



Issue Date: 01 July 2014

OALJ CASE No: 2012-LDA-00466
OWCP CASE No: 15-51461

In the Matter of:

EDWIN JETNIL,
Claimant,

v.

CHUGACH MANAGEMENT SERVICES,
Employer,

and

ZURICH AMERICAN INSURANCE COMPANY.
Carrier, and,

Director, Office of Workers Compensation Programs,
Party-in-Interest

Appearances: Patrick B. Streb, Esq.
For the Claimant

Keith L. Flicker, Esq.
For the Employer / Carrier

Decision and Order

I. Background

This decision grants temporary total disability compensation and medical benefits under the Longshore Harbor Worker's Compensation Act,¹ (the Act) as extended by the Defense Base Act.² The Claimant was a painter for Chugach Management Services

¹ 33 U.S.C. § 901, *et seq.*

² 42 U.S.C. § 1651, *et seq.*

(Chugach),³ in remote areas of the Pacific Ocean. He lacerated his foot during an assignment at Gagan Island, which developed a bacterial infection (cellulitis) that progressed to gas gangrene. Ultimately his right leg was amputated below the knee. Chugach denied liability for disability benefits.

After the Claimant's Motion for Summary Decision was denied,⁴ the parties agreed to submit the matter for a decision on the record.⁵ That record includes the stipulated testimony of the Claimant,⁶ and of Laninlur Caleb, a coworker who testified by telephonic deposition, as did his direct supervisor, Hesbon Jokas, and the division supervisor, Robert Amador.⁷ The Claimant's medical records at the Roi Namur Dispensary and the Kwajalein hospital⁸, his bi-weekly wage report⁹ and his and his co-workers' time sheets¹⁰ are in the record too.

II. Issues

After considering the stipulations, the following issues remain for resolution:

1. whether Claimant's disability arose within a "zone of special danger;"
2. the nature and extent of Claimant's physical disability;
3. whether the Claimant can return to his usual and customary employment;

³ The Employer and its carrier are collectively referred to as "Chugach."

⁴ Order Denying Claimant's Motion for Summary Decision (July 3, 2013).

⁵ Trial was originally scheduled for January 14, 2014, but was continued several times due to difficulties encountered in conducting discovery and to federal budget issues. *See, e.g.*, Notice of Calendar Call (September 13, 2012); Continuance Order (March 18, 2013); Notice of Calendar Call (May 3, 2013); Order Canceling Calendar Call (October 15, 2013); Order Extending Discovery Deadlines and Setting Briefing Schedule (October 21, 2013). No issues were reserved for later disposition.

⁶ Proposed Stipulations; C. Ex.-7 at 22 (Proposed Stipulations); E. Ex.-AA (Proposed Stipulations); citations to the Claimant's exhibits are abbreviated as C. Ex.-[exhibit number] at [page number]; citations to the Employer's exhibits are abbreviated as E. Ex.-[exhibit number] at [page number].

⁷ E. Ex.-X (Deposition of Laninlur Caleb); E. Ex.-Y (Deposition of Hesbon Jokas); E. Ex.-Z (Deposition of Robert Amador).

⁸ E. Ex.-A and J (Roi Namur Dispensary Outpatient Progress Notes); E. Ex.-B (USAKA EMS Report); E. Ex.-C (Kwajalein Hospital ER Record); E. Ex.-D and H (Dr. Mazour's Medical Records); E. Ex.-E (Surgical Report); E. Ex.-F (Post-Operation Lab Reports); E. Ex.-G (Physical Therapy Initial Evaluation); E. Ex.-I (Physician's Orders)

⁹ C. Ex.-8 at 114 (Payroll 2007-2009).

¹⁰ E. Ex.-K, L, and M (Employee Timesheets) Claimant objected on the grounds that they were not disclosed prior to receipt of Employer's exhibits on December 27, 2013, that they were deliberately withheld, and that they lack foundation. Overruled.

