

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 18 February 2011**

CASE NO.: 2010-LDA-107  
OWCP NO.: 02-189761

In the Matter of:

KENNETH A. CLARK  
Claimant

v.

SERVICE EMPLOYEES INTERNATIONAL, INC.  
Employer

and

INSURANCE COMPANY OF THE STATE  
OF PENNSYLVANIA/CHARTIS/AIG WORLDSOURCE  
Carrier

**APPEARANCES:**

Gary B. Pitts, Esq.  
Joel S. Mills, Esq.  
For the claimant

Scott R. MacInnes, Esq.  
For the employer/carrier

Before: DANIEL L. LELAND  
Administrative Law Judge

**DECISION AND ORDER-AWARDING BENEFITS**

This proceeding arises from a claim for compensation 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.* A formal hearing was held before the undersigned in Pittsburgh, PA on October 22, 2010 at which claimant's exhibits (CX) 1-13, 15-17 and employer/carrier's exhibits (EX) 1-9 were admitted into evidence. Both parties filed timely post-hearing briefs.

### Issues

1. Did claimant's injury arise out of, and in the course of, his covered employment?
2. What is the nature and extent of claimant's disability?

### Stipulations

The parties have stipulated, and I so find, that:

1. The date of claimant's alleged injury was April 7, 2009.
2. There was an employer-employee relationship at the time of the alleged injury.
3. Employer's notices of controversion were filed on September 24 and November 4, 2009.
4. Claimant's average weekly wage at the time of the alleged injury was \$2025.00.

### Factual Summary

#### *Claimant's Testimony*

Claimant is fifty eight years old, graduated from high school, and earned a college degree in theology in 1985. (TR 19-20). Following his graduation from college he was ordained as a minister and served in that capacity until the end of 1993. *Id.* He was then employed as a security guard, armored car driver, and over-the-road truck driver until 2003. (TR 20-21). From 2003 to 2005 claimant and his ex-wife operated a bed and breakfast. (TR 21).

Claimant was hired by Service Employees International, Inc. (employer) as a truck driver in Iraq in convoys for the U. S. Army and the U. S. Marine Corps and left for Iraq at the end of June 2005. (TR 22, 23-24). Claimant worked seven days a week and averaged between ninety three and ninety six hours a week. (TR 22-23). For the entire time in Iraq he was stationed at Camp Anaconda which is located approximately thirty five miles north of Baghdad. (TR 23). At that time Camp Anaconda was enclosed by a perimeter wire. *Id.* Claimant hauled jet and diesel fuel, gasoline, armed assault vehicles, Humvees, ammunition and artillery shells, as well as other items. (TR 24). He hauled this cargo to forty one different bases throughout Iraq. *Id.* While driving in the convoys, claimant wore Kevlar helmets and flak jackets. (TR 24-25). Originally the trucks claimant drove were not armored, but starting in 2006 they were fitted with "hillbilly" armor consisting of steel plates welded to the trucks and Mylar sheeting attached to the windshields. (TR 25). Initially there were twenty trucks in a convoy accompanied by five escort vehicles. (TR. 26). Truck drivers were prohibited from carrying weapons. *Id.* They were briefed that the insurgents had a bounty on their heads and would try their best to kidnap them. (TR 27). Claimant described photographs of trucks blown up by IEDs (improvised explosive devices) or struck by bullets from AK-47s. (CX 5 at 1-14, TR 27-32). He also referred to his written account and a video of an attack by insurgents on a convoy in which claimant was

driving. (CX 5 at 15, CX 6).<sup>1</sup> Claimant noted excerpts from the log books he kept in Iraq which described attacks on his convoy. (CX 7, TR 34). (The complete log books are at EX 6). Claimant went on 522 convoy missions during the 31 months he was in Iraq which were subject to 254 hostile incidents, and he experienced 20 personal attacks while he was driving in convoys. (CX 13, TR 38-53).

