U.S. Department of Labor

Office of Administrative Law Judges
11870 Merchants Walk - Suite 204
Newport News, VA 23606

(757) 591-5140
(757) 591-5150 (FAX)

Issue Date: 24 January 2011

Case No.: **2010-LDA-00347**

OWCP Nos.: **02-173586**

In the Matter of:

CHARLES MBULE,
Claimant,
v.

EOD TECHNOLOGY, INC. / INSURANCE CO. OF THE STATE OF PENNSYLVANIA
Employer / Carrier,
and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
Party In Interest.

Appearances: Tara K. Coughlin, Esq.
For the Claimant

Jennifer J. Nobley, Esq.
For the Employer/Carrier

Before: Daniel A. Sarno, Jr.
Administrative Law Judge

DECISION AND ORDER

This proceeding involves consolidated claims for benefits filed under the Defense Base Act ("the Act"), 42 U.S.C. § 1651, et seq. (2000), an extension of the Longshore and Harbor Workers' Compensation Act ("the Longshore Act"), as amended, 33 U.S.C. § 901, et seq. (2000). The parties waived a formal hearing, agreeing to a decision on the record. Both parties submitted closing briefs and exhibits. The parties made various objections to exhibits submitted by the opposing party, which the undersigned has ruled on. The following exhibits are admitted

into evidence: Claimant's Exhibits ("CX") CX A through CX X and Employer's exhibits ("EX") EX 1 through EX 13, EX 15 through EX 21, EX 23 through EX 27, and EX 29.[1]

The parties also submitted stipulations of fact resolving some of the issues raised in this claim. The stipulations, received on September 20, 2010, were signed by counsel for the Claimant and by counsel for the Employer/Carrier. The document is made a part of the formal file.

The Claimant is seeking an award based on the stipulations, an award of all unpaid medical bills totaling $67,779.09, an award of all medical care associated with Claimant's gunshot wound and damaged kidney, and Claimant's attorney fees and costs. The findings and conclusions that follow are based upon a complete review of the entire record in light of the arguments of the parties, applicable statutory provisions, regulations and pertinent precedent.

STIPULATIONS

The Claimant and the Employer have stipulated to the following:

1. On July 21, 2007, Claimant was employed as a Security Guard by EDOT in Iraq.

2. While sitting in a tent at FOB Shield in Baghdad on July 21, 2007, Claimant was hit with a bullet in the right side of his back when celebratory rounds of gunfire from an Iraqi soccer match impacted FOB Shield. The bullet entered the right side of Claimant's back and punctured his right kidney, which had to be removed.

3. This injury comes within the coverage of the Defense Base Act extension to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et eq.*

4. Employer's liability under the Act was insured by Insurance Company of the State of Pennsylvania, and administered by Chartis Insurance.

5. Timely notice of injury and timely claim for compensation were given and filed by Claimant.

6. Claimant's Average Weekly Wage at the time of injury was $230.66.

7. Carrier has voluntarily paid Temporary Total Disability indemnity at the rate of $153.85 per week from July 22, 2007 to the present and continuing.

8. Claimant is unable to return to his usual and customary occupation as a Security Guard or to any other suitable alternative employment as a result of his orthopedic condition.

[1] The following abbreviations will be used as citations to the record: EX – Employer's Exhibits; CX – Claimant's Exhibits. Although Claimant did not number the pages of the exhibits, the undersigned has cited to pages by counting the first page of the exhibit as one and counting forward.

9. Claimant is entitled to ongoing Permanent and Total Disability indemnity at the rate of $153.85 per week as of January 19, 2010.

10. Carrier agrees to authorize Dr. Roger Melvill, neurosurgeon in South Africa, to evaluate claimant for surgical and non-surgical intervention with regard to the bullet lodged in claimant's spine.

11. Following the initial evaluation of claimant by Dr. Melvill, the carrier will authorize future medical treatment that is reasonable and necessary to cure or relieve the effects of the bullet in claimant's spine, including special travel accommodations for Claimant and a helper via business or first class airfare to receive medical treatment because Claimant is unable to sit for significant periods of time.

ISSUES

1. Whether Claimant's left kidney problems arose out of and in the course of his employment.

2. The reasonableness and necessity of past medical expenses claimed by claimant.

SUMMARY OF THE EVIDENCE

Employer filed a Report of Injury, LS-202, on July 24, 2007, explaining that Claimant was sitting in a tent when celebratory fire from an Iraqi soccer match outside the perimeter resulted in incoming rounds which penetrated the tent and lodged in Claimant's upper back in a downward trajectory. The bullet punctured his kidney, which was removed on July 21, 2007. (EX 1). Claimant filed a Claim for Benefits, LS-203, on May 8, 2009. On it he explained he was inside a tent at Rusafa Prison Camp when he was shot through the back. As a result, he wrote that his right kidney was damaged and removed, post right ureferonephrectomy was evident, and the ipsilateral psoas muscle was enlarged. (EX 3)

I. Claimant's Affidavit

Claimant submitted an affidavit sworn on September 24, 2010. (CX A). In it, he attested that he is 36 years old, married, and has seven children. He stated that he left his home in Uganda on July 19, 2007 to go work for EODT in Iraq. Two days after arriving at the camp in Iraq, on July 21, 2007, he stated he was sitting in a tent talking to colleagues when he heard a gunshot. He realized he had been hit in the back and a co-worker drug him from the tent. (CX A at 1).

He was taken to an Army hospital in Iraq where he was told that the bullet had damaged one of his kidneys and doctors had removed it. He was then referred to a specialist in Dubai where he underwent another operation to treat his spinal muscles that were affected. (CX A at 1).

Claimant attested that on August 15, 2007 he was given a plane ticket and sent home without being given any other money. On August 16, 2007 he went to the offices of Askar Security, the company that sent him to EODT. (CX A at 1).

Claimant attested in December 2007 he went to Mulago Hospital in Kampala because of unbearable pain. There was no room for him to be treated in the public wing of the hospital. A member of the Ugandan Parliament and a friend of his father's, Honourable Sejjoba Isaac Mayanja, offered to pay half of the medical costs for Claimant to be treated in the private wing of the hospital. Claimant stated he also told the hospital his employer was EODT and would be responsible for paying for his medical care. Claimant attested he spent most of December 2007 hospitalized, during which time he underwent surgery for spine and muscle problems. (CX A at 2).

Of the 62,700,000 shillings Mr. Sejjoba lent him with the agreement that it would be repaid, Claimant stated he had repaid 15,000,000 shillings, leaving a balance of 47,000,000 shillings. (CX A at 2).

Claimant attested he paid 9,850,000 shillings out of his own pocket to Buddu Poly Clinic where he was treated for many months in 2008 for his injury and stabilizing his blood pressure. He has not been reimbursed for those expenses. Between January and June of 2008 he was treated at the clinic for high blood pressure and prescribed medication, which he has only been able to afford sporadically. (CX A at 3).

Claimant attested he has also been paying for his pain medication himself. The medication, Voltaren, helps the pain. He has not been reimbursed the cost of that medication. (CX A at 3).

Claimant also stated he has gone to Uro Care and Mulago for treatment when he could afford and his expenses for those treatments have not been reimbursed. (CX A at 3).

Claimant attested he has been given $105.54 to pay for medical expenses. (CX A at 3). Claimant attested he contacted Bruce Gregg at AIG and sent him requests for reimbursement of medical expenses in 2008. He stated Mr. Gregg contacted him and said he would not be given any more money. (CX A at 2).