4. whether the Claimant can engage in suitable alternative employment;
5. whether Claimant is entitled to ongoing medical care under § 7 of the Act;
6. whether Chugach is entitled to special fund relief pursuant to § 8(f) of the Act;
7. whether Claimant is entitled to annual increases under § 10(f) of the Act; and
8. whether reasonable attorney's fees, costs, and interest are to be assessed against Chugach.

III. Summary of Contentions and Findings

The Claimant sustained a cut on his right foot while stationed as a painter on Gagan Island in Kwajalein Atoll. About five days later he ceased coming to work due to his foot injury. He sought care at the Roi Namur Dispensary, which promptly transported him to the Kwajalein Hospital. His right leg was amputated below the knee on January 27, 2009, because the infected laceration had progressed to gas gangrene. The conditions of his employment in Kwajalein Atoll make his injury compensable under the Defense Base Act's zone of special danger doctrine. Claimant is entitled to temporary total disability compensation and to ongoing medical care and treatment under § 7 of the Act.

The Employer argues that the injury did not arise out of the course of his employment because there is only a zone of special danger when an employee is working overseas. The Employer argues that the zone of special danger doctrine only applies to two types of injuries:

1. An injury that arises from a reasonable recreational or social activity is covered when an employee works overseas in a foreign land. As a citizen of the Republic of the Marshall Islands, however, the Claimant's recreational and social activities as a native son involved no zone of special danger, or

2. An injury that occurs in an overseas locale that presents an increased risk of injury. As the Claimant was native to the area, no increased risk was present, so his injury while fishing after work hours was unrelated to his employment and noncompensable.

I find that the Claimant established that the obligations and conditions of his employment created a zone of special danger, out of which his injury arose. The Kwajalein Atoll is a remote locale with no phone service, limited electricity and mail service, and rudimentary medical care. These factors combine to present dangers to workers. Employment on Gagan Island increased these risks. Gagan is an

uninhabited island with limited food; it can only be reached by a boat, and then only with the Employer's permission. Due to Claimant's diabetes, reef fishing was necessary source of food. It was foreseeable employees would fish while off duty, whether for food or recreation. Injury on the reef was a foreseeable consequence. In addition, the limited nature of the medical services available to an injured employee was such that a wound infection would be foreseeable. The Defense Base Act makes the Claimant's injury compensable because the Claimant worked in a zone of special danger.

The Claimant has not yet gained access to a prosthetic limb, so he has yet to reach maximum medical improvement. His physical limitations preclude a return to work as a painter. The Employer identified no suitable alternative employment which the Claimant could do. Therefore, Claimant is entitled to temporary total disability compensation based on his average weekly wage of \$439.05.

IV. Facts

A. Stipulated Facts

The Parties stipulated to these facts:

1. an employee-employer relationship existed between Claimant and the Employer;¹¹
2. the claim was timely noticed and timely filed and the Employer's controversion was timely filed;¹² and
3. Claimant's applicable average weekly wage is \$439.05.¹³

B. Facts Drawn from the Proof

1. Nature and Location of the Work

Edwin Jetnil was born on October 17, 1952 as a citizen of the Republic of the Marshall Islands.¹⁴ Kwajalein Atoll, a remote Pacific coral atoll approximately 2,400 miles southwest of Honolulu, Hawaii, is home to the U.S. Army Space & Missile Defense Command Ronald Reagan Ballistic Missile Defense Test Site. Claimant has been an employee since 1980¹⁵ of the prime contractors that have administered the U.S. Army's work on the Kwajalein Atoll.¹⁶

¹¹ Prehearing Statement of Respondent Chugach Management Services/Zurich at § 4(b); Prehearing Statement of Claimant Edwin Jetnil at § 4(b).

¹² Prehearing Statement of Respondent Chugach Management Services/Zurich at § 4(e); Prehearing Statement of Claimant Edwin Jetnil at § 4(e).

¹³ Employer/Carrier's Hearing Brief at 3.

¹⁴ Proposed Stipulations (Claimant's Stipulated Testimony) at 1 ¶ 1; C. Ex.-7 at 22 (Proposed Stipulations); E. Ex.-AA (Proposed Stipulations).

