



(412) 644-5754
(412) 644-5005 (FAX)

Issue Date: 30 July 2012

Case No: 2012-LDA-5

In the Matter of:

GREGORY SAVOIE,
Claimant,

v.

SERVICE EMPLOYEES
INTERNATIONAL, INC.,
Employer,

And

INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA,
Carrier.

Appearances:

Brian Karsen, Esq.
For Claimant

P. Vincent Gaddy, Esq.
For Employer

Before: MICHAEL P. LESNIAK
Administrative Law Judge

DECISION AND ORDER—AWARDING BENEFITS

This proceeding arises from a claim under the Defense Base Act (“DBA”), 42 U.S.C. § 1651 (2011), et seq., an extension of the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. § 901 (2011), et seq. The DBA provides for compensation benefits for the injuries and deaths of workers employed in relation to certain government contracts outside of the United States.¹

¹ 42 U.S.C. § 1651(a)(4) provides that:

Claimant filed an LS-18 form on September 22, 2011. (File letter). On September 28, 2011, the District Director referred this case to the Office of Administrative Law Judges for a formal hearing. *Id.* Following proper notice to all parties, I held a formal hearing on February 14, 2012 in Pittsburgh, Pennsylvania. At the hearing, I admitted Claimant's Exhibits 1-8 and 10-13 and Employer's Exhibits 1-10 and 14. (T., p. 8, lines 18-23, p. 10, lines 1-5).² The parties submitted post-hearing briefs, which I have considered in rendering my decision. Post-hearing, I also received Employer's Exhibits 11 and 12, both of which I now admit into evidence.

Stipulations

The parties have stipulated to and I find the following:

1. The parties are subject to the Defense Base Act;
2. An employer/employee relationship existed;
3. Employer was timely notified of Claimant's injury;
4. Claimant filed a timely claim; and
5. Claimant's average weekly wage is \$1,911.64 and his compensation rate is \$1,200.62.

(T., p. 5, lines 1-11).

Issues

The issues remaining in dispute are:

1. Whether Claimant suffered a compensable psychological injury related to his employment;
2. Whether Claimant suffered a compensable gallbladder injury related to his employment;

Except as herein modified, the provisions of the Longshoremen's and Harbor Workers' Compensation Act, as amended, shall apply in respect to the injury or death of any employee engaged in any employment . . .

(4) under a contract entered into with the United States or any executive department, independent establishment, or agency thereof, . . . or any subcontract, . . . where such contract is to be performed outside the continental United States . . . for the purpose of engaging in public work.

² The following abbreviations are used in this Decision and Order: CX = Claimant's Exhibit, EX = Employer/Carrier's Exhibit, T. = Transcript of the February 14, 2012 hearing.

3. Whether Employer/Carrier is liable for the payment of Claimant's medical costs pursuant to Section 7(a) of the Act;
4. Whether Employer/Carrier is liable for the payment of penalties, interest, costs and attorney's fees.

Background

Claimant joined the Army after high school, serving approximately five and a half years. (T., p. 28, lines 9-13). He was trained by the Army as a heavy construction equipment mechanic. (EX. 10, p. 12 and 18). Claimant's active duty with the Army ended in 2001. (EX. 10, p. 17). Having worked with civilian contractors while in the Army and stationed in Bosnia, Claimant became interested in working as a civilian contractor in Iraq and applied with the Employer in 2004. (T., p. 28, lines 14-25).

Claimant was hired by Employer as a mechanic and deployed initially to Kuwait. (T., p. 29, lines 1-7). Claimant then transferred to Camp Cedar in Iraq before returning for a ten month period of time to Kuwait. (T., p. 29, lines 8-14). Subsequent to his second deployment in Kuwait, Claimant returned again to Iraq and remained there from that point until his employment ended in 2009. (T., p. 29, lines 15-22). During the course of his employment, Claimant worked at several different bases in Iraq. (T., p. 29, line 23 to p. 30, line 4).

Claimant's position also changed during the course of his employment from a mechanic to a dispatcher to an operations specialist. (T., p. 30, lines 11- p. 31, line 7 and p. 40, line 18 to p. 41, line 1). Claimant worked as a dispatcher for approximately three years. (T., p. 31, lines 8-10). Claimant's job responsibilities as a dispatcher could vary depending upon where he was stationed. (T., p. 31, lines 11-24 and EX. 10, p. 35-38). Claimant's job duties as operations specialist are detailed in his trial testimony. (T. p. 41, lines 1-21).