Claimant left Iraq on April 7, 2009, returned briefly to Pennsylvania, and moved to Hawaii at the end of May 2009. (TR 54-55). In January 2009, claimant had purchased a 36-foot sailboat online for \$34,900 with the intention of starting a charter boat business in Hawaii. (TR 55, 80). He first sailed the boat in May 2009 and became seasick; he did not start the charter boat business and put the boat up for sale. (TR 81-84). Claimant began having sleep problems a few months before he left Iraq. (TR 54-55). After he returned to the United States his sleep problems worsened, he had nightmares, and he did not want to be around people. (TR 56). He started to have flashbacks reliving events in Iraq and imagined that objects on the side of the road were IEDs. TR 57. Claimant also began to have headaches and anxiety attacks and had anger problems. (TR 57-58). He also had crying spells. TR 59. Claimant was referred to Dr. Stephanie Skow, a psychiatrist, who initially evaluated him on July 10, 2009 and saw him twenty eight times between that date and May 10, 2010. (TR 60-61, CX 1). Dr. Skow prescribed Citalopram, an anti-depressant, and Topirimate, a pain medication, and claimant was more recently prescribed Amatriptylin, another anti-depressant. (TR 62).

Claimant left Hawaii on May 15, 2010 and returned to Pennsylvania. (TR 64). He flew to Long Beach, California and drove a U-haul truck to Pennsylvania which took approximately one week. (TR 96). Since he returned to Pennsylvania claimant has been treated for his emotional and mental problems by David Johns, a therapist, whom he has seen seven times. (TR 64). In Hawaii claimant was primarily employed as a school bus driver for sixteen to seventeen hours a week. (TR 67). He also drove a garbage truck for six weeks and a tractor-trailer on a coffee plantation for about three months. (TR 67-68). From January to March 2010, claimant drove a school bus and a garbage truck and averaged fifty to fifty five hours of work a week. (TR 94-95). Since returning to Pennsylvania claimant has been driving a school bus twenty five hours a week. (TR 68). He testified that he could not perform this job without his medications. (TR 68-69). Claimant continues to take Citalopram, Topirimate, and Amitriptylin. (TR 75). His condition has improved since returning to Pennsylvania as he has fewer flashbacks and anxiety attacks. (TR 77). He stated that driving the school bus is stressful and he has had a couple of flashbacks while driving. (TR 78). Claimant characterized the statement in Dr. Dawson's report that he was not emotionally affected by his flashbacks and that they did not cause distress as "an outright lie". (TR 109).

### *Claimant's Post-Iraq Earnings*

Claimant was employed as a school bus driver by Roberts Hawaii, Inc, on August 10, 2009 and from August 17 to December 3, 2009. (CX 10 at 9-10). His 2009 W-2 form shows that he earned \$5,547.41 for Roberts. Claimant's 2009 W-2 forms also demonstrate that he earned

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<sup>1</sup> Claimant's summary of this incident states that it occurred on September 13, 2009. (CX 5 at 15). As claimant left Iraq in April 2009 this date is clearly incorrect.

\$2276.00 for Kauai Coffee Company, Inc. and \$577.28 for Wayne's Enterprises, Inc. Id at 6-7. His total earnings for 2009 were \$8400.69.