¹⁵ E. Ex.-Y at 9 (Deposition of Hesbon Jokas). Chugach became the prime contractor in 2003 after the prior contractor, Raytheon Corporation. E. Ex.-Z at 12

Claimant lives on Third Island (also known as Ennubir and Santo).¹⁷ Third Island's only electricity is provided by portable generators; there is neither a landline nor cellular telephone service on the island.¹⁸ There is no regularly scheduled mail delivery.¹⁹ The only way to and from Third Island is by boat, for there is no airstrip.²⁰

Claimant worked as a Painter III five days a week, Tuesday through Saturday, for eight hours a day from 7 a.m. to 4 p.m. He traveled from Third Island and back by boat. The Employer provided a boat to the island of Roi Namur where he generally worked, and annually he was assigned some work on Gagan Island.²¹ The Claimant was injured while on Gagan Island, where he had been sent to paint and perform routine maintenance on the pier from January 7 until January 10, 2009.²² Gagan Island is a restricted access island that has an optic sensor and some communications buildings.²³ There are no living quarters other than a trailer where the Claimant and his co-workers slept while working on Gagan.²⁴ The Employer provided the food.²⁵

2. Medical Care on Kwajalein Atoll

On Third Island the only medical facility is a one-room clinic-type facility that is run by the Republic of the Marshall Island's government, staffed by a person with nurse-type training. Access to this facility is typically free or permitted with a small co-pay.²⁶ Traveling to Roi Namur provided access to the Roi Namur Dispensary, a facility generally staffed by a nurse and a physician's assistant.²⁷ The Roi Namur facility provides basic care such as an EKG, bandages, and items for sutures, but anything more serious requires the nurse to call a helicopter to transport the injured person to the Kwajalein

(Deposition of Robert Amador). Before Raytheon the prime contractor had been Johnson Controls World Services.

¹⁶ Proposed Stipulations at 2 ¶4; C. Ex.-7 at 22; E. Ex.-AA.

¹⁷ *Id.* at 1 ¶2.

¹⁸ *Id.* at 1 ¶3.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 2 ¶6; E. Ex.-Z at 25.

²² *Id.* at 2 ¶7; E. Ex.-X at 7; E. Ex.-K.

²³ E. Ex.-Z at 19.

²⁴ *Id.*; E. Ex.-X at 7. The three-bedroom trailer had one bathroom, a kitchen, and a living room with a television.

²⁵ Claimant's Stipulated Testimony Proposed Stipulations at 2 ¶7; C. Ex.-7 at 22 (Proposed Stipulations); E. Ex.-AA (Proposed Stipulations).

²⁶ E. Ex.-Z at 38.

²⁷ E. Ex.-Z at 42; E. Ex.-A and J.

Hospital,²⁸ a small hospital that focuses on outpatient surgeries and general care.²⁹

3. Claimant's Injury and Treatment

The Claimant departed from Roi Namur on Tuesday, January 7, 2009, with co-workers Aikner Rubon and Laninlur Caleb on a boat the Employer provided, to work on the pier on Gagan Island.³⁰ On January 9 or 10, 2009 on Gagan Island after work hours around 6:00 p.m. Claimant, wearing flip flops, went fishing on the reef. He is diabetic and was advised to eat fish when possible.³¹ While reef fishing Claimant slipped and cut his right foot on a piece of coral between his fourth and fifth toes.³² He continued to work on Gagan Island through Saturday, January 10, 2009. While on paid leave from January 15, 2009 to January 17, 2009 he was treated at the Third Island clinic.³³ The following work week Claimant did no work on January 20, 2009, a holiday. The next day he traveled to Roi Namur to tell his co-worker, Shubi Langidrik, that he was taking the rest of the week off.³⁴

On January 26, 2009 Claimant presented at the Roi Namur Dispensary with his right foot wrapped, soiled, and foul smelling.³⁵ Staff drew a blood sample, elevated his foot on a pillow, and called a helicopter to transport him to Kwajalein Hospital.³⁶ That same day he

²⁸ E. Ex.-Z at 42.

²⁹ E. Ex.-Z at 43.