Claimant attested he suffers from pain daily. His right leg is paralyzed, requiring him to use crutches to get around. He has back pain that makes it difficult to sit or lie down. The pain is worse at night, making sleep difficult. He also stated he has frequent headaches. (CX A at 3).

Claimant attested that on July 28, 2010 his face and legs were swollen when he woke up. He went to the hospital where he was told he had kidney failure. On July 30 he underwent renal tests. (CX A at 3).

Claimant attested he has no family history of kidney problems or high blood pressure. He does not drink alcohol, smoke, or eat salty or fatty goods. He stated his blood pressure was normal before he went to Iraq. (CX A at 4). The doctors who saw him after being shot told him that high blood pressure was bad for his kidney. (CX A at 3).
enlarged. (EX 3)

II. Medical Evidence

Pre-Employment Screen

Records show Claimant was seen at Louise Memorial Medical Center in 2006. At that time his blood pressure was recorded as 90/60. (CX J).

Post-Injury Medical Records

Claimant was seen at the 28th Combat Support Hospital in Baghdad in the emergency room about five hours after being shot. A CT scan was done showing the gunshot injury to his right kidney. His left kidney appeared functional. He underwent a right nephrectomy. (CX K at 1-2).

On February 8, 2007 Claimant was admitted to Canadian Specialist Hospital in Dubai. He was discharged on August 13, 2007 with a recommendation of three months recovery and no harsh physical exertion for six months. (CX K at 4-5).

On April 8, 2007 Claimant had a CT done of his abdomen and pelvis at Advanced Radiology in Dubai. A bullet was seen in the right lumbar region. Claimant's ipsilateral psoas muscle was mildly enlarged. (CX K at 22).

Mulago Hospital

Clinical notes dated October 11, 2007 (11/10/07) recount Claimant's having been shot and medical care he received immediately afterward. (CX L at 8-9).

An x-ray report dated October 22, 2007 states that imagery of the kidney was taken. It stated his left kidney appeared normal. (CX L at 1). The name of the medical professional who wrote the report is not readable. (CX L at 2).

An operation report dated December 10, 2007 (12/10/07) states that Claimant underwent an exploratory laparatory and right psoas muscle repair. The surgeon is listed as Dr. Msechu/Kituuka/Dr. Nyondo/Dr. Ssekasanvu. (CX L at 10). An anaesthetic report from the same day lists the anaesthetist as Serugendo and states that Claimant's preoperative blood pressure was 140/80. (CX L at 11).

A document titled Mulago Hospital Private Patients Service Summary for In Patient Charges lists Claimant's admission date as December 10, 2007 and his discharge date as December 31, 2007. Totals are listed for groupings of charges and a final total of $67,790 in U.S. dollars is entered. The subtotals included $8,550 on the line for professional fee. On the line for in-patient consultation/anaesthetic preoperative fee $14,228 is listed, although a line is also drawn to include surgery fee, anaestetic fee, doctor-in care fee, and health care fee. In the section for therapy $9,100 is listed. In the line for drugs $18,750 is listed. Finally under residential, a line

is drawn to include the subheadings of curtained room, single room and VIP as well as the heading of "others" and a total of $15,170 is listed. (CX L at 12).

A letter written by Dr. Ssekasanvue of the Department of Nephrology at Mulago Hospital on August 8, 2010 states that Claimant presents with body weakness, reduced urine output, generalized body oedema with painful pitting ledal oedema associated with nausea and vomiting, and numbness and paraesthesiaes of both lower limbs. The letter states that testing shows light levels of serum urea, seum creatinine, and sodium, coupled with fluctuating blood pressure. He suggests the Claimant undergo dialysis and a kidney transplant (CX P).

The following receipts on Mulago Hospital Complex, Private Patients Services Scheme letterhead were submitted into evidence:

- A receipt dated October 11, 2007 (11/10/07) for 20,000 shillings. A single, unreadable word is written in the space for the description of the service being paid for. Dr. Watya is listed as the consultant. (CX L at 3).
- A receipt dated October 15, 2007 (10/15/07) for 20,000 shillings. The payment is listed as being for an abdominal ultrasound. (CX L at 4).
- A receipt dated October 22, 2007 (22/10/07) for 25,000 shillings. The payment is listed as being for an abdominal ultrasound. (CX L at 5).
- A receipt dated December 10, 2007 (10/12/07) for 20,000 shillings. The payment is listed as being for operation and medication. (CX L at 13).
- A receipt dated December 19, 2007 (19/12/07) for 13,895 shillings. The payment is listed as being for medication and operation. (CX L at 14).

<u>Buddu Poly Clinic</u>

Dr. J. Sekitooleko of the Buddu Poly Clinic on September 20, 2008 wrote a letter confirming his treatment of Claimant. He recounted that Claimant had been shot and undergone a nephrectomy on his right kidney and that he was treating him with analgesics, antihypertensives, anxiolytics, and tranquillisers. (CX M at 1). On November 28, 2008, he wrote a second letter in which he stated Claimant had first come to the clinic on January 1, 2008 with high blood pressure and associated symptoms of heart failure that he believed were secondary to kidney failure. Dr. Sekitooleko wrote that Claimant was seen at the clinic 52 times between January 1 and June 30, 2008. He reported at the time of discharge Claimant was stable with satisfactory renal and heart functions and blood pressure within normal range. (CX M at 2).

Dr. Sekitooleko stated Claimant's clinic bill is 9,850,000 shillings, covering transport at 40,000 shillings per visit; feeding at 10,000 per visit; and medical, consultation, and counseling charges totaling 7,250,000 shillings. (CX M at 2). Claimant submitted into evidence a receipt for 9,850,000 shillings dated September 20, 2008, (CX M at 3).

Claimant also submitted an attendance book from the clinic. The pages from the book consist of dated notes. Most days include blood pressure readings. The highest reading is 240/130 on Claimant's first visit. On his last five visits in June 2008 his readings were 140/90. In

the intervening visits, the readings varied, with none lower than 140/80.[2] Records also show he was prescribed a number of different blood pressure medications and non-steroidal anti-inflammatory drugs. (CX M).

Kampala Imaging Centre

An August 8, 2009 scannogram shows a bullet near Claimant's spine laying lateral to his L2/L3 disc space. The radiologist noted that the nerve roots appear compressed at L4/L5. (CX N).

Kampala Family Clinic

Dr. Joel Kiryabwire, a neurosurgeon at Kampala Family Clinic, saw Claimant on December 17, 2009. (CX O). He reviewed Claimant's medical records from after his injury as well as examined Claimant. He noted Claimant appeared to be walking with pain as he walked with a walking stick, placing more weight on his right side. He observed Claimant reported being able to move his lower limbs immediately after being shot but later was unable to move them at all and then improved on physiotherapy. Claimant complained of severe lower back pain that worsened when he walked or sat down for more than a few minutes. He stated the pain radiated down his legs and was worse on his left. He characterized the pain as pins and needles and stated it was unbearable at night. Without a walking aid he stated he could not walk for more than a few steps and with one not for more than 200 meters. Dr. Kiryabwire observed Claimant had mild generalized muscle atrophy in his lower limb muscles, which was more pronounced in his left leg. (CX O).

Uro Care

Claimant submitted a receipt for 30,000 shillings in cash from Uro Care in Kampala, Uganda dated October 31, 2007. The receipt stated it was in payment for "review."

Pharmacy Records

Claimant submitted the following receipts for pain and blood pressure drugs:

St. Jude Health Centre

- Sept. 15, 2007, 25 tabs of Voltaren at a rate of 4,000 shillings for a total of 100,000 shillings and 2 doses of Albendazole at a rate of 1,500 shillings for a total of 3,000 shillings and a total bill of 103,000 shillings. (CX R at 1).
- Sept. 15, 2009, 25 tabs of Voltaren for a total of 100,000 shillings. (CX R at 2).