Claimant earned \$2616.00 for seven weeks driving a garbage truck for Garden Isle Disposal, Inc. between January 24 and March 22, 2010. (CX 10 at 1-5). In his deposition he testified that during the same period he worked for Garden Isle he drove a school bus for Roberts one day a week and a van for Roberts on Sundays. (EX 5 at 51-52). He stated that he drove the school bus 17 to 20 hours a week and earned \$19.47 an hour and drove the van 6 to 9 hour a week and earned \$11.00 an hour. Id at 53. However, he later testified that he drove the school bus only four hours a shift one day per week. Id at 53-54. Therefore, claimant earned \$660.00 for driving the van and \$623.00 for driving the school bus between January 24 and March 22, 2010, which added to the \$2616.00 he earned for Garden Isle, produced total earnings of \$3899.00. From March 22 to May 13, 2010 claimant drove a school bus for Roberts averaging 19 hours a week at \$19.47 an hour and drove a van for Roberts two days a month at \$11.00 an hour. His total earnings during this period were \$411.18. Beginning at the end of July 2010 claimant began driving a school bus for DMJ Transportation for twenty five hours a week at \$11.00 an hour and was still driving the school bus for DMJ at the time of the hearing. (EX 5 at 67-68). His earnings during this period were \$3575.00.

#### *Medical and Psychological Evidence*

Dr. Skow initially evaluated claimant on July 10, 2009. (CX 1 at 15-17). She recorded his history, performed a mental status exam, and diagnosed MDD (major depressive disorder), PTSD (post traumatic stress disorder), and chronic pain related to combat injuries. Dr. Skow recommended weekly psychotherapy sessions and anti-depressant medication. In a letter to claimant's counsel dated August 26, 2009, Dr. Skow stated that she had diagnosed claimant with post traumatic stress disorder directly resulting from his thirty one months of prolonged exposure to combat in Iraq as a convoy driver. She recommended that claimant not go back to work as a convoy driver due to his severe PTSD. She believed that this condition started in April 2009 after claimant returned from Iraq. (CX 1 at 19). Dr. Skow's progress notes indicate that she treated claimant from August 24, 2009 to May 16, 2010. (CX 1).

In a Work Capacity Evaluation Form, dated May 5, 2010 (CX 1 at 64), Dr. Skow declared that claimant is not competent to work eight hours a day due to the side effects of medication affecting cognition, memory, decision making, and reaction time. She stated that the number of hours he could work each day depended on the type of job. In response to the question "Is the worker competent to perform his job?" Dr. Skow responded "No" because "[d]riving would be problematic due to effects of medication and severe PTSD symptoms". She listed severe headaches, PTSD symptoms, and traumatic brain injury as other medical factors which need to be considered in identifying jobs for claimant. Dr. Skow completed a second Work Capacity Evaluation form on September 7, 2010. Id at 67. She opined that claimant is not competent to work eight hours a day due to continued PTSD symptoms, continual flashbacks, anxiety, intrusive thoughts, and insomnia. Dr. Skow stated that claimant is not able to perform any work, that he is not able to return to Iraq, and that he is unable to work in an enclosed environment around people due to extreme PTSD symptoms. Severe flashbacks, anxiety, panic

attacks, anger, memory loss, confusion, and insomnia were listed as other medical factors which need to be considered in placing claimant for employment.

Dr. Lauren Dawson, a clinical neuropsychologist, examined and tested claimant on April 29 and 30, 2010. (EX 1). Dr. Dawson stated that “it is my impression that (claimant) does suffer from an underlying psychological disorder characterized by acute emotional distress in the context of probable longstanding characterological problems. The extent to which his psychological problems are related to his experience in Iraq cannot be determined.” Dr. Dawson further concluded that “(Claimant’s) animated demeanor when talking about his experiences in Iraq in which he appeared to relish his memories of his time there and his pronounced interest in discussing his experiences at length argue against the presence of any posttraumatic stress disorder. Moreover, it is impossible to determine which aspects of (claimant’s) reported experiences, symptoms, and complaints are embellished given his marked exaggeration of symptoms and overendorsement of psychotherapy.” Dr. Dawson determined that claimant was “emotionally labile with some emotional dysregulation noted. On measures of psychological and emotional functioning, he provided invalid test results reflected in severe overreporting of psychopathology, perhaps as a cry for help or other motivational factors to appear unwell.” Dr. Dawson concluded that claimant likely suffers from an adjustment disorder with depressed mood and anxiety related to financial difficulties since moving to Kauai and possible difficulties acclimating to his new environment.