³⁰ E. Ex.-K and M. Claimant objected to the admission of the employee time sheets arguing that they were deliberately withheld, because the Employer has not produced them in response to a discovery requests nor were they in the Employer's Rule 26(a) disclosures. This was overruled pursuant to 20 C.F.R. § 702.339; Claimant's Stipulated Testimony Proposed Stipulations at 2 ¶7.

³¹ Proposed Stipulations at 2 ¶8; C. Ex.-7 at 22; E. Ex.-AA; *See also* E. Ex.-BB; E.Ex.-X at 14; E. Ex.-Y at 13-18; E.Ex.-Z at 30-33. Because of the limited food sources within the Republic of the Marshall Islands, fishing has been a traditional way of life. Fishing done every day on the Kwajalein Atoll is a primary source of fresh food for Kwajalein's inhabitants. Fish is never sold, but rather is shared amongst the community and families in the island villages. *See generally* C. Ex.-8 at 205-207. (The rate of type 2 diabetes in the Marshall Islands is one of the highest in the world, as an estimated 28% of individuals over the age of fifteen have type 2 diabetes.)

³² E. Ex.-K.

³³ E. Ex.-D at 14; E. Ex.-N. Claimant objected to the admission of the Zero to Sixty form on the grounds that it deliberately withheld as they were not produced in response to discovery requests nor disclosed, and they lack foundation as to who prepared it and when it was prepared. The objection is overruled.

³⁴ E. Ex.-N.

³⁵ E. Ex.-A; Claimant's Stipulated Testimony Proposed Stipulations at 3 ¶9.

³⁶ E. Ex.-A.

was flown to Kwajalein where he was transported by ambulance to Kwajalein Hospital.³⁷

At Kwajalein Hospital's Emergency Room he was given a pain reliever, Vicodin.³⁸ The USAKA EMS report confirms that his medical history of diabetes and hypertension.³⁹ When admitted to the ER his fourth and fifth toes were black; there was a large open wound on the top of the foot.⁴⁰ During the nurse's evaluation the Claimant rated his pain on a scale from 1 to 10 at 9.⁴¹ He was transferred via stretcher to inpatient care where Dr. Mazour admitted him for IV antibiotics and evaluation for surgery.⁴² Dr. Mazour found maggots between Claimant's fourth and fifth toes.⁴³ A duplex Doppler examination of Claimant's right leg was done, in addition to X-rays of his lungs and right leg.⁴⁴ The results showed severe soft tissue gas in the dorsal soft tissues, consistent with severe infection and possible gas gangrene. Dr. Mazour recommended below the knee amputation on January 27, 2009.⁴⁵

Later on January 27, 2009, Dr. Shankel amputated Claimant's right leg below the knee.⁴⁶ The surgery was completed with no complications or breaks in technique and Claimant tolerated the procedure well and left the operating room in satisfactory condition.⁴⁷ Physical therapy focused on practicing to walk with the assistance of a walker and safely transferring from sitting to standing.⁴⁸ The Claimant's treating physician referred him to the Philippines on February 3, 2009 to obtain a prosthetic limb, for none was available on Kwajalein or in Majuro.⁴⁹ After a month the Claimant was discharged from Kwajalein Hospital with a walker and cane; the efforts to obtain a prosthetic limb continued. Claimant was also directed to report to the Roi Namur Dispensary within two weeks of discharge.⁵⁰ The physician's assistant at Roi Namur saw Claimant on March 5 and 25, 2009 and observed that the stump appeared normal with no redness or

³⁷ E. Ex.-B; Claimant's Stipulated Testimony Proposed Stipulations at 3 ¶9.

³⁸ E. Ex.-C.

³⁹ E. Ex.-B.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² E. Ex.-D at 14.

⁴³ E. Ex.-D at 15.

⁴⁴ E. Ex.-D at 19-21.

⁴⁵ E. Ex.-D at 30.

⁴⁶ E. Ex.-E and F.

⁴⁷ E. Ex.-E.

⁴⁸ E. Ex.-G.

⁴⁹ C. Ex.-8 at 159. Majuro is the capital of the Republic of the Marshall Islands.