Harm and/or Injury

Claimant described living on the bases in Iraq as tough. (T., p. 31, lines 25-32, line 2). Claimant worked seven days per week, usually twelve hours per day, though on occasions even worked up to thirty-six hours consecutively. (T., p. 32, lines 11-19). Claimant's work environment was very high paced. (T., p. 32, lines 20-23). Claimant was under intense pressure to perform the responsibilities of his job and under additional pressure due to the threat of attack. (T., p. 33, lines 16-21).

Claimant testified that he was on the military bases in Iraq at different times when they came under attack. (T., p. 33, lines 22-24). He estimated being present for approximately 100 mortar attacks. (EX. 10, p. 101). Claimant described one particular incident during a mortar attack when he was located on the edge of the base near the wire and they were anticipating insurgents coming on to the base as the mortars were fired from just outside the wire. (T., p. 33, lines 4-15 and EX. 10, p. 101-102). This particular incident occurred at Camp Cedar and led to

Claimant emotionally breaking down and crying during a meeting with the Employer's human resources department. (T., p. 33, lines 2-4 and EX. 10, p. 99).

Claimant also described an experience when he flew in a helicopter during the daylight and witnessed numerous houses reduced to rubble. (T., p. 34, lines 19-25). This impacted Claimant significantly as he recognized that families had been killed when their homes were destroyed. (T., p. 34, lines 25 to page 35, line 8). Claimant also encountered small arms fire at Camp War Horse and saw equipment that had been blown up. (EX. 10, p. 102-104).

Claimant began to experience excruciating stomach pain in 2009. (T., p. 37, line 8 to p. 38, line 5). This pain came and went over the weeks following its initial onset. (T., p. 38, lines 6-8). Claimant returned to the clinic on multiple occasions for treatment. (T., p. 38, lines 9-11). Claimant was provided with a list of several things that might be causing the pain though was never provided initially with a definitive diagnosis. (T., p. 38, lines 12-21 and p. 39, lines 11-19). He was advised by the medics that they could not diagnose his condition. (EX. 10, p. 79).

Claimant begged to have his condition further evaluated though was denied medical leave. (T., p. 39, lines 14- 25 and p. 38, lines 22-25 and EX. 10, p. 79). Claimant tried various avenues to get out of Iraq for further medical evaluation, including going through the Employee Assistance Program (EAP). (EX. 10, p. 83-84) Throughout this period Claimant continued to work and deal with the pain as best he could. (T., p. 40, lines 1-3). The pain grew so bad that Claimant thought he would die in Iraq. (EX. 10, p. 82).

In August 2009, Claimant was transferred to Camp Paliwoda. (T., p. 40, lines 10-14). Upon arriving at Camp Paliwoda, Claimant determined that they were short- staffed. (T., p. 41, line 24 to p. 42, line 17). Claimant notified the project manager though was advised that no additional personnel were going to be provided. (T., p. 42, line 21 to p. 43, line 4). Claimant, due to the under-staffing issue, worked excessively to the point of exhaustion and turned in his resignation, which was not accepted. (T., p. 43, line 6 to p. 44, line 19).

Claimant's condition deteriorated such that he reached out to the Employee Assistance Program for help. (T., p. 44, line 24 to p. 45, line 15). Claimant also spoke with the camp Chaplin regarding his condition and desire to resign. (T., p. 46, lines 1-7). After having told the Chaplin that he wanted to die, the Chaplin insisted on getting Claimant off of the base and into the Combat Support Hospital. (T., p. 46, lines 9-24).

Medical Treatment

Claimant was admitted to the Combat Support Hospital on August 15, 2009 after being flown in from Camp Paliwoda for evaluation. (CX. 7, p. 4). Claimant advised he was very stressed since he was doing the work that three workers used to do. (CX. 7, p. 5). Claimant stated that he usually worked twelve hours per day but at least three times in the last month he stayed at work without going home and did so because "the mission must come first." (CX. 7, p. 5). Claimant advised the admitting physician that if he did sleep, it was poor because of his stress. (CX. 7, p. 5). Further, Claimant advised that he "hit a wall" in the last week and was

having passive suicidal ideation. (CX. 7, p. 5). Although he wanted to die, he felt he had to complete the mission. (CX. 7, p. 6).