She averred that claimant does not meet the diagnostic criteria for posttraumatic stress disorder because “[a]lthough he encountered life threatening situations frequently in Iraq, he denied ever feeling intense fear, horror or helplessness. He stated that he was able to deal with the situation in Iraq calmly and effectively.” Dr. Dawson also noted that claimant “reportedly enjoyed being in Iraq, signed up for additional tours of duty, and considered returning for another stint until recently. In addition, when discussing his experiences in Iraq (claimant) was very animated and appeared to relish his recollections without any avoidance or emotional distress noted.”

Dr. Dawson suspected that claimant has a premorbid psychological condition but in the absence of additional data she could not make this determination unequivocally. She opined that the extent to which claimant’s emotional dysfunction may affect his ability to perform his occupation due to a psychological overlay cannot be determined due to extreme exaggeration and invalid test results. She stated that claimant is capable of some gainful employment but she was unable to determine the extent to which his emotional dysfunction may hinder his ability to work. Dr. Dawson acknowledged that claimant’s ability to work may be limited because he is emotionally labile and easily overwhelmed which may adversely affect his ability to carry out his work duties safely and effectively.

In Dr. Dawson’s deposition, she testified that she was unable to determine if claimant’s emotional condition impaired him from doing a job safely and that she needed more information. (EX 7 at 65). She noted that claimant worked seven days a week in the past and is apparently working full time now and she could not conclude that he should not return to Iraq. Id at 66. Dr. Dawson has not treated any patients who have returned from a war zone or any soldiers who

have served in Iraq or Afghanistan. She has performed evaluations for insurance companies of civilians who worked in Iraq and Afghanistan. Id at 71.

David Johns, a therapist, provided a Treatment Summary Report on August 18, 2010. (CX 1 at 65-66). Mr. Johns has treated “a number” of Iraq and Afghanistan veterans for PTSD. Claimant reported experiencing headaches, flashbacks, anger, rage, depression, anxiety, and obsessive thoughts. Mr. Johns opined that claimant is a classic case of PTSD as a result of being exposed to traumatic events in Iraq for thirty one months. He noted that recurrent recollections of hostile action, nightmares, hypervigilance, sleep problems, and anxiety and depression are a constant part of claimant’s daily life. Claimant also reported that he was emotionally detached and had diminished interest in what previously made him happy. Mr. Johns opined that claimant is significantly disabled emotionally and physically due to PTSD. Mr. Johns’ Clinical Record of claimant’s treatment is at CX 17.

Dr. Dawson drafted an Addendum Report, dated October 18, 2010, after reviewing Mr. Johns’ report. (EX 9). Dr. Dawson’s opinion that claimant does not have PTSD remained unchanged. She also adhered to her opinion that claimant suffers from some underlying psychopathology that cannot be determined accurately because of his exaggerated presentation. Dr. Dawson maintained that the underlying psychopathology probably reflects longstanding premorbid difficulties and some emotional dysfunction related to current situational stressors, including the stress associated with claimant’s current legal situation. She did not believe that claimant’s current stressors are “industrially related”.

#### *Vocational Evidence*

Susan Rapant, a rehabilitation consultant, provided a Vocational Report dated October 15, 2010. (EX 8). She reviewed the medical and psychological evidence in the record. Ms. Rapant conducted a labor market survey taking into consideration claimant’s age, education, work history, vocational background, interests, and physical capabilities based on Dr. Dawson’s neuropsychological examination. She identified six jobs within thirty miles of claimant’s residence: 1. Full-time truck driver hauling coal and stone-pay based on percentage of loads hauled; 2. Full-time truck driver for energy company, pay-\$10.00-15.00 an hour; 3. Full-time tractor-trailer driver hauling liquid chemicals throughout North America, average earnings-\$17.60-\$26.63 an hour; 4. Full-time concrete delivery driver, pay- \$13.00 an hour plus hauling bonus; 5. Full-time roll off driver hauling construction debris, pay-\$15.60 an hour; and 6. Full-time, 60 hour work week, regional OTR truck driver, pay-\$800-\$1200 a week.