[2] Claimant's blood pressure readings are as follows by date: Jan. 8: 190/100, Jan. 9: 180/100, Jan. 11: 170/100, Jan. 13: 160/90, Jan. 20:150/80, Jan. 24: 180/90, Jan. 27: 170/100, Jan. 30: 170/100, Feb. 8: 180/100, Feb. 12: 160/100, Feb. 15: 160/90, Feb. 17: 160/100, Feb. 21: 160/100, Feb. 23: 150/90, Feb. 27: 170/110, March 1: 150/90, March 4: 160/100, March 9: 170/100, March 13: 200/110, March 15: 150/90, March 18: 180/100, March 23: 140/80, March 31: 150/100, April 9: 190/110, April 18: 150/90, April 22: 160/100, April 26: 160/80, May 4: 210/100, May 7: 190/100, May 11: 160/90, May 13: 140/90, May 18: 150/90, May 22: 150/90, May 27: 150/90, May 31: 176/100, June 2: 140/90, June 8: 150/90, June 13: 160/90, June 14: 150/80.

- Oct. 9, 2000, 25 tabs of Voltaren for a total of 100,000 shillings. (CX R at 2).
- November 4, 2009, 25 tabs of Voltaren for a total of 100,000 shillings. (CX R at 3).

Friecca Pharmacy

- Dec. 6, 2009, 50 tabs of Voltaren for a total of 200,000 shillings. (CX R at 4).
- Jan. 20, 2010, 50 tabs of Voltaren for a total of 200,000 shillings. (CX R at 5).
- March 12, 2010, 50 tabs of Voltaren for a total of 200,000 shillings. (CX R at 6).
- July 16, 2010, 50 tabs of Voltaren for a total of 200,000 shillings. (CX R at 8).

HK Pharmaceuticals

- May 26, 2010, 50 tabs of Voltaren for a total of 200,000 shillings. (CX R at 7).

Life Savers Pharmacy

- July 30, 2010, Amlodipine (Norvase) for a total of 400,000 shillings. (CX R at 9).

Dr. Steven Borkan

On September 23, 2010 Dr. Steven Borkan offered an expert opinion in the form of a notarized letter. Dr. Borkan is board certified in internal medicine and nephrology. He has practiced in academic and private practice settings for more than 20 years, during which time he has supervised the care of thousands of dialysis patients. He stated he has also cared for patients with kidney injuries and kidney donors. (CX C at 1).

Dr. Borkan noted Claimant had undergone a right nephrectomny and stabilization of his L2-L4 spine region where the bullet remains lodged. He observed that as a result of the bullet, Claimant experiences chronic pain syndrome, marked leg weakness, and requires a wheelchair and crutches for transportation. He also noted Claimant had been taking Voltaren, a non-steroidal anti-inflammatory, since 2007. (CX C at 1).

Dr. Borkan discussed Claimant's results using standard formulas for kidney function that suggest a moderately reduced glomerular filtration rate consistent with stage III chronic kidney disease. He noted that given Claimant's muscle atrophy in his lower extremities, the standard formulas may underestimate the severity of Claimant's current kidney disease. (CX C at 2-3).

Dr. Borkan stated that the likelihood of experiencing hypertension is increased after nephrectomy. He stated chronic pain is also likely to increase Claimant's blood pressure, a potent cause of progressive kidney disease. (CX C at 2). He further explained:

> Since [Claimant's] treating doctors document elevated blood pressures since 2007 and hypertension is a common cause of kidney disease, it is likely that some or all of his progressive kidney disease is caused by hypertension that resulted from his initial gunshot wound. This is made more likely since [Claimant's] blood pressure was previously in the low normal range and his kidney function, estimated by BUN and Cr were both normal on two occasions in August 2007) (after the gunshot wound, right kidney injury and two surgeries were performed). It is also probable that long-term use of the non-steroidal Voltaren for chronic pain has

> contributed to Mr. Mbule's current hypertension, edema formation (i.e., swelling) and kidney disease, particularly since he has only one kidney. Had funds for proper hypertension treatment included a non-nephrotoxic form of pain relief such as surgical intervention or a pain stimulator (as suggested Dr. Melvill, a neurosurgeon) or a narcotic, this patient would certainly not be at such high risk for progression of kidney disease in the future that could ultimately lead to end stage kidney disease.

(CX C at 2).

On November 12, 2010 Dr. Borkan was deposed. (CX X). He stated that between when he composed his September 2010 letter and the deposition he reviewed some additional records, namely records of Claimant's clinic visits beginning in 2007. (CX X at 13). Those clinic records included a number of blood pressure readings. (CX X at 18). He noted that the only medical record he had reviewed from prior to the Claimant's having been shot was a pre-employment physical. (CX X at 14).

Dr. Borkan explained that Claimant's kidney function, his blood nitrogen level, his serum creatinine, and clinical observations of persistent edema led him to conclude Claimant has chronic kidney disease. (CX X at 41-42). He estimated Claimant was in stage three chronic kidney disease, although he suggested it could be more severe due to a loss of muscle mass in Claimant's lower extremities. (EX X at 42-43).

He stated that in his experience between five and ten percent of patients who have one kidney removed experience high blood pressure. (CX X at 24). "In my almost 25 years of clinical experience, I've taken care of hundreds of patients who have undergone traumatic or elective removal of a simple kidney, and it is well-known that these patients experience an increased risk of high blood pressure after a single kidney is removed." (CX X at 21).

He agreed that it was not normal for a patient to experience a 30 to 50 percent reduction in kidney function within three years after the removal of one kidney. (CX X at 24-25).

He opined that the nonsteroidal medication Claimant had taken for his pain likely antagonized the effect of the blood pressure medication he had also been taking and elevated his blood pressure. (EX X at 29).

> In [Claimant's] case, what we know for certain is that he has certain risk factors for progress of his chronic kidney disease, and by far the most important risk factor for progression is his high blood pressure. Adding to the high blood pressure are exposure to the nonsteroidal agent, chroic stress, and chronic pain. Other factors might include progressive anemia, which can add to the cardiac consequences of chronic kidney disease, and the tendency to retain salt in water, which may be an important component of this patient's high blood pressure. By that I mean that, as the kidney fails—as [Claimant's] kidney is, certainly failing—the patients tend to retain salt and water. That clearly elevates blood pressure and is, certainly, almost contributing in [Claimant's] case to the severity and the

> persistence of his high blood pressure, as well as to the refractory nature of his high blood pressure.

(EX X at 36-37).

Dr. Borkan stated that high blood pressure is the second leading cause of kidney disease. (CX X at 44). Diabetes is the first and glucose readings indicate Claimant does not have diabetes. (EX X at 49-52).

Dr. Borkan discussed Claimant's 90/60 blood pressure on his 2006 pre-employment physical, noting that it was in the low normal range putting him at the lowest possible risk for kidney disease. (EX X at 46). He also reported no family history of high blood pressure. (EX X at 49). In comparison, Claimant's blood pressure readings from the Buddu Poly Clinic in 2008 are high, none close to the recommended target for patients with chronic kidney disease of less than 125/75. (EX X at 47). Dr. Borkan explained:

> I think the – the cause of such severe persistent and refractory high blood pressure is likely to be multifactorial and involves chronic kidney disease; exposure to nonsteroidal anti-inflammatory agents, both prescription and nonprescription, that are known to elevate blood pressure; chronic pain, which he clearly suffered from, which was, in fact, driving his need for analgesics, pain medications; and the stress that he was under as a result of his injury and loss of ability to provide for his family.