The treating physician at the Combat Support Hospital, Dr. Gary Drouillard, noted Claimant to have severe work related stresses and resultant poor sleep. (CX. 7, p. 4). He was further noted to have strong passive suicidal ideation and the recommendation was for admission for his safety and assignment of an escort. (CX. 7, p. 5). Dr. Drouillard diagnosed Claimant as follows: Axis I, sleep deprivation; Axis II, borderline traits; Axis III, obesity; Axis IV, work/occupations stress; Axis V, GAF 40. (CX. 7, p. 5). The notes indicate that it was later determined that Claimant did not have borderline traits. (CX. 7, p. 4).

Claimant was monitored by a sitter, provided by the Employer, watching over him as he slept. (CX. 7, p. 3-4). Claimant's belt and boot laces were removed and his pockets were searched and emptied while looking for dangerous objects. (CX. 7, p. 4). Prescription medications were provided by the doctor. (CX. 7, p. 4). The sitter/unit escort and medications continued during the course of Claimant's hospitalization until his discharge on August 17, 2009. (CX. 7, p. 1-3).

From the Combat Support Hospital, Claimant was then escorted by the Employee Assistance Program representative to Canadian Specialist Hospital in Dubai. (T., p. 46, line 25 to p. 47, line 12). Claimant was admitted on August 20, 2009 and he remained hospitalized for ten more days while under close observation. (CX 8, p.1-2). Chief complaints at the time of hospitalization included inappropriate laughter, paranoid ideas, insomnia, suspiciousness, irritable mood and loss of appetite. (CX. 8, p. 1-2). Prescription medications were continued (CX. 8, p. 1-3) and Dr. Mohamed Sameh Talib diagnosed acute stress disorder. (CX. 8, p. 1). Claimant was discharged on August 29, 2009 with recommendations for sick leave and continued use of the prescription medications. (CX. 8, p. 1-2). Claimant was then sent back to the United States with an escort following his discharge from Canadian Specialist Hospital. (T., p. 48, lines 1-19). This was done at the direction of the Employer. (T., p. 98, lines 2-4).

Upon returning to the United States, Claimant presented to the Heritage Valley Health System, where he was diagnosed with cholecystitis and cholelithiasis and underwent a laparoscopic cholecystectomy (removal of the gallbladder) on September 9, 2009. (CX. 9, p. 14-15; EX. 8 at 53). Around that time, Claimant also made attempts to contact mental health professionals. (T., p. 49, line 17 to p. 50, line 16 and EX. 10, p. 88). Claimant remained in the United States until February, 2010 when he travelled Indonesia to be with his wife and son. (T., p. 73, lines 11-14). Claimant remained in Indonesia for a year and 4 months before returning to the United States to get help with his psychological condition. (T., p. 51, lines 9-13 and EX. 10, p. 116).

Claimant presented to Jefferson Behavioral Health in July 2011 and was immediately hospitalized for approximately eight days. (T., p. 51, line 14 to p. 52, line 6). At that time, Claimant began regular treatment with a psychiatrist, Dr. Prabhjot Deol, and counselor, as well as group therapy sessions and prescription medications. (T., p. 52, lines 7-23). Claimant believes the treatment he is receiving is helping to improve his condition. (EX. 10, p. 140-141 and 146). Dr. Deol, advised him to go on disability. (EX. 10, p. 96 and 126).

Claimant has described having to be professional and deal with the pressure of working in a war zone, including experiencing rocket and mortar attacks, but then coming to terms with the impact these experiences had on his mental state after leaving the environment. (EX. 10, p. 100 and 144-145). He has testified about being full, even “overfull”, of bad experiences, and about the powerful flashbacks that he experiences. (EX. 10, p. 131-132, 136-138).

Findings of Fact and Conclusions of Law

Psychological Injury

Claimant’s Prima Facie Case

Section 33 U.S.C. § 920(a) establishes a presumption in favor of an injured worker that, “in the absence of substantial evidence to the contrary,” a “claim comes within the provisions of this chapter.” This is an express statutory presumption that a claim for an injury under 33 U.S.C. § 902(2) comes within the provisions of the Longshore and Harbor Workers’ Compensation Act. In order for a Claimant to assert the presumption under 33 U.S.C. § 920(a), the burden rests with him to first establish a *prima facie* case. *Kelaita v. Triple A Mach. Shop*, 13 BRBS 326 (1981).