#### Conclusions of Law

##### I.

Section 20 of the Act provides that “[i]n 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. The § 20(a) presumption only applies if the claimant establishes a *prima facie* case by proving that he suffered some harm or pain, and that an accident occurred or working conditions existed which

could have caused the harm. *Kelaita v. Triple A. Mach. Shop*, 13 BRBS 326 (1981). See *U. S. Industries/Federal Sheet Metal v. Director, OWCP (Riley)*, 455 U. S. 608, 14 BRBS 631 (1982). In presenting his case, the claimant is not required to introduce affirmative medical evidence that the working conditions in fact caused his harm; rather the claimant must show that working conditions existed which could have caused his harm. *U. S. Industries/Federal Sheet Metal, Inc.*

Once the claimant has invoked the § 20(a) presumption, the burden shifts to the employer to go forward with substantial countervailing evidence to rebut the presumption that the injury was caused by claimant's employment. *Swinton v. J. Frank Kelly, Inc.*, 554 F. 2d 1075, 1082, 4 BRBS 466, 475 (D. C. Cir.), *cert denied*, 429 U. S. 820 (1976), *Gooden v. Director, OWCP*, 135 F. 3d 1066, 32 BRBS 59 (CRT) (5<sup>th</sup> Cir. 1998). Once the § 20(a) presumption applies, the relevant inquiry is whether employer succeeded in establishing the lack of causal nexus. *Dower v. General Dynamics Corp.*, 14 BRBS 324 (1981). Highly equivocal evidence is not substantial and will not rebut the presumption. *Dewberry v. Southern Stevedoring Corp.*, 7 BRBS 322 (1977), *aff'd mem.*, 590 F. 2d 331, 9 BRBS 436 (4<sup>th</sup> Cir. 1978). The presumption may be rebutted by negative evidence if it is specific and comprehensive enough to sever the potential connection between the particular injury and the job-related accident. *Swinton*.

Claimant has experienced sleep problems, flashbacks, headaches, anxiety, and depression since leaving Iraq. During his thirty one months in Iraq claimant drove trucks on 522 convoy missions which were subjected to 254 hostile incidents of which 20 were personal attacks. Claimant has demonstrated that he suffered harm and that he experienced working conditions in Iraq which could have caused the harm. He therefore has made out a *prima facie* case.

In her report Dr. Dawson stated that claimant suffers from an underlying psychological disorder characterized by acute emotional distress but that she was unable to determine the extent to which his psychological problems are related to his experience in Iraq. Dr. Dawson's indefinite conclusion clearly does not meet the standard for rebutting the § 20(a) presumption. Although she later somewhat inconsistently stated that claimant's psychological problems were "likely" related to his financial difficulties and "possible" difficulties in acclimating to his move to Hawaii, and in her addendum report she suggested that claimant's psychopathology is "probably" related to current stressors including the stress related to his current legal situation and that his stressors are not "industrially related", her findings are speculative and are not sufficiently specific to sever the connection between claimant's psychological condition and his experience in Iraq. See *Swinton*.<sup>2</sup> I find that the presumption in § 20(a) has not been rebutted and that the claim comes within provisions of the Act.

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<sup>2</sup> I frankly find it incomprehensible and unworthy of belief that claimant's psychological condition is related to such prosaic matters as his financial problems, his move to Hawaii, and his current legal situation rather than to his prolonged exposure to hostile action in Iraq. Dr. Dawson's finding that claimant does not have PTSD because of his animated demeanor in discussing his experience in Iraq in which he allegedly appeared to relish the memories of his time in Iraq will not be credited as it is directly contradicted by his demeanor on the witness stand when discussing his Iraq experiences which was somber and downcast.