(EX X at 47).

Dr. Borkan discussed a number of articles he deemed reliable and relevant. The articles included statements that high blood pressure is a possible effect of a solitary kidney, high blood pressure is one of the long-term risks of kidney donation, and chronic pain is associated with the increased prevalence of diagnosed hypertension and increased use of anytihypertension medications (EX X at 56-59). Another article stated that high normal blood pressure, defined as 130 to 139, is associated with a three-fold greater risk of future development of kidney disease. (EX X at 61). Dr. Borkan added that the risk is higher in patients of African origin. (EX X at 61-62). Another article indicates an increased risk of developing end-stage renal disease in patients with large doses or long-term use of nonsteroidal agents. (EX X at 63).

Dr. Borkan concluded that being shot, the subsequent pain, high blood pressure, and improper treatment of the pain the direct causes of Claimant's kidney disease. He stated:

> [B]ased on the facts that there was low normal blood pressure both before and immediately after the gunshot wound, that there was normal kidney function before and immediately after the gunshot wound, that there was no family history of high blood pressure, diabetes or kidney disease in his first-degree relatives. The fact that [Claimant] did not suffer diabetes would lead me to conclude that only after the nephrectomy, and incidentally, not immediately after the nephrectomy but at some point subsequent to the surgery, did he develop severe and refractory

> high blood pressure, which in his case almost certainly aggravated the deterioration of his kidney function.

(CX X at 68).

Dr. Joseph Weisstuch

Dr. Joseph Weisstuch was deposed on September 20, 2010. (EX 15). Dr. Weisstuch is board certified in internal medicine and nephrology and has been in practice for 19 years. (EX 25 at 4-5).

On November 3, 2009 he composed a letter after reviewing Claimant's medical records from after he was shot through to 2009. Dr. Weisstuch opined that Claimant did not require a kidney transplant. He stated it was rare for patients who have undergone a nephrectomy to develop kidney failure. (EX 16). In his deposition, Dr. Weisstuch further explained that at the time he wrote the letter he found that Claimant had no functional limitations and no permanent impairment of any sort regarding his left kidney. (EX 15 at 6-7).

Prior to his 2010 deposition, Dr. Weisstuch stated he reviewed an August 2010 note signed by Dr. Ssekasanvue at the department of nephrology at Mulago Hospital and blood tests from July 30, 2010. Dr. Weisstuch expressed disagreement with the contents of Dr. Ssekasanvue's note. A patient with oliguria, which Dr. Ssekasanvue listed Claimant as having, would make less than 500 ml of urine a day, something Dr. Weisstuch stated is seen only seen in patients with acute kidney failure and would result in death over more than a couple weeks. (EX 25 at 10). Dr. Weisstuch also opined Claimant did not have generalized body edema because adema from kidney failure is due to having a lot of protein in the urine and Claimant's protein level in the blood was in the normal range on July 30. (EX 25 at 10-11, 12-13). Dr. Weisstuch also opined that Claimant's creatine level suggests he has approximately 40 to 50 percent kidney function, which does not indicate the need for a kidney transplant. (EX 25 at 11, 21).

Dr. Weisstuch also stated he found it very unusual for someone's kidney function to be half normal three years after one kidney was removed. He noted Claimant's sodium level was a little high in his July 30 testing, which Dr. Weisstuch suggested might indicate Claimant was dehydrated or taking other medications. (EX 25 at 14). Dr. Weisstuch observed that Claimant's blood tests from August 2 and 4 of 2007 show normal kidney function. (EX 25 at 15). He further stated that there have been studies done that do not show increased incidents of kidney failure after having one kidney removed. (EX 25 at 14-15).

Dr. Weisstuch recommended that Claimant have his blood pressure measured, urinalysis done, and his medications examined. (EX 25 at 16). When asked about Claimant's prognosis, he stated:

> I have no way of knowing from that slice in time in July 30 what caused his kidney function not to be normal in July. In general once someone's kidneys are not normal that is progressive. It depends on how high his blood pressure would be, how much protein he would have in the urine that would decide over what

> period of time that would progress. People whose blood pressure is controlled who don't have protein in the urine can progress over 30 years. People who have a lot of protein in the urine and have high blood pressure progress quickly. That is if this is permanent kidney failure. I have no way of knowing that from that one slice in time. It is also highly unusual to have any degree of kidney failure this early after having removed one kidney and makes me have suspicious that there is something else going on.

(EX 25 at 17-18).

Dr. Weisstuch opined that high blood pressure may not cause kidney failure, as others believe. (EX 25 at 25-28). "I would say high blood pressure in people who have kidney disease clearly causes worsened kidney failure. This is not clear that high blood pressure alone is a cause of kidney failure. I am aware that that is the conventional wisdom. I am also aware that there is no good study to support that statement." (EX 25 at 28). He further explained:

> So often people attribute kidney failure to high blood pressure because often we see patients at the end of their disease when they have high blood pressure and kidney failure and we don't have any other cause for their kidney failure and often people say well, it's because of their hypertension. I would say it's clear that someone who has kidney disease whose blood pressure is high, that will contribute to worsening kidney function but it is not at all clear that having high blood pressure causes kidney failure.

(EX 25 at 27). Dr. Weisstuch opined that Claimant did not sustain damage to his left kidney from the gun shot or from removal of the right kidney, but did state that "if [Claimant's] blood pressure is elevated that will increase the risk of his left kidney being affected long term." (CX 25 at 36). Dr. Weisstuch noted that although there were references to high and fluctuating blood pressure in the records he reviewed there were no specific readings other than the 140/80 reading taken before Claimant's operation in December 2007. (CX 25 at 24-25, 38).

Dr. Roger Melvill

Dr. Roger Melvill reviewed Claimant's medical records and composed a letter to Claimant's attorney on September 13, 2010. (CX D). He concluded that Claimant sustained neural injury to the lumbar plexus, which he said was not fully explained in the available reports. Further evaluation is required, but he noted nerve injuries do often produce pain syndromes that are difficult to treat. Dr. Melvill opined after his review of the records that Claimant's "pain and leg paralysis is as a direct result of the gunshot injury." Id.

Dr. EK Naddumba

Dr. EK Nadduma reviewed Claimant's medical records, examined Claimant, and composed a letter to Claimant's attorney on October 5, 2010. (CX U). Dr. Nadduma reported Claimant complained of pain in his right leg, low back pain, headaches, and pain in the abdominal scar of previous surgery. He described the right leg pain and pins and needles as well

as burning sensations. Dr. Nadduma noted decreased muscle tone and sensory impairment in Claimant's right leg. (CX U at 1). Claimant's blood pressure was 140/100. Dr. Nadduma concluded Claimant's gunshot injury resulted in nerve root injuries resulting in a motor and sensory impairment in his right lower limb. It also caused hypertension as a complication, Dr. Nadduma wrote. (CX U at 2).

III. Other Evidence

Loan

Claimant submitted a note on letterhead of The Parliament of Uganda signed by Hon. Sejjoba Isaac Mayanja. The note, dated 02/01/2010, states that Mayanja acknowledges receipt of 15,000,000 shillings from Claimant as partial payment of a debt and states that the remaining balance is 47,700,000 shillings. The note states that the money was lent to Claimant when he went through an operation. (CX L at 15).