To establish a *prima facie* case, a Claimant must show that (1) he sustained a physical and/or mental harm or pain, and (2) that working conditions existed or an accident occurred at work, which could have caused or aggravated the harm or pain. *See, e.g., Smith v. SEII*, BRB No. 11-0110 (Aug. 17, 2011)(unpub.); *McAllister v Lockheed Shipbuilding, et al.*, 39 BRBS 35 (2005)(citing *Bath Iron Works Corp. v. Preston*, 380 F.3d 597 (1st Cir. 2004); *Ramey v. Stevedoring Services of America*, 134 F.3d 954 (9th Cir. 1998); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981) and *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608 (1982)). 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. Industries/Federal Sheet Metal*, 455 U.S. at 614 n. 7).

Harm/Injury

To satisfy the “harm/injury” element of a *prima facie* case, the Claimant must offer affirmative evidence that something “went wrong within his human frame.” *Wheatley v. Adler*, 407 F.2d 307, 313 (D.C. Cir. 1968)(en banc). The injury need not be traceable to a definite time or event, but can gradually occur over time, as long as Claimant’s employment has aggravated the symptoms of the condition. *Pittman v. Jeffboat, Inc.*, 18 BRBS 212 (1986). Further, the relevant consideration is whether the Claimant suffered an injury in the broadest sense, not whether a specific medical diagnosis has been properly rendered. *See Walkley v. SEII, Inc.*, BRB No. 09-0573 (April 23, 2010)(unpub.). Additionally, “subjective complaints can, in appropriate cases, ground a finding of permanent disability.” *Sylvester v. Bethlehem Steel Corp.*, 14 BRBS 234, 236 (1981), *aff’d sub nom., Sylvester v. Director, OWCP*, 681 F.2d 359, 363 (5th Cir. 1982).

Psychological injuries related to work have long been recognized as compensable conditions under the Act. *See e.g., Director, OWCP v. Potomac Electric Power Co.*, 607 F.2d 1378, (D.C. Cir. 1979). Furthermore, these injuries may be compensable even if the claimant did not suffer from another physical, external injury or harm. *See Urban Land Institute v. Garrell*, 346 F.Supp. 699 (D.C. Cir. 1972) (substantial evidence supported the finding the stressful pressures of claimant's job precipitated her nervous reaction, for which there was no physical or external cause); *Butler v. District Parking Management*, 363 F.2d 682 (D.C. Cir. 1966) (employer failed to rebut presumption that claimant's schizophrenic reaction arose out of employment); *American Nat'l Red Cross v. Hagen*, 327 F.2d 559 (7th Cir. 1964) (affirming decision that claimant's working conditions triggered an acute schizophrenia reaction). "For a psychological harm to be caused by 'stressful' working conditions, the working conditions need not be circumstances universally recognized as 'stressful', they need only be occurrences that are stressful to that claimant." *S.K. [Kamal] v. ITT Industries, Inc.*, 43 BRBS 78, n. 1 (2009)(citing *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968)). Thus, the relevant central issue to evaluate is the Claimant's subjective reaction to the conditions or events to determine whether his reactions, symptomology and affects result in an injury. *Id.* (citing *Konno v. Young Brothers, Ltd.*, 28 BRBS 57 (1994)).

Working conditions/causation

In order to invoke the presumption under the "working conditions" prong, the Supreme Court has required a claimant to at least allege an injury that arises out of and in the course of employment. *U.S. Industries*, 455 U.S. at 615 ("Arising 'out of' and 'in the course of' employment are separate elements: the former refers to injury causation; the latter refers to the time, place, and circumstances of the injury"). On the other hand, a claimant does not need to introduce affirmative medical evidence that the working conditions in fact caused his harm; rather, he need only introduce a potential connection. *See generally Champion v. S&M Traylor Bros.*, 690 F.2d 285, 295 (D.C. Cir. 1982).

The causation requirement is even more relaxed under the Defense Base Act, which permits recovery for any injury arising out of the "zone of special danger" created by the "obligations or conditions" of Employment. *O'Leary v. Brown-Pacific-Maxon, Inc.*, 340 U.S. 504, 506-07 (1951)("[t]he test of recovery is not a causal relation between the nature of employment of the injured person and the accident. Nor is it necessary that the employee be engaged at the time of the injury in activity of benefit to his employer. All that is required is that the 'obligations or conditions' of employment create the 'zone of special danger' out of which the injury arose.")(internal citations omitted).