## II.

Total disability is defined as complete incapacity to earn pre-injury wages in the same work as at the time of injury or in any other employment. The claimant has the initial burden of proving total disability. To establish a *prima facie* case of total disability, the claimant must show that he cannot return to his regular or usual employment due to his work-related injury. The administrative law judge must compare the claimant's medical restrictions with the specific requirements of his usual employment. *Curit v. Bath Iron Works Corp.*, 22 BRBS 100 (1988). At this initial stage, the claimant need not establish that he cannot return to any employment, only that he cannot return to his former employment. *Elliot v. C & P Tel. Co.*, 16 BRBS 89 (1984). "Usual" employment is the claimant's regular duties at the time that he was injured. *Ramirez v. Vessel Jeanne Lou, Inc.*, 14 BRBS 689 (1982).

If the claimant establishes a *prima facie* case of total disability, the burden shifts to employer to establish suitable alternate employment. An employer must show the existence of realistically available job opportunities within the geographical area where the employee resides which he is capable of performing, considering his age, education, work experience, and physical restrictions, and which he could secure if he diligently tried. *Trans-State Dredging v. Benefits Review Bd. (Tanner)*, 731 F. 2d 199, 16 BRBS 74 (CRT) (4<sup>th</sup> Cir. 1984), *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F. 2d 1031, 14 BRBS 156 (5<sup>th</sup> Cir. 1981). The employer is not required to act as an employment agency for the claimant. It must, however, prove the availability of actual, not theoretical, employment opportunities by identifying specific jobs available to the claimant within his local community. *New Orleans (Gulfwide) Stevedores, Bumble Bee Seafoods v. Director, OWCP*, 629 F. 2d 1327, 1330, 12 BRBS 660, 662 (9<sup>th</sup> Cir. 1980).

Section 8(e) of the Act provides that in cases of temporary partial disability resulting in decrease of earning capacity claimant's compensation shall be two-thirds of the difference between the injured employee's average weekly wage before the injury and his wage-earning capacity after the injury in the same or other employment, to be paid during the continuance of such disability, but not be paid for a period exceeding five years. "Wage-earning capacity" refers to an injured employee's ability to command regular income as the result of his personal labor." *Seidel v. General Dynamics Corp.*, 22 BRBS 403, 405 (1989). The wage-earning capacity of an injured employee in cases of partial disability shall be determined by his actual earnings if such actual earnings fairly and reasonably represent his wage-earning capacity. Section 8(h) of the Act.

Dr. Skow determined that claimant is unable to return to his usual employment in Iraq as a truck driver due the effects of his medication and his severe PTSD symptoms. Mr. Johns opined that claimant is significantly disabled emotionally and physically due to PTSD. Dr. Dawson concluded that claimant is capable of some gainful employment but she admitted that his emotional condition may impair him from doing a job safely. Dr. Dawson could not say that he could not return to Iraq. The opinions of Dr. Skow and Mr. Johns clearly demonstrate that claimant's emotional disorder precludes him from returning to his usual employment in Iraq. Dr. Skow's opinion that claimant can return to Iraq is based in part on her finding that claimant is working full time now which is untrue. Having considered the medical and psychological

evidence and claimant's testimony, I believe that the evidence clearly shows that claimant is not emotionally capable of performing his usual employment in Iraq and that he has established a *prima facie* case.

The employer's vocational expert has identified six truck driving jobs within thirty miles of claimant's residence all of which required a minimum of forty to sixty hours of work a week and some of which involve driving long distances. Dr. Skow stated that claimant is unable to work eight hours a day and Dr. Dawson averred that claimant's emotional instability may adversely affect his ability to carry out his usual work-related duties as a truck driver safely and effectively. Although claimant presently drives a school bus twenty five hours a week this is substantially different than a full-time truck driving job, and claimant testified that his job of school bus driver is stressful and that he continues to experience flashbacks. I conclude that claimant is psychologically incapable of performing a full-time truck driving job and that his actual earnings represent his wage-earning capacity.