Department of Labor Forms

On June 17, 2009 the Department of Labor received Claimant's Form LS-203, Claim for Compensation. On the form he states that his first operation as a result of the injury was at an Army hospital in Iraq and his second operation was at Canadian Specialist Hopsital in Dubai. He also lists Dr. Sekitoleko J. of Buddu Polyclinic in Uganda and noted next to his name "was physician of my choice." He stated that the Employer provided medical treatment and then noted "some treatment is on my own since even the follow up as per Dr. Usama Nihad Rifat was never done with the scarcity of funds I used Dr. Sekitoleko J. (EX 3).

Dr. Ndagga filed Form LS-204, Attending Physician's Supplementary Report, on September 11, 2009 (EX 17 at 86-87).

AIG Emails

An email sent from Gregg Bruce at AIG to Claimant on October 7, 2008, with a copy going to Laura Jolley with an EDOT email address, states that Mr. Bruce had reviewed Claimant's claim file. He notes Claimant was paid weekly benefits, which were discontinued after six months because medical reports from Canadian Hospital stated that Claimant should not engaged in harsh physical exertion for six months, not perform heavy work for three months, and there would be no permanent disability from the injury and surgery. Mr. Gregg also wrote: "If you are under any medical treatment for your injuries, please advise and provide those medical reports to our office here. However, based on what I have at this time in our claim file here benefits will not be resumed." (EX 17 at 124).

On October 9, 2008, Claimant replied to Mr. Bruce's email, again copying Ms. Jolley. He wrote in part:

You ask the following questions, and I am answering…

1. Can you please send me the bills again by email? I answer, yes, and these are attached. These bills are for the medical treatment I have been receiving from Buddu Polyclinic as shown in Doctor Jimmy Sekitooleko's letter dated 20th/September/2008, attached and receipted accordingly. The treatment was secured on the bases of X-Ray findings at Mulago Hospital, Kampala. The Hospital X-Ray costs were accordingly receipted and are attached.
2. Are you under active medical treatment at this time? I answer, I am not under active medical treatment at this time, and I have no physician that is treating me at this time and there are no medical reports for treatment at this time.

The following statement summarises the bills:

I accessed X-Ray findings at Mulago Hospita- Kampala, as initially requested by Buddu Polyclinic on four occasions, namely; 11/10/07 I spent 40,000=UGX on transport and paid 20,000=UGX against Receipt No. 01108991; 15/10/07 I spent 40,000=UGX on transport and paid 25,000=agains Receipt No.01109909; and on 31/10/07 I spent 40,000= on transport and paid 30,000= against Receipt No.7680; totaling in part to 255,000=UGX (US3$156.4)only.

I have been receiving medical treatment at Buddu Polyclinic up to 9,850,000=(US$6,043). The grand total is 10,105,000=UGX (US$6,199.4). Receipts are attached.

(EX 24).

An email sent from Gregg Bruce to Claimant on December 12, 2008 states: "On the basis of further contact with you through Protectors Uganda we have authorized and additional USD ($) 53.04 to be reimbursed to you for travel from your home to Kasangan. We are otherwise declining to make further payment." (EX 17 at 125).

DISCUSSION

It has been consistently held that the Act must be construed liberally in favor of the Claimant. Voris v. Eikel, 346 U.S. 328, 333 (1953); J. B. Vozzolo, Inc. v. Britton, 377 F.2d 144, 147 (D.C. Cir. 1967). However, the United States Supreme Court has determined that the "true-doubt" rule, which resolves factual doubt in favor of the Claimant when the evidence is evenly balanced, violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. Section 556(d), which specifies that the proponent of a rule or position has the burden of proof and, thus, the burden of persuasion. Director, OWCP v. Greenwich Collieries, 512 U.S. 267 (1994), aff'g, 990 F.2d 730 (3d Cir. 1993).

In arriving at a decision in this matter, it is well settled that the finder of fact is entitled to determine the credibility of witnesses, to weigh the evidence and draw his own inferences therefrom, and is not bound to accept the opinion or theory of any particular medical examiners. Duhagon v. Metro. Stevedore Co., 31 BRBS 98, 101 (1997), aff'd, 169 F.3d 615, 33 BRBS 1 (CRT) (9th Cir. 1999); Avondale Shipyards, Inc. v. Kennel, 914 F.2d 88, 91, 24 BRBS 46, 48 (CRT) (5th Cir. 1988); Atl. Mar., Inc. & Hartford Accident & Indem. Co. v. Bruce, 661 F.2d

898, 900, 14 BRBS 63 (CRT) (5th Cir. 1981); Bank v. Chicago Grain Trimmers Ass'n, 390 U.S. 459, 467, reh'g denied, 391 U.S. 929 (1968).

I. Causation and Section 20(a)

Claimant's Prima Facie Case

The Claimant has the burden of establishing a *prima facie* case of compensability. He must demonstrate that he sustained a physical and/or mental harm and prove that working conditions existed or an accident occurred that could have caused the harm. U.S. Indus. v. Director, OWCP, 455 U.S. 608, 616 (1982); Kelaita v. Triple A Mach. Shop, 13 BRBS 326, 330 (1981). Once the Claimant establishes these two elements of his *prima facie* case, Section 20(a) of the Act provides him with a presumption that links the harm suffered with the claimant's employment. See Kelaita, 13 BRBS 326; Hampton v. Bethlehem Steel Corp., 24 BRBS 141, 143 (1990). The presumption is a procedural device and is not a substitute for substantive evidence of the injury that the claimant must present. Universal Mar. Corp. v. Moore, 126 F.3d 256, 262 (4th Cir. 1997) (citing U.S. Indus., 455 U.S. at 614 n.7).

In U.S. Industries, the U.S. Supreme Court noted that for the Section 20(a) presumption, the claimant must at least allege an injury that arises out of and in the course of employment. U.S. Indus., 455 U.S. at 415. In order to establish the "arising out of" prong of a *prima facie* case, the claimant need not introduce affirmative medical evidence that the working conditions in fact caused his harm. See U.S. Indus., 455 U.S. at 608. Instead, the claimant need only show that working conditions existed that could have caused his harm. Id. at 616. The injury need not be traceable to a definite time or event but can occur gradually over a period of time. See Pittman v. Jeffboat, Inc., 18 BRBS 212 (1986).

An administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence. See Sylvester v. Bethlehem Steel Corp., 14 BRBS 234, 236 (1981), aff'd sub nom., Sylvester v. Director, OWCP, 681 F.3d 359 (5th Cir. 1982) (holding that a claimant's credible subjective complaints can be sufficient to establish harm); Calbeck v. Strachan Shipping Co., 306 F.2d 693 (5th Cir. 1962), cert. denied, 372 U.S. 954 (1963); Todd Shipyards Corp. v. Donovan, 300 F.2d 741 (5th Cir. 1962).

In the instant case, the parties have stipulated that Claimant was shot while on base working as a security guard for Employer. The parties further stipulated that the bullet entered the right side of Claimant's back and punctured his right kidney, which had to be removed. All evidence presented in this case supports that chain of events. Further, the evidence shows the bullet was never removed from Claimant's body and remains embedded near his spine. (CX N). Thus, the evidence is clear that the gunshot is a work-related injury.

When a claimant sustains an injury at work that is followed by the occurrence of a subsequent injury or aggravation outside work, the employer is liable for the entire disability if that subsequent injury is the natural, unavoidable result of the initial work injury. *Bludworth Shipyard v. Lira*, 700 F.2d 1046, 15 BRBS 120 (CRT) (5th Cir. 1983); *Hicks v. Pacific Marine & Supply Co.*, 14 BRBS 549 (1981).