In the instant case, the Claimant credibly testified regarding his employment in Iraq and how it caused him stress. The Claimant's testimony is supported by the medical records of the Combat Support Hospital, Canadian Specialist Hospital in Dubai, and Jefferson Behavioral Health and Dr. Deol. The records of the Combat Support Hospital indicate the Claimant was admitted in August 14, 2009 for sleep deprivation and strong passive suicidal ideation ("SI") (CX. 7, p. 3 and 5). He was also disoriented. (CX. 7, p. 3). The records further indicate severe work-related stressors and resultant poor sleep which resulted in his being flown out of Camp Paliwoda for safety reasons. (CX. 7, p. 4). The Axis IV diagnosis provided by Dr. Gary

Drouillard, a medical doctor specializing in psychiatry, was “work/occupational stress”. (CX. 7, p. 5).

The Claimant was subsequently admitted to Canadian Specialist Hospital and remained for 10 days. (CX. 8, p. 1-3). The Claimant was under close observation and received medications, including Olanzapine, Sodium Valproate and Clonazepam. (CX. 8, p. 1). Dr. Mohamed Sameh Talib, a medical doctor specializing in psychiatry at Canadian Specialist Hospital, diagnosed acute stress disorder and recommended continued treatment and three weeks sick leave upon the Claimant’s discharge. (CX. 8, p. 1-2).

On July 22, 2011, the Claimant presented for psychiatric evaluation at Jefferson Behavioral Health and was immediately transferred for hospitalization to Trinity Medical Center where he was diagnosed with major depression with psychotic features and post-traumatic stress disorder. (CX. 10, p. 1-272 and CX. 14, p. 9, lines 2-18). Dr. Prabhjot Deol, a medical doctor specializing in psychiatry, was on call at Trinity Medical Center and evaluated the Claimant the day following his admission. (CX. 14, p. 10, lines 1-6).

The Claimant presented with many issues during Dr. Deol’s initial evaluation, including reported flashbacks and nightmares and suicidal statements. (CX. 14, p. 10, line 18 to p. 11, line 22). Dr. Deol advised the Claimant was suicidal and psychotic at the time of his initial evaluation. (CX. 14, p. 11, line 23 to p. 12, line 1). Dr. Deol formed an initial diagnosis of depression and psychotic features, as well as post-traumatic stress disorder. (CX. 14, p. 12, lines 16-21).

I find the records of Combat Support Hospital, Canadian Specialist Hospital and Jefferson Behavioral Health documenting the Claimant’s complaints to be compelling. I also find the opinions and medical diagnoses of Drs. Gary Drouillard and Mohamed Sameh Talib to be credible. The sworn testimony of Dr. Prabhjot Deol, Claimant’s treating physician, is also credible, and I accept his opinions regarding diagnoses and causation.

Dr. Deol testified that it is reasonable for the Claimant to perceive the events experienced during the course of his employment, including the attacks on the bases and viewing the bombed out buildings, as stressful. (CX. 14, p. 21, lines 17-23). The emergence of the Claimant’s symptoms is consistent with the events that he was exposed to during the course of his employment in Iraq. (CX. 14, p. 23, lines 2-5). The Claimant’s symptoms in July 2011 were consistent with those of someone who had been exposed to a war zone and were directly related to his diagnosis. (CX. 14, p. 22, lines 6-25). Dr. Deol opined that the Claimant’s exposure to the trauma and stressful conditions of his employment caused his current psychiatric illness, including depression and post- traumatic stress disorder. (CX. 14, p. 23, lines 6-21).

Regarding his working conditions, the Claimant described living on the bases in Iraq as tough. (T., p. 31, lines 25-32, line 2). The Claimant worked seven days per week, usually twelve hours per day, though on occasions even worked up to thirty-six hours consecutively. (T., p. 32, lines 11-19). The Claimant was under intense pressure to perform the responsibilities of his job and under additional pressure due to the threat of attack. (T., p. 33, lines 16-21). The Claimant, in fact, was on the military bases in Iraq at different times when they came under

attack. (T., p. 33, lines 22-24). He estimated being present for approximately 100 mortar attacks. (EX. 10, p. 101). The Claimant also testified regarding specific stressful incidents, including a mortar attack where he was located on the edge of the base near the wire and they were anticipating insurgents coming on to the base as the mortars were fired from just outside the wire. (T., p. 33, lines 4-15 and EX. 10, p. 101-102). This particular incident led to the Claimant emotionally breaking down and crying during a meeting with the Employer's human resources department. (T., p. 33, lines 2-4 and EX. 10, p. 99).

