

Issue Date: 21 July 2011

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
BOSTON, MASSACHUSETTS

ALJ NO.: 2011-LDA-00121

OWCP NO.:02-188149

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*In the Matter of:*

DONALD A. HENSON,  
*Claimant,*

v.

SERVICE EMPLOYEES INTERNATIONAL INC.,  
*Employer,*

*and*

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

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Appearances:

Gary B. Pitts, Esq., Pitts & Mills, Houston, Texas for Claimant

Limor Ben-Maier, Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, Houston, Texas  
for Employer/Carrier

**DECISION AND ORDER AWARDING BENEFITS**

**I. Statement of the Case**

The present matter is a claim for compensation and medical benefits filed by Donald Henson (“Claimant”) against Service Employees International, Inc. (the “Employer” or “SEIU”) and its insurance carrier Insurance Company of The State of Pennsylvania (“Carrier”) under the provisions of the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. § 901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the “Act”). After an

informal conference before the District Director, Office of Workers' Compensation Programs ("OWCP"), a formal hearing was held before the undersigned administrative law judge on June 14, 2011, in Boston, Massachusetts. After the hearing, the parties were able to resolve their disputes and on July 20, 2011, the parties filed joint stipulations upon which the claim can be resolved.

Upon review of the stipulations and the evidence of record, I conclude that the Claimant is entitled to an award of compensation and medical benefits. Accordingly, I adopt the parties' stipulations. My findings of fact and conclusions of law are set forth below.

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

The parties have stipulated to the following facts:

1. The Claimant was born on May 25, 1965, and is currently 46 years old;
2. The Claimant began working for the Employer as a heavy truck driver in 2007;
3. On May 17, 2009, Claimant reported an injury to his left shoulder after pulling binders off a flatbed trailer. He returned to the United States on May 28, 2009, for further treatment. He has undergone two surgeries to his left shoulder and is not yet at maximum medical improvement ("MMI");
4. At the time of his claimed injury, Claimant had an average weekly wage of \$1,826.92;
5. Employer/Carrier voluntarily accepted the claim for injury to the Claimant's left shoulder and he has been receiving temporary total disability benefits since May 28, 2009, and continuing;
6. On August 25, 2010, Claimant amended his LS-203 to include a right shoulder injury, aggravation of his diabetes, and a worsening of a psychological condition. Employer/Carrier controverted the newly claimed injuries;
7. The Claimant alleges his psychological condition is related to the psychological effect on the Claimant as a result of being exposed to a violent war zone environment. The Claimant recollected one incident where his convoy came under mortar attack. He also reported several instances where his friends/coworkers died as a result of enemy mortar attacks, and that the Claimant ended up covered in blood;
8. The Claimant also alleges that his right shoulder is a compensable injury as he had to overcompensate due to his left shoulder injury;
9. The Claimant alleged a worsening of his diabetes due to his work related injuries and required medication;

10. The claim proceeded to a formal hearing for determination of whether the Claimant suffered a compensable right shoulder injury, psychological injury, and a worsening of his diabetes;
11. The Claimant continues to receive temporary total disability benefits at \$1,200.62 per week for his accepted left should injury;
12. Based on continued investigation, testimony and arguments made at formal hearing, the parties stipulate that the Claimant has also suffered a right shoulder and psychological injury while working for the Employer. As such, the Claimant is entitled to reasonable and necessary medical benefits related to both his right shoulder and psychological injuries;
13. Based on continued investigation, testimony and arguments made at formal hearing, the parties stipulate that the Claimant's diabetes is not compensable and not related to the conditions of employment and the Claimant is not entitled to related compensation and/or medical benefits for diabetes; and
14. Counsel for Claimant has established an entitlement to attorney's fees and costs. The Claimant's counsel filed his fee petition on July 19, 2011.

### **III. ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the entire record, the following order is entered:

1. The Employer/Carrier shall pay the Claimant temporary total disability compensation for his work related left shoulder injury at a rate of \$1,200.62 per week, pursuant to 33 U.S.C. § 908(b), beginning May 28, 2009 to the present and continuing, subject to any credit due to the Employer/Carrier under 33 U.S.C. § 903(e) for benefits previously paid for this injury;
2. The Employer/Carrier shall provide medical benefits for all reasonable and necessary medical care associated with the Claimant's work related right shoulder and psychological injuries, pursuant to 33 U.S.C. § 907; and
3. The Claimant's attorney has filed a fully supported and fully itemized fee petition pursuant to 33 U.S.C. § 928(a). Should the Employer/Carrier object to any fees or costs requested in the application, the parties' attorneys shall discuss and attempt to informally resolve the objections. Any agreement reached between the parties as a result of these discussions shall be filed with the court in the form of a stipulation. In the event that the parties are unable to resolve all issues relating to the requested fees and costs, the Employer/Carrier's objections shall be filed not later than 30 days following issuance of this decision. The objections must

be accompanied by a certification that the objecting party made a good faith effort to resolve the issues with the Claimant's attorney prior to the filing of the objections.

**SO ORDERED.**

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**COLLEEN A. GERAGHTY**  
Administrative Law Judge

Boston, Massachusetts