 May 2010

Case No.: 2009-LDA-429

OWCP No.: 02-144361

In the Matter of

**PRESTON W. WHEELER,
Claimant**

v.

**SERVICE EMPLOYEES INTERNATIONAL, INC.,
Employer**

and

**INSURANCE COMPANY OF
THE STATE OF PENNSYLVANIA,
Carrier**

**Before: PATRICK M. ROSENOW
Administrative Law Judge**

DECISION AND ORDER

This case arises from a claim for benefits under the Defense Base Act (the Act),¹ brought by Claimant against Employer and Carrier.² On 22 Jun 09, the matter was referred to the Office of Administrative Law Judges for a formal hearing. Both parties were represented by counsel and indicated that only one issue, average weekly wage (AWW), was ripe for adjudication. They agreed to waive a personal hearing and submit the matter for decision on written exhibits and briefs. I issued an interim decision that found Claimant's average weekly wage at the time of his injury was \$1,806.26. In the event that there were no additional issues for adjudication, but either side wished to appeal the average weekly wage decision, I directed the parties to submit joint stipulations as to nature and extent and medical care sufficient to support a comprehensive compensation order that could then be considered by the Board.

¹ 42 U.S.C. § 1651 (2010) (the Defense Base Act is an extension of the Longshore and Harbor Workers' Compensation Act 33 U.S.C. § 901-950).

² For simplicity both Employer and Carrier are collectively referred to herein as Employer.

In response to that order, Employer indicated it wished to appeal the average weekly wage decision. The parties stipulated that (1) Claimant is totally disabled and has not reached maximum medical improvement; (2) Claimant is receiving appropriate medical care pursuant to Section 7; and (3) Employer has paid Claimant temporary total disability compensation since 21 Sep 05.

Based on those stipulations and the record in my interim decision, I find and order as follows:

1. Claimant was injured in Iraq on 20 Sep 05 while working for Employer under circumstances falling within the Act.
2. Claimant became temporarily totally disabled as of that date and remains so.
3. Claimant's average weekly wage (AWW) at the time of his injury was \$1,806.26.
4. Employer shall pay Claimant temporary total disability benefits from 21 Sep 05 through the present and continuing based on that AWW.
5. Employer shall pay all reasonable, appropriate and necessary medical expenses in accordance with Section 7.
6. Employer shall receive credit for all compensation heretofore paid, as and when paid.
7. Employer shall pay interest on any sums determined to be due and owing at the rate provided by 28 U.S.C. § 1961.³
8. The district director will perform all computations to determine specific amounts based on and consistent with the findings and order herein.

³ Effective February 27, 2001, this interest rate is based on a weekly average one-year constant maturity Treasury yield for the calendar week preceding the date of service of this Decision and Order by the District Director. This order incorporates by reference this statute and provides for its specific administrative application by the District Director. *Grant v. Portland Stevedoring Co., et al.*, 16 BRBS 267 (1984).

9. Claimant's Counsel is hereby allowed thirty (30) days from the date of service of this decision by the District Director to submit an application for attorney's fees.⁴ A service sheet showing that service has been made on all parties, including the Claimant, must accompany the petition. Parties have twenty (20) days following the receipt of such application within which to file any objections thereto. In the event Employer elects to file any objections to said application it must serve a copy on Claimant's counsel, who shall then have fifteen days from service to file an answer thereto.

So ORDERED this 6th day of May, 2010, at Covington, Louisiana.

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PATRICK M. ROSENOW
Administrative Law Judge

⁴ Counsel for Claimant should be aware that an attorney's fee award approved by an administrative law judge compensates only the hours of work expended between the close of the informal conference proceedings and the issuance of the administrative law judge's Decision and Order. *Revoir v. Gen. Dynamics Corp.*, 12 BRBS 524 (1980). The Board has determined that the letter of referral of the case from the District Director to the Office of the Administrative Law Judges provides the clearest indication of the date when informal proceedings terminate. *Miller v. Prolerized New England Co.*, 14 BRBS 811, 813 (1981), *aff'd*, 691 F.2d 45 (1st Cir. 1982). Thus, Counsel for Claimant is entitled to a fee award for services rendered after the date this matter was referred from the District Director.