The Claimant also described an experience when he flew in a helicopter during the daylight and witnessed numerous houses reduced to rubble. (T., p. 34, lines 19-25). This impacted the Claimant as he recognized that families had been killed when their homes were destroyed. (T., p. 34, lines 25 to page 35, line 8). The Claimant also encountered small arms fire at Camp War Horse and saw equipment that had been blown up. (EX. 10, p. 102-104).

Accordingly, I find that the Claimant has established a *prima facie* case that he sustained a harm (psychological injury) and conditions existed at work (stressful war zone) that could have caused the harm. Thus, the Claimant is entitled to the Section 20(a) presumption which presumes that the Claimant's injury arose out of and in the course of his employment.

Employer/Carrier's Rebuttal

Once the Section 20(a) presumption has been invoked, the burden shifts to the Employer/Carrier to rebut the presumption with substantial evidence that the Claimant's condition is not related to his employment. *See Port Cooper/T. Smith Stevedoring Co., Inc. v. Hunter*, 227 F.3d 285 (5th Cir. 2000); *Conoco, Inc. v. Dir., OWCP*, 194 F.3d 684 (5th Cir. 1999); *Gooden v. Dir., OWCP*, 135 F. 3d 1066 (5th Cir. 1998). In order to rebut the presumption, the Employer must produce substantial evidence that the Claimant's condition was not caused, aggravated, or contributed to by the work accident. *See, e.g., Brown v. Jacksonville Shipyards, Inc.*, 893 F. 2d 294, 297 (11th Cir. 1990); *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 1082 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976), *Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984).

In the present case, Employer/Carrier has offered no evidence to refute a determination that Claimant's perceived his work environment in Iraq as stressful. The only evidence offered by the Employer/Carrier to rebut the Section 20(a) presumption is the opinion of Dr. Joseph Ricker, who is a psychologist, not a medical doctor. Dr. Ricker examined the Claimant once, in December of 2011. At the time of the examination, the Claimant was treating with Dr. Deol and taking Citalopram, an antidepressant, and Seroquel, a mood stabilizer and antipsychotic, in addition to seeing a counselor. (EX. 11, p. 28, lines 17-24). Dr. Ricker opined the Claimant most likely has major depression. (EX. 11, p. 33, line 15 to p. 34, line 3).

Dr. Ricker's opinion is limited in that he opined that, as of the date of his examination, he did not believe the Claimant's emotional status was causally related to his employment in Iraq. (EX. 11, p. 77, line 15 to page 78, line 2). Dr. Ricker does note the Claimant's psychiatric symptoms, namely suicidal and homicidal ideation in August of 2009. (EX. 1, p. 11). Dr.

Ricker, in both his report and deposition testimony, confirms the presence of a psychological injury.

I find Dr. Deol's testimony regarding these aspects of Dr. Ricker's report to be relevant. Dr. Deol advises that in his review of the report Dr. Ricker confirms post-traumatic stress disorder but that the symptoms were not present at the time of the December, 2011 evaluation. (CX. 14, p. 52, lines 4-8). Dr. Deol explains that Dr. Ricker's one-time evaluation was a cross-section of the Claimant's condition and that the DSM-IV evaluation confirmed post-traumatic stress disorder. (CX. 14, p. 55, line 18 to p. 56, line 3). Dr. Ricker's cross-section evaluation was performed at a time when the Claimant's thought process had improved and he was more coherent and logical. (CX. 14, p. 58, lines 8-14). Dr. Ricker's cross-section evaluation does not provide a final diagnosis but, rather, confirms the Claimant met the criteria for post-traumatic stress disorder but did not have the symptoms at the time of the evaluation. (CX. 14, p. 62, line 21 to p. 63, line 2). Once an individual is diagnosed with post-traumatic stress disorder they are never cured of it. Rather, the symptoms of post-traumatic stress disorder are treated and the focus is on helping an individual recover. (CX. 14, p. 63, line 4 to p. 64, line 11).