⁵⁰ C. Ex.-8 at 160.

swelling and that there was no evidence of infection. The Claimant's daughter had come to the clinic and obtained a hard soled shoe for Claimant's left foot and claimed that Claimant had developed a sore on his left toes.⁵¹

V. Analysis and Conclusions of Law

The obligations and conditions of the Claimant's employment in the remote Pacific created a zone of special danger, out of which his injury arose. Claimant has remained temporarily totally disabled since January 15, 2009. The disability is temporary because he has not reached maximum medical improvement. He is totally disabled because he cannot return to his previous work as a painter, and Chugach showed no suitable alternative employment. Claimant is entitled to temporary total disability compensation and medical care for the amputation. The following section explains those findings.

A. Zone of Special Danger Doctrine

To be compensable under the Act, a claimant's injury must be shown to "arise out of" and "in the course of employment."⁵² The common law's standards for determining the scope of employment don't apply. The U.S. Supreme Court has held that in claims under the Defense Base Act, "[a]ll that is required is that the obligations or conditions of employment create the zone of special danger out of which the injury arose."⁵³ Injuries suffered away from work or after work hours are compensable, not because they are causally related to work, but because "the entire work environment may be located in some remote situs."⁵⁴ An injury is compensable under the Act where it arises from "one of the risks, an incident of service" which was "foreseeable, if not foreseen."⁵⁵ The U.S. Supreme Court did recognize that "an employee might go so far from his employment and become so thoroughly disconnected from the service of his employer that it would be entirely unreasonable to say that injuries suffered by him arose out of and in the course of his employment."⁵⁶

⁵¹ E. Ex.-J at 58; C. Ex.-8 at 165.

⁵² 33 U.S.C. § 902(2).

⁵³ *O'Leary v. Brown-Pacific-Maxon*, 340 U.S. 504, 507 (1951). *See also, Gondeck v. Pan American World Airways, Inc.*, 382 U.S. 25 (1965); *Ilaszczat v. Kalama Services*, 36 BRBS 78 (BRB 2002), *aff'd sub nom. Kalama Services, Inc. v. Director, OWCP*, 354 F.3d 1085, 37 BRBS 122(CRT) (9th Cir. 2004).

⁵⁴ 9 Lex. K Larson, *Larson's Worker's Compensation Law* §149.02 (Matthew Bender, 2010).

⁵⁵ *O'Leary* 340 U.S. at 507; *DiCecca v. Battelle Memorial Institute*, BRB No. 13-0378 issued on May 9, 2014.

⁵⁶ *O'Leary* 340 U.S. at 507; *See, e.g., Kirkland v. Air America*, 23 BRBS 348 (BRB 1990), *aff'd mem. sub nom. Kirkland v. Director, OWCP* 925 F.2d 489 (D.C. Cir. 1991) compensation denied where the employee's widow helped plan and assisted in a

The “exacting and unconventional conditions”⁵⁷ of the remote Kwajalein Atoll “placed him in an environment with unique risks,”⁵⁸ which created a zone of special danger that led to his amputation. Gagan Island is uninhabited, accessible only by boat, and visiting requires the express permission of the Employer.⁵⁹ The food Chugach provided was bread, chicken, hot dogs, bacon, and rice. As a diabetic, the Claimant was advised to add fish to his diet whenever possible.⁶⁰ Those conditions made reef fishing appropriate. Whether for sustenance or recreation,⁶¹ reef fishing was popular in the Marshall Islands, and foreseeable. A laceration from the coral was a foreseeable consequence.⁶² So was an infection due to the humid climate and limited medical care. The Employer had to realize that Third Island offered medical services equivalent to a first aid kit and that the Roi Namur Dispensary was unsophisticated. Therefore, the resulting infection and amputation were foreseeable, “if not foreseen.”