Following the shooting and a hospital stay in Dubai, the evidence shows Claimant returned to his home in Uganda. In Uganda he sought additional medical care. Dr. Ssekasanvue of the Department of Nephrology at Mulago Hospital, where he was seen in October and December 2007, noted Claimant presented at the hospital with body weakness, reduced urine output, generalized body oedema with painful pitting ledal oedema associated with nausea and vomiting, and numbness and paraesthesia of both lower limbs. He also noted Claimant had fluctuating blood pressure. (CX P).

Records from Buddu Poly Clinic, where records show Claimant was seen more than 50 times in 2008, show Claimant had consistently high blood pressure readings. (CX M).

Dr. Joel Kiryabwire, a neurosurgeon at Kampala Family Clinic, examined Claimant in December 2009, during which time he noted Claimant appeared to be walking with pain as he walked with a walking stick. Claimant complained of severe lower back pain that radiated down his legs and was worse on his left. Dr. Kiryabwire observed Claimant had mild generalized muscle atrophy in his lower limb muscles, which was more pronounced in his left leg. (CX O).

When Dr. EK Nadduma reviewed examined Claimant in 2010, he reported Claimant complained of pain in his right leg, low back pain, headaches, and pain in the abdominal scar of previous surgery. He described the right leg pain as pins and needles as well as burning sensations and noted decreased muscle tone and sensory impairment in Claimant's right leg. Claimant's blood pressure was 140/100. (CX U).

Dr. Borkan estimated that Claimant was in stage three chronic kidney disease based on Claimant's kidney function, his blood nitrogen level, his serum creatinine, and clinical observations of persistent edema. (CX X at 41-42). He stated it could be more severe due to a loss of muscle mass in Claimant's lower extremities. (EX X at 42-43).

Dr. Borkan concluded that being shot, the subsequent pain, high blood pressure, and improper treatment of the pain are the direct causes of Claimant's kidney disease. (CX X at 68). He explained that the gunshot resulted in Claimant's right kidney being removed, leaving Claimant with only one kidney. The injury and bullet that remains embedded in Claimant's back has caused Claimant chronic pain. (CX C at 1). Both the loss of one kidney and the chronic pain caused Claimant's blood pressure to rise. (CX C at 2, EX X at 30, 47). The pain also prompted Claimant to take nonsteroidal medications, which also increased his blood pressure. (EX X at 47). Claimant's high blood pressure then caused kidney disease. (CX C at 2, CX X at 36-37). Dr. Borkan concluded, "it is likely that some or all of his progressive kidney disease is caused by hypertension that resulted from his initial gunshot wound" (CX C at 2). He further explained: "In [Claimant's] case, what we know for certain is that he has certain risk factors for progress of his chronic kidney disease, and by far the most important risk factor for progression is his high blood pressure. Adding to the high blood pressure are exposure to the nonsteroidal agent, chroic stress, and chronic pain." (CX X at 36-37).

Dr. Borkan's explanation that the effects of the shooting caused Claimant's high blood pressure is supported by the fact that Claimant's blood pressure in his pre-deployment physical

was 90/60. (CX J). Dr. Borkan also noted Claimant does not smoke, is not overweight, and has no family history of hypertension, which are often contributing factors to hypertension. (CX X at 49). Dr. Borkan also cited medical articles supporting his contentions that chronic pain and nephrectomies can both cause hypertension and that hypertension is a known cause of kidney disease. (CX X at 56-60).

Thus, I find Claimant has established a *prima facie* case of compensability by demonstrating that he sustained a physical harm (kidney disease) and an accident occurred (gunshot) that could have caused the harm.

Employer's Rebuttal

In order to rebut the presumption, the Employer must produce specific and comprehensive evidence that the Claimant's condition was not caused, aggravated, or contributed to by the work accident. Brown v. Jacksonville Shipyards, Inc., 893 F.2d 294, 297, 23 BRBS 22, 24 (CRT) (11th Cir. 1990); Swinton v. J. Frank Kelly, Inc., 554 F.2d 1075,1082, 4 BRBS 466, 477 (D.C. Cir. 1976), cert. denied, 429 U.S. 820 (1976).

Employer has stipulated that the shooting was a work-related injury and contests only that Claimant's liver disease is a sequela of that injury. Employer argued that it rebutted the 20(a) presumption that Claimant's liver disease is a work-related injury through the testimony of Dr. Weisstuch. Dr. Weisstuch opined first that any impairment to Claimant's kidney function may have been temporary due to dehydration or medications and secondly that high blood pressure doesn't cause kidney failure.

Dr. Weisstuch opined that Claimant's creatine level on July 30, 2010 suggests he has approximately 40 to 50 percent kidney function. (EX 25 at 11, 21). He observed that Claimant's blood tests from August 2 and 4 of 2007 show normal kidney function. (EX 25 at 15). Dr. Weisstuch suggested that Claimant could have been dehydrated or on medication at the time of the July 30, 2010 blood test, based on the fact that Claimant's sodium level was a little high[3]. If he was dehydrated, the level of kidney function observed could have only been transient. (EX 25 at 14).

I find this theory as presented by the Employer through Dr. Weisstuch not to constitute substantial evidence that Claimant has no injury to his kidney function. No other doctor, either reviewing or treating, made any mention of the possibility of dehydration or medication affecting the test results or expressed concern over the fact that Claimant's sodium level was two mmol/L over the reference value range. Nor was any other evidence available that would suggest Claimant was dehydrated at the time of the test. Dr. Weisstuch also failed to suggest what medications could have had an effect on the test. Further, Dr. Weisstuch made the comment without any further explanation as to how, or if, the level of dehydration or medication that would cause a slight elevation in sodium level could also cause such an increase in creatine level to indicate 40 to 50 percent kidney function.

[3] The test showed Claimant's sodium level was 159 mmol/L, with the reference value for men at 145-157.

Employer's second argument is that Dr. Weisstuch stated that it is not clear that having high blood pressure alone causes kidney failure. (EX 25 at 25-28). He did recognize that high blood pressure can contribute to worsening kidney function in somebody who already has kidney disease. (EX 25 at 27). He stated: "I would say high blood pressure in people who have kidney disease clearly causes worsened kidney failure. This is not clear that high blood pressure alone is a cause of kidney failure. I am aware that that is the conventional wisdom. I am also aware that there is no good study to support that statement." (EX 25 at 28). Dr. Weisstuch also opined that Claimant did not sustain damage to his left kidney from the gun shot or from removal of the right kidney, but did state that "if [Claimant's] blood pressure is elevated that will increase the risk of his left kidney being affected long term." (CX 25 at 36). He further stated that there have been studies done that do not show increased incidents of kidney failure after having one kidney removed. (EX 25 at 14-15). He stated he found it very unusual for someone's kidney function to be half normal three years after one kidney was removed.

At the time of his deposition, Dr. Weisstuch had not reviewed the records from Buddu Poly Clinic. In the records he had reviewed he noted there were only references to high and fluctuating blood pressure and not specific measurements other than the 140/80 reading taken before Claimant's operation in December 2007. (CX 25 at 24-25, 38). Despite Dr. Weisstuch's lack of additional information on Claimant's blood pressure though, he does not specifically dispute that Claimant has had high blood pressure, nor does he offer an opinion as to the cause. His argument is only that in general it is "not clear" that high blood pressure causes kidney failure. He agrees, however, that high blood pressure worsens kidney failure. He states that he does not know of any studies showing that high blood pressure causes kidney failure, but he also does not mention any studies showing that it does not. His statement that causation is "not clear" is not substantial evidence to rebut the presumption that Claimant's kidney failure is as a result of the workplace shooting and thus constitutes a work-related injury for purposes of the Act.