Dr. Deol's opinions are supported by Dr. Ricker himself when he testified that the treatment the Claimant has received thus far has been beneficial to him and that further improvement is expected with continuing treatment. (EX. 11, p. 45 lines 11-20). Dr. Ricker would not advise the Claimant to discontinue the current medication protocol. (EX. 11, p. 73, lines 13-24). Dr. Ricker further testified that it would probably not be advisable for the Claimant to return to work in Iraq at this time. (EX. 11, p. 74, lines 8-14). Dr. Ricker concurs with all of the treatment provided to Claimant and agrees that his condition is improved from his July, 2011 hospitalization. Dr. Ricker's opinions waver on various aspects of the Claimant's condition and diagnoses, but it confirms the existence of a psychological injury.

Furthermore, Dr. Ricker had a limited understanding of the legal standard of causation under the Defense Base Act. (EX. 11, p. 52, line 22 to p. 53, line 22). The Employer/Carrier did not provide him with a definition of causation under the Defense Base Act. (EX. 11, p. 68, lines 16-21). Dr. Ricker could not state within a reasonable degree of psychological certainty that the stressors of the Claimant's employment in Iraq did not cause his psychological condition. (EX. 11, p. 70, line 22 to p. 71, line 13). Dr. Ricker's opinion is equivocal and, accordingly, the Employer/Carrier has not submitted substantial evidence to rebut the Section 20(a) presumption that the Claimant's condition is work-related.

Nature and Extent of Disability

Under the Act, "disability" is defined as the "incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment." 33 U.S.C. § 902(10). To establish a *prima facie* case of total disability, a claimant must show that he cannot return to his regular or usual employment due to his work-related injury. See *Crum v. General Adjustment Bureau*, 738 F. 2d 474, 479 (D.C. Cir. 1984) ("[i]n order to be found disabled, claimant must establish an inability to return to his usual employment."). "Usual" employment is a claimant's regular duties at the time that he was injured. *Ramirez v. Vessel Jeanne Lou, Inc.*, 14 BRBS 689 (1982). A physician's opinion that his patient's return to

his usual or similar work would aggravate his condition may support a finding of total disability. *Care v. Washington Metro. Area Transit Authority*, 21 BRBS 248 (1988).

Dr. Deol opined that the Claimant has not reached maximum medical improvement for his psychological injury and that it would be contra-indicated for him to return to work in a war zone based upon his symptoms and diagnoses. (CX. 14, p. 23, line 22 to p. 24, line 11). Moreover, Dr. Deol opined that the Claimant is not capable of sustaining any employment at present. (CX. 14, p. 25, line 16 to p. 26, line 13). Dr. Ricker also opined that the Claimant has not reached maximum medical improvement and that it would not be advisable for him to return to work in Iraq at this time.

By showing that he is unable to return to his regular employment due to a work-related injury, the Claimant established a *prima facie* case of total disability. Once a claimant establishes a *prima facie* case, the burden shifts to the Employer to demonstrate that suitable alternate employment exists. *See Nguyen v. Ebbtide Fabricators*, 19 BRBS 142, 144-145 (1986). Generally, to establish the existence of suitable alternate employment, an employer must show the existence of realistically available job opportunities in the relevant community, which the claimant is capable of performing, considering his age, education, work experience and physical restrictions. *Patterson v. Omniplex World Services*, 36 BRBS 149, 154 (2003); *see also Crum*, 738 F. 2d at 479 (“Once claimant [shown an inability to return to his usual employment], the burden shifts to the employer to establish suitable alternate employment opportunities available to claimant considering his age, education and work experience.”).

In this case, Employer/Carrier has presented no evidence establishing the availability of suitable alternate employment for the Claimant. In the absence of such evidence—and absent a showing that Claimant has reached maximum medical improvement—Claimant is entitled to an award or temporary total disability benefits from July 22, 2011 to the present and continuing pursuant to the opinion of Dr. Deol. Additionally, Dr. Talib of the Canadian Specialist Hospital recommended three weeks sick leave as of the Claimant’s hospital discharge on August 29, 2009. Accordingly, Claimant is also awarded temporary total disability benefits from August 29, 2009 through September 18, 2009.

I find, however, that Claimant is not entitled to disability benefits during the period of September 19, 2009 through July 21, 2011. To begin with, there is no medical evidence supporting a finding that Claimant was totally disabled during this time. Additionally, Claimant traveled to Indonesia in February of 2010 and remained there for a year and four months before returning to the United States, thus making himself unavailable for treatment by his domestic physicians.