The Employer’s argument that Claimant was not in the zone of special danger because he is a citizen of the Republic of the Marshall Islands is unpersuasive. The Benefits Review Board recently rejected the argument that only two categories injuries are compensable under the Defense Base Act.⁶³ The Board focused on whether the injurious action was “reasonable and foreseeable” in light of the conditions of the

burglary her paramour carried out, during which the employee was murdered. Her involvement “severed any causal relationship that may have existed between the conditions created by his job and his death,” 23 BRBS at 349-350.; *Gillespie v. General Electric Co.*, 21 BRBS 56 (BRB 1988), *aff’d*, 873 F.2d 1443 (1st Cir. 1989) compensation denied for the death of an employee while engaging in auto-erotic asphyxiation; *R.F. [Fear] v. CSA, Ltd. and The Ins. Co. of the State of PA*, 43 BRBS 139 (BRB 2009) compensation denied for physical and emotional injuries the employee claimed from damage to facial skin after using a chemical peel. The trial judge found no physical harm to his skin or psychological trauma related to a physical harm; the Benefits Review Board found adequate proof of a psychological harm, but the peel was neither rooted in the conditions and obligations of employment, nor related to his overseas employment in any way. The injury was thoroughly disconnected from his service and had no genesis in his employment in Kuwait. The zone of danger doctrine didn’t apply.

⁵⁷ *O’Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 363 (1965).

⁵⁸ *N.R. [Rogers] v. Halliburton Serv.*, 42 BRBS 56, 61 (BRB 2008).

⁵⁹ E. Ex.-Z at 65-66.

⁶⁰ Proposed Stipulations (Claimant’s Stipulated Testimony) at 2 ¶8.

⁶¹ *Id.*

⁶² E. Ex.-Z at 57; E. Ex.-BB.

⁶³ *DiCecca v. Battelle Memorial Institute*, BRB No. 13-0378 issued on May 9, 2014 granted death benefits under the zone of special danger doctrine when an employee was killed in a taxi ride returning home from the grocery store in Tbilisi, Georgia stating that it was a foreseeable consequence incident to the obligations of employment.

employment in a dangerous locale.⁶⁴ The zone of special danger is not negated because the place of employment is not an overseas locale. Life on Gagan Island in particular, and on the Kwajalein Atoll generally, poses dangers unrelated to the citizenship of the injured worker. The risks to human health and safety incident to life on Kwajalein Atoll do not dissipate simply because one was born there.

B. Nature and Extent of Disability

Under the Act all disabilities are either temporary or permanent and are also either partial or total.⁶⁵ Permanency is determined based on the medical facts; it doesn't depend on economic factors or employability.⁶⁶ Whether an injury is partial or total, however, depends on whether a claimant can show that he cannot return to his prior job or any suitable alternative employment.⁶⁷ The Claimant's disability is temporary and total. As a result, Claimant is not entitled currently to annual increases under § 10(f) of the Act and the Employer is not entitled to special fund relief under § 8(f) of the Act.⁶⁸

1. Claimant's Physical Disability is Temporary

Two tests determine whether a claimant's disability is permanent or temporary. First, a disability is permanent if any disability lingers after a claimant has reached their maximum medical improvement (MMI).⁶⁹ Second, a disability is permanent when a "condition has continued for a lengthy period, and it appears to be of lasting or indefinite duration, as distinguished from one in which recovery merely awaits a normal recovery period."⁷⁰

The Claimant has not yet received a prosthetic leg, and therefore his disability remains temporary from the last day he worked, January 15, 2009. Providing a prosthetic is one of the most elementary ways that a workers' compensation regime assists with rehabilitation.⁷¹ Proper fitting implicates medical care, including the condition of the stump while bearing weight, and training to use it through physical therapy. Improvement in the Claimant's ability to care for himself, and activities of daily living would be expected once

⁶⁴ *Id.*

⁶⁵ 33 U.S.C. § 908(a)-(e).

⁶⁶ *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56 (BRB 1986).

⁶⁷ *Bumble Bee Seafoods v. Director, OWCP*, 629 F.2d 1327, 1330 (9th Cir. 1980).

⁶⁸ Director asserted absolute bar due to failure to timely submit an application for § 8(f) relief, however, no § 8(f) funds are available regardless because Claimant has only been awarded TTD compensation.

⁶⁹ *Trask*, 17 BRBS at 62.