Thus, the Employer has not met the burden of production to rebut the 20(a) presumption in this case and I find the gunshot, high blood pressure, and kidney disease to be a work-related injury.

II. Medical Expenses

Section 7(a) of the Act provides that, "[t]he employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require." 33 U.S.C. § 907(a) (2006). A claim for medical benefits is never time-barred. Colburn v. General Dynamics Corp., 21 BRBS 219, 222 (1988).

In order for a medical expense to be assessed against the employer, the expense must be both reasonable and necessary. Pernell v. Capitol Hill Masonry, 11 BRBS 532, 539 (1979). Medical care must be appropriate for the injury. 20 C.F.R § 702.402. A claimant has established a *prima facie* case for compensable medical treatment where a qualified physician indicates treatment was necessary for a work-related condition. Turner v. Chesapeake & Potomac Tel. Co., 16 BRBS 255, 257-58 (1984). The claimant must establish that the medical expenses are related to the compensable injury. Pardee v. Army & Air Force Exch. Serv., 13 BRBS 1130 (1981);

Suppa v. Lehigh Valley R.R. Co., 13 BRBS 374 (1981). The employer is liable for all medical expenses which are the natural and unavoidable result of the work injury, and not due to an intervening cause. Atl. Marine v. Bruce, 661 F.2d 898, 14 BRBS 63 (5th Cir. 1981), aff'g, 12 BRBS 65 (1980). An employee cannot receive reimbursement for medical expenses unless he has first requested authorization, prior to obtaining treatment, except in cases of emergency or refusal/neglect. 20 C.F.R. § 702.421; Shahady v. Atlas Tile & Marble Co., 682 F.2d 968 (D.C. Cir. 1982) (per curiam), rev'g 13 BRBS 1007 (1981), cert. denied, 459 U.S. 1146 (1983); McQuillen v. Horne Bros. Inc., 16 BRBS 10 (1983); Jackson v. Ingalls Shipbuilding, 15 BRBS 299 (1983).

Past Medical Bills

Claimant is requesting reimbursement for four sets of medical bills. Those bills are for (1) pre-surgery consultation and tests at Mulago Hospital, (2) surgery and hospital costs at Mulago Hospital in December 2007, (3) medical costs from Buddu Poly Clinic, and (4) costs for medications.

Claimant submitted three receipts for payments related to pre-surgery consultations and tests at Mulago Hospital totaling 65,000 shillings. The first is dated October 11, 2007 for $20,000. Dr. Watya is listed as the consultant on the receipt. (CX L at 3). The single word written on the receipt in the space for the description of the service being provided is not readable, but Claimant also submitted clinical notes from the same date. The notes recount the Claimant's medical treatment post-gunshot. (CX L at 8-9). The second receipt is dated October 15, 2007 and is also for 20,000 shillings. The payment is listed as being for an abdominal ultrasound. (CX L at 4). The third receipt is dated October 22, 2007 and is for 25,000 shillings. The payment is listed as being for an abdominal ultrasound. (CX L at 5). An x-ray report dated October 22, 2007 states that imagery of the kidney was taken. (CX L at 1).

An operation report dated December 10, 2007 states that Claimant underwent an exploratory laparatory and right psoas muscle repair at Mulago Hospital. (CX L at 10). A document titled Mulago Hospital Private Patients Service Summary for In Patient Charges lists Claimant's admission date as December 10, 2007 and his discharge date as December 31, 2007. Totals are listed for groupings of charges and a final total of $67,790 in U.S. dollars is entered. The subtotals included $8,550 on the line for professional fee. On the line for in-patient consultation/anaesthetic preoperative fee $14,228 is listed, although a line is also drawn to include surgery fee, anaestetic fee, doctor-in care fee, and health care fee. In the section for therapy $9,100 is listed. In the line for drugs $18,750 is listed. Finally under residential, a line is drawn to include the subheadings of curtained room, single room and VIP as well as the heading of "others" and a total of $15,170 is listed. (CX L at 12). Two receipts related to the hospital stay were also submitted. One, from December 10, 2007, is for 20,000 shillings listed as being payment for operation and medication. (CX L at 13). The second is dated December 19, 2007 for 13,895 shillings for medication and operation. (CX L at 14). A medical report signed by Dr. EK Naddumba also references the surgery, explaining that it was an exploratory lapalatomy done for a suspected retroperitoneal abscess in the right ileopsoas muscle. (CX U).

Claimant submitted a letter from Dr. J. Sekitooleko of the Buddu Poly Clinic that stated that Claimant had been seen at the clinic 52 times between January 1 and June 30, 2008. (CX M at 2). Dr. Sekitooleko stated Claimant's clinic bill is 9,850,000 shillings, covering transport at 40,000 shillings per visit; feeding at 10,000 per visit; and medical, consultation, and counseling charges totaling 7,250,000 shillings. (CX M at 2). Claimant submitted into evidence a receipt for 9,850,000 shillings dated September 20, 2008, (CX M at 3). Claimant also submitted an attendance book from the clinic showing dated notes from each of his visits. (CX M).

Finally, Claimant has requested 1,900,000 shillings for pain and blood pressure medication and 30,000 for a review at Uro Care. The receipt from Uro Care is dated October 21, 2007 and no additional documentation on the visit has been submitted into evidence. (CX R at 10). The first medication receipt is from Sept. 15, 2007 for Voltaren. (CX R at 1). The remaining receipts are from 2009 and 2010 and total 1,800,000 shillings with all but one receipt being from St. Judge Health Centre, Friecca Pharmacy, or HK Pharmaceuticals for Voltaren. (CX R at 2-9). The last receipt is from Life Savers Pharmacy for 400,000 shillings worth of Amlodipine (Norvase) on July 30, 2010. (CX R at 9).

7(d) Requirements

Employer argues it should not have to reimburse Claimant for any of the expenses because Claimant failed to request that Employer authorize his treatment prior to him obtaining it, as required by Section 7(d) of the Act. Section 7(d) states:

> An employee shall not be entitled to recover any amount expended by him for medical or other treatment or services unless:
>
> > (A) the employer shall have refused or neglected a request to furnish such services and the employee has complied with subsections (b) and (c) of this section and the applicable regulations; or
> >
> > (B) the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide or authorize same.

33 U.S.C. § 907(d)(1). Before an employer can be said to have neglected to provide care, there must first have been a request for such care. Jackson v. Navy Exchange Service Center, 9 BRBS 437 (1978).

An employee does not have to request authorization for emergency treatment. White v. Sealand Terminal Corp., 13 BRBS 1021 (1981); Shahady v. Atlas Tile & Marble Co., 682 F.2d 968 (D.C. Cir. 1982) (per curium), rev'g 13 BRBS 1007 (1981), cert. denied, 459 U.S. 1146 (1983); McQuillen v. Horne Bros., Inc., 16 BRBS 10 (1983); Jackson v. Ingalls Shipbuilding Div., Litton Sys., 15 BRBS 299 (1983); Schoen v. U.S. Chamber of Commerce, 30 BRBS 112 (1996).

Employer contends that Claimant failed to request a primary treating physician in Uganda or to request medical treatment, and as far as the Employer knew, based on the discharge records from Canadian Specialist Hospital, Claimant was able to return to work without restriction and

no permanent disability as of February 2008. Employer argued it had no knowledge of Claimant's surgery and stay at Mulago Hospital in December 2007 until Claimant's counsel served Employer with medical records and receipts in September 2009. (EX 4).