Section 7(a) Medicals

Section 7(a) of the Act provides that “[t]he employer shall furnish such medical, surgical, and other attendance or treatment . . . for such period as the nature of the injury or the process of recovery may require.” 33 U.S.C. § 907(a) (2006). I find that the Employer/Carrier is responsible for all psychiatric and psychological care from August 15, 2009, when the Claimant was initially admitted to the Combat Support Hospital, to the present and continuing, and

including treatment rendered by Dr. Deol, Jefferson Behavioral Health and Trinity Medical Centers, excluding any treatment rendered while Claimant resided in Indonesia. I also find the treatment rendered by Dr. Deol, Jefferson Behavioral Health and Trinity Medical Centers for the Claimant's psychological injury from July 22, 2011 to present has been both reasonable and necessary.

Gallbladder Injury

In the present case, Claimant presented to the Employer's medical clinic in Iraq on multiple occasions due to abdominal pain accompanied by nausea, vomiting and diarrhea. Clinic personnel were unable to diagnose the Claimant's condition or identify the cause of his pain. Upon his repatriation to the United States, the Claimant underwent a laparoscopic cholecystectomy (removal of the gallbladder). Claimant asserts that his gallbladder injury is compensable under the Act pursuant to the "zone of special danger" line of cases and that he is entitled to medical benefits which would include satisfaction of any lien that may be asserted by Heritage Valley Health System.

Upon review of the record, I find no evidence that miner sustained an accident or was subjected to working conditions that could have caused or aggravated his harm or pain. I also find no evidence that the "obligations or conditions" of [his] employment create[d] a 'zone of special danger' out of which the injury arose." *O'Leary*, 340 U.S. at 506-07. Therefore, Claimant is not entitled to the Section 20(a) presumption, and I do not reach the issues of rebuttal or payment of medical expenses.

Conclusion

Claimant has demonstrated that he sustained a psychological injury that could have been caused by his work in a stressful war zone. Therefore, he is entitled to the Section 20(a) presumption that his injury arose out of and in the course of his employment. As Employer is unable to rebut this presumption, Claimant is entitled temporary total disability compensation under Section 8(b) of the Act for the periods of August 29, 2009 to September 18, 2009 and July 22, 2011 to the present and continuing. Claimant has failed to establish that his gallbladder problems may have arisen from the conditions of his employment; therefore, he is not entitled to the Section 20(a) presumption with respect to that injury/harm, and I do not reach the issue of rebuttal. Finally, Claimant is not entitled to temporary total disability compensation for the period of September 19, 2009 through July 21, 2011 because there is no evidence of disability during this time, and because Claimant made himself unavailable for psychiatric/psychological treatment while living in Indonesia.

Order

Based on the above findings of fact and conclusions of law, **IT IS HEREBY ORDERED:**

1. Employer/Carrier shall pay the Claimant temporary total disability compensation under Section 8(b) of the Act based on an average weekly wage of \$1,911.64 and

compensation rate of \$1,200.62 from August 29, 2009 to September 18, 2009 and from July 22, 2011 to the present and continuing.

2. Employer/Carrier may terminate the Claimant's temporary total disability compensation if the Claimant makes himself unavailable for psychiatric and/or psychological treatment by Dr. Deol and/or any other qualified psychiatrist or psychologist by residing away from his doctors in the United States.

3. Employer/Carrier shall pay past medical expenses of the Claimant beginning August 15, 2009 and shall continue to provide all necessary treatment pursuant to Section 7 of the Act for the work-related psychological injury. This is to exclude the one year and four months, from on or about February 2010 until June 2011, that Claimant made himself unavailable for treatment by residing in Indonesia.

4. Employer/Carrier shall pay all appropriate interest under the Act on all of the above sums determined to be in arrears as of the date of service of this Order at the rate applicable under 28 U.S.C. § 1961.

5. Employer/Carrier shall pay reasonable fees and costs to the Claimant's attorney for securing the benefits herein. Claimant's attorney shall have thirty (30) days to file his attorney fee petition and the Employer/Carrier's attorney shall have twenty (20) days following the receipt of that petition to file objections thereto.

A

MICHAEL P. LESNIAK
Administrative Law Judge