⁷⁰ *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649, 654 (5th Cir. 1968).

⁷¹ 5 Lex K. Larson, *Larson's Worker's Compensation Law* § 95.02 (Matthew Bender, 2010).

Claimant receives a prosthetic device.⁷² Until he receives that appropriate durable medical equipment, it cannot be said that he condition is of indefinite duration; he has not reached MMI. His disability remains temporary.

2. Claimant's Disability is Total

In order to present a *prima facie* case of total disability under § 8 of the Act, a claimant bears the initial burden to prove that he cannot return to his usual and customary employment. If he does, the burden shifts to the employer to show the availability of suitable alternative employment.⁷³ If an employer fails to meet that burden, a claimant is totally disabled.

Claimant has met his *prima facie* burden. He can't to return to his usual and customary employment as a painter on Kwajalein Atoll with only one leg, and no prosthesis for the amputation. Chugach has not argued or proven the Claimant can do any other suitable alternative employment.⁷⁴ His disability is total rather than partial.⁷⁵

C. Section 7 Medical Benefits

Under § 7(a) of the Act, an employer must:

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.⁷⁶

Claimant is entitled to § 7 medical benefits for past and future treatment. By its nature, a below the knee amputation involves a prosthesis as a required "apparatus." The Employer is obligated to reimburse the Claimant for any out-of-pocket expenses incurred for his care, pay any outstanding medical bills, and provide for reasonable and necessary treatment going forward, including a prosthesis and any other assistive equipment his physician deems necessary.

⁷² E. Ex-G and H; C. Ex-8 at 146.

⁷³ *Hairston v. Todd Shipyards Corp.*, 849 F.2d 1194, 1196 (9th Cir., 1988); *Bumble Bee Seafoods* 629 F.2d 1327; *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP*, 592 F.2d 762 (4th Cir. 1979).

⁷⁴ Employer/Carrier's Supplement to Prehearing Statement. Employer did not address the issue of alternative employment. Employer argued that the only issue in dispute was whether the injury arose from a zone of special danger and reserved the right to dispute employability later. The claimant is entitled to a compensation order, not a piecemeal trial by interval. No prehearing order severed the issue of employability for later adjudication. *See, Luttrell v. Alutiiq Global Solutions*, 45 BRBS 31 (BRB 2011).

⁷⁵ *Stevens v. Director, OWCP*, 909 F.2d 1256 (9th Cir. 1990)

⁷⁶ 33 U.S.C. § 907(a).

VI. Conclusion and Order

The Claimant suffered compensable work-related injuries arising from the zone of special danger for which Chugach is liable. The Claimant has been totally disabled since the last day he worked for the Employer. It is ORDERED that:

1. Chugach Management Services and its insurance carrier, Zurich American Insurance Company, must pay or reimburse the Claimant for all reasonable, appropriate, and necessary medical expenses arising from the Claimant's work-related amputation pursuant to § 7 of the Longshore Act, including the cost of ongoing treatment, necessary equipment and apparatus, and mileage to and from medical appointments;
2. Chugach Management Services and its insurance carrier, Zurich American Insurance Company, must pay the Claimant temporary total disability benefits from January 15, 2009, to date based on an average weekly wage of \$439.05, plus interest on those weekly benefits as they become due;
3. The District Director shall make all calculations necessary to carry out this Order, and the parties must submit any additional documents needed to aid the District Director in this calculation; and
4. Claimant's counsel is entitled to reasonable attorney's fees and costs for benefits procured on the Claimant's behalf. A fee petition that comports with 20 C.F.R. § 702.132 must be filed within 21 days from the date this order is served by the District Director. Chugach must file his objections within 14 days after the fee petition is served. The parties must meet in person or voice-to-voice to discuss and attempt to resolve any objections within 14 days after objections are served. Both parties are charged with the duty to arrange the meeting. Claimant's counsel must file

a report within 7 days thereafter that identifies the objections have been resolved, those that have been narrowed, and those that remain unresolved. The report may also reply to any unresolved objections.

So Ordered.

William Dorsey
ADMINISTRATIVE LAW JUDGE

San Francisco, California