Claimant contends Employer neglected to provide medical care to Claimant when they sent him back to Uganda. Claimant also notes Employer, through AIG examiner Bruce Gregg, directly refused to provide medical care in two emails, one on October 7, 2008 and a second on December 12, 2008. (EX 17 at 124-125). Claimant also argues his December 2007 surgery at Mulago Hospital was emergency treatment due to pain from the bullet in his back.

I note that Dr. Rifat's recommendations upon Claimant's discharge from Canadian Specialist Hospital immediately prior to his return to Uganda were: "No specific medications are needed. He needs three months of recovery. He can resume work later. He is not to have harsh physical exertion for the next coming six months. This is to leave the abdominal wound healing properly. He can lead normal life but his disability is that he had lost his right kidney." I reject Claimant's argument that Employer "neglected" to provide medical treatment to Claimant simply by sending him home upon his release from Canadian Specialist Hospital with a discharge report that suggests no further medical intervention is needed. Claimant has made no argument nor provided any evidence that after returning to Uganda he requested the Employer provide medical care or even alerted the Employer he was under medical care prior to requesting reimbursement via email to Gregg Bruce at AIG on October 9, 2008. (EX 24). On December 12, 2008 Mr. Bruce replied to that email stating that "We are otherwise declining to make future payment." (EX 17 at 125). I find that at that point Claimant had requested and Employer had declined to provide medical care. Once the employer has refused to provide treatment or to satisfy a claimant's request for treatment, the claimant is released from the obligation of continuing to seek employer's approval. Pirozzi v. Todd Shipyards Corp., 21 BRBS 294 (1988); Betz, 14 BRBS at 809. See generally Lloyd, 725 F.2d 780, 16 BRBS 44 (CRT). The claimant then need only establish that the treatment subsequently procured on his own initiative was necessary for treatment of the injury, in order to be entitled to such treatment at the employer's expense. Rieche, 16 BRBS at 275; Beynum, 14 BRBS at 958. Therefore, Employer is not required to reimburse any medical care received prior to October 9, 2008 unless that care was done on an emergency basis, in which case there is no requirement that Claimant request prior authorization from Employer. Medical care received after that date must be reimbursed by Employer if it was necessary for treatment of Claimant's injury.

Claimant has argued his December 2007 surgery at Mulago Hospital was done on an emergency basis. Claimant affirmed that when he went to the hospital he was "in unbearable pain that would not stop." (CX A). At that time the public wing of the hospital did not have available space so Claimant made arrangements to borrow money to be treated in the private wing, suggesting the emergent nature of the care. There is no argument that the Claimant does not have a bullet that remains lodged in his back, and the evidence shows as a result of that bullet, Claimant was suffering from back and leg pain. Given the emergent nature of his needing treatment for that pain, I find he did not need to request authorization for the surgery and hospital stay.

I find the October bills from Mulago Hospital and the bills from the Buddu Poly Clinic and Uro Care are not reimbursable because the costs were incurred prior to the time Claimant requested authorization for treatment, and they do not constitute emergency care. Of the pharmacy receipts, I find that nine of them are for dates after Claimant requested and was refused medical treatment by Employer. All are for pain or blood pressure medication which are mentioned in Claimant's medical records as being for the treatment of the pain and high blood pressure he suffered as a result of the shooting. Those receipts total 1,800,000 shillings and I find the medications to be necessary to Claimant's treatment and the costs to be reimbursable.

Claimant has requested the exchange rate on the date of the award be used, noting that the current exchange rate is approximately 2,200 Ugandan shillings to one U.S. dollar. Employer states that the exchange rate on December 15, 2010 was 2,302 shillings to one dollar. I take judicial notice that the current exchange rate is 2,314 shillings to one dollar. At that rate, 1,800,000 shillings equals $777.87 in U.S. dollars.

Fraudulent Charges

Employer contends the receipts for payments of medical services submitted by Claimant are fraudulent. Employer notes there were no invoices or bills submitted, only receipts. The receipts do not state what medical services Claimant paid for, the price of each service, or the date the service was provided. Employer also noted the largest of the receipts from Mulago Hospital indicates that payment was made in U.S. dollars rather than Ugandan shillings. Employer also expresses disbelief that Claimant would have been able to pay the amounts stated on the receipts out of his own pocket.

Claimant explains that the Mulago Hospital bill was put into U.S. dollars because he told the hospital his American employer would be paying for his medical care. In addition, he submitted an operation report, anesthesia report, a summary charge sheet, two receipts for payments, and a report from the hospital's senior consultant orthopaedic surgeon indicating the surgery was done. (CX L, U). Claimant further affirmed he received the medical care and submitted a letter from the person who loaned him money for the operations stating as much. (CX A, L). No evidence is in the record that any of Claimant's exhibits are fraudulent. Similarly, there is no evidence any of the pharmacy receipts are not legitimate. Therefore, I find Employer's argument that the requested amount is fraudulent to be baseless.

Customary Rates

Employer contends the costs for treatment are in excess of the customary rates charged for the same or similar services in the Kampala, Uganda community. Fees charged by medical providers should be limited to the charges prevailing in the community in which the provider is located and shall not exceed the customary charges of the provider for the same or similar services, including supplies. 20 C.F.R. § 702.413.

Employer offers for comparison purposes surgery and hospital stay costs from the Centers for Medicare & Medicaid Services: Inpatient Hospital Data for Fiscal Year 2007, suggesting that those rates are lower than the Mulago Hospital charges. I find the data not

applicable to what the prevailing community rate is in Kampala, Uganda. Since no evidence has been submitted regarding customary charges in Uganda or at Mulago Hospital, I do not find the $67,790 hospital bill submitted by Claimant for reimbursement to exceed the prevailing community rate or customary charges of the provider.

Future Medical Care

Claimant is further requesting an award for all medical care regarding complications from the gunshot wound in Iraq, including medical treatment associated with problems in his remaining kidney. Based on the medical evidence and Dr. Borkan's testimony, I have found Claimant's high blood pressure, kidney disease, and back and leg pain from the bullet near his spine to be the natural and unavoidable result of Claimant having been shot at work. I find Employer is responsible for all future reasonable medical expenses necessary to care for Claimant's kidney disease and other complications from his gunshot wound.

ORDER

1. Employer/Carrier shall reimburse Claimant $67,790 for the cost of his December 2007 surgery and stay at Mulago Hospital and $777.87 for the cost of pain and blood pressure medications he purchased in 2009 and 2010.
2. Employer/Carrier shall authorize Dr. Roger Melvill, a neurosurgeon in South Africa, to evaluate claimant for surgical and non-surgical intervention with regard to the bullet lodged in claimant's spine. Following the initial evaluation of claimant by Dr. Melvill, the carrier shall authorize future medical treatment that is reasonable and necessary to cure or relieve the effects of the bullet in claimant's spine, including special travel accommodations for Claimant and a helper via business or first class airfare to receive medical treatment.
3. Employer/Carrier shall pay Claimant for all reasonable and necessary future medical expenses that are the result of Claimant's employment-related injuries and conditions, including his kidney disease.
4. Interest at the rate specified in § 28 U.S.C. 1961 in effect when this Decision and Order is filed with the Office of the District Director shall be paid on all accrued benefits and penalties, computed from the date on which each payment was originally due to be paid.
5. All monetary computations made pursuant to this Order are subject to verification by the District Director. No penalty shall be assessed against the Employer until it has had notice of the amount to be paid.

6. Claimant's attorney shall have twenty (20) days from receipt of this Decision and Order to file his attorney fee petition and the Employer/Carrier's counsel shall have fifteen (15) days, after receipt of that petition, to file objections thereto.

SO ORDERED.

A

Daniel A. Sarno, Jr.
Administrative Law Judge

DAS/amc
Newport News, Virginia