### III.

Claimant seeks benefits for temporary total disability from the time he left Iraq on April 7, 2009 to August 10, 2009 and from May 15 to May 24, 2010. He also seeks benefits for temporary partial disability from August 10 to December 31, 2009, January 1 to March 22, 2010, and May 24, 2010 to the present. Claimant's brief at 30. Claimant's average weekly wage of \$2025.00 yields a weekly compensation rate of \$1351.00 ( $2/3$  or  $.667 \times \$2025.00$ ). According to the U. S. Department of Labor, Division of Longshore and Harbor Workers' Compensation, the National Maximum Compensation Rate for injuries occurring between October 1, 2008 and September 30, 2009 is \$1200.62. As claimant's weekly compensation rate is higher than the national maximum, claimant shall receive the National Maximum Compensation Rate for his total disability benefits. The National Maximum Compensation Rate will not apply to claimant's temporary partial disability compensation.

Claimant had no wage-earning capacity from April 7 to August 9, 2009, a total of 17.7 weeks and he is therefore entitled to benefits for temporary total disability of \$21,251.00 ( $17.7 \times \$1200.62$ ). Claimant also had no wage-earning capacity from May 14 to July 31, 2010, a total of 11.3 weeks, and he is therefore entitled to temporary total disability benefits of \$14,047.00 ( $11.3 \times \$1200.62$ ). Claimant's benefits for temporary total disability are \$35,298.00.

From August 10 to December 31, 2010 claimant worked 20.6 weeks and earned a total of \$8401.00. His compensation for this period is \$27,831.00 ( $20.6 \times \$1351.00$ ). He is therefore entitled to temporary partial disability benefits of \$19,430.00 ( $\$27,831.00 - \$8401.00$ ). From January 1 to March 22, 2010 claimant worked 8.3 weeks and earned \$3899.00. His compensation for this period is \$11,213.00 ( $8.3 \times \$1351.00$ ) and he is entitled to temporary partial disability benefits of \$7314.00 ( $\$11,213.00 - \$3899.00$ ). From August 1, 2010 to the present (February 18, 2011) claimant has worked 28.9 weeks and has earned \$7848.00 ( $28.9 \times \$275.00$ ). His compensation for this period is \$39,044.00 ( $28.9 \times \$1351.00$ ) and he is entitled to benefits for temporary partial disability of \$31,196.00 ( $\$39,044.00 - \$7848.00$ ). Claimant's total benefits for temporary partial disability are \$57,940.00. He is entitled to weekly benefits for temporary partial disability of \$1076.00 ( $\$1351.00 - \$275.00$ ) from the present and continuing.

Claimant is also entitled to be reimbursed for medical expenses for treatment of his psychological disorder and transportation-related medical expenses in the amount of \$4998.72. See Section 7, CX 8.

Claimant's counsel is allowed thirty days from the date of service of this decision to submit an application for attorney fees. The employer/carrier has twenty days in which to respond.

ORDER

IT IS ORDERED THAT Service Employees International, Inc. and Insurance Company of the State of Pennsylvania/Chartis/AIG Worldsource pay claimant:

1. Compensation for temporary total disability from April 7 to August 9, 2009 and from May 14 to July 31, 2010 of \$35,298.00;
2. Compensation for temporary partial disability from August 10 to December 31, 2009, from January 1 to March 22, 2010, and from August 1, 2010 to February 18, 2011 of \$57,940.00;
3. Compensation for temporary partial disability from February 19, 2011 and continuing of \$1076.00 a week;
4. Medical benefits of \$4998.72; and
5. Interest on any past-due compensation determined to be due and owing at the rate provided by 28 U.S.C. § 1961 as determined by the district director.

**A**

DANIEL L. LELAND  
Administrative Law Judge