



Issue Date: 16 April 2015

Case No.: 2014-LDA-00531

OWCP No.: 02-221909

In the Matter of

ROBERT G. HOBBS,
Claimant,

v.

SERVICE EMPLOYEES INTERNATIONAL, INC./
INSURANCE CO. OF THE STATE OF PENN.,
Employer/Carrier.

Appearances:

Gary B. Pitts, Esq., Pitts & Mills, Houston, TX
For Claimant.

James L. Azzarello, Jr., Esq., Thomas & Associates, Chicago, IL
For Employer/Carrier.

Before: Pamela J. Lakes
Administrative Law Judge

DECISION AND ORDER GRANTING BENEFITS

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901, *et. seq.*, as extended by the Defense Base Act, 42 U.S.C. § 1651, *et. seq.* ("the Act"), brought by Robert G. Hobbs ("Claimant"), against Service Employees International, Inc., ("Employer"), as insured by Insurance Company of the State of Pennsylvania ("Carrier").

The findings of fact and conclusions of law that follow are based upon my analysis of the entire record, including all evidence admitted and arguments made by the parties. Where pertinent, I have made credibility determinations concerning the evidence. Although Claimant is a resident of North Carolina, he filed this claim for compensation with the District Director in Jacksonville, Florida; accordingly, the law of the U.S. Court of Appeals for the Eleventh Circuit applies, in accordance with Section 3 of the Defense Base Act. *See generally* 42 U.S.C. §1653.

PROCEDURAL HISTORY

This claim arises out of an injury Claimant sustained to his left hip while working as a convoy lead in Iraq from 2006 through 2011. (Tr. 17; CX 10, 11).¹ Employer filed a First Report of Injury, Form LS-202, on October 18, 2011, noting that Claimant injured his left hip while working for Employer in Iraq. (EX 1). On January 17, 2012, Employer filed a Payment of Compensation without Award, Form LS-206, stating that Claimant would be paid a weekly compensation rate of \$1,206.80 beginning October 25, 2011. (EX 1). On February 20, 2014, Employer amended its Form LS-206, stating that Claimant would be paid a weekly compensation rate of \$222.92 beginning February 20, 2014. (CX 5; EX 1). On February 21, 2014, Employer filed a Notice of Final Payment or Suspension of Compensation Payments, Form LS-208, stating the reason for termination or suspension of payments as “benefits change to [Permanent Partial Disability] based on LMS 1-27-2014.” (EX 1). An informal conference was held on March 25, 2014. (CX 9).

On April 9, 2014, Employer filed a Notice of Controversion of Right to Compensation, asserting “Carrier disagrees with the Informal Conference Recommendations received April 7, 2014 specifically disputes claimant [Permanent Total Disability].” (EX 1-5). On May 12, 2014, this case was referred for a formal hearing, along with Claimant’s Pre-Hearing Statement, Form LS-18. (CX 10).² On June 20, 2014, a hearing was scheduled before the undersigned administrative law judge for November 19, 2014.³ Employer submitted Pre-Hearing Statement, Form LS-18, on July 8, 2013. (CX 11-1).

On November 19, 2014, a hearing was held before me in Washington, D.C. Claimant’s Exhibits 1-13 were duly admitted without objection, as were Employer’s Exhibits 1 to 10. (Tr. 8-10). Employer’s Witness and Amended Exhibit List, Employer’s Pre-Hearing Statement, and that parties’ Stipulation Form, filed on November 6, 2014, were admitted as ALJ-1. (Tr. 5). Claimant’s Pre-Hearing Statement and Exhibit and Witness List, filed on October 30, 2014, were admitted into evidence as ALJ 2. (ALJ 2; Tr. 5). The record is now CLOSED. **SO ORDERED.**

The parties were given 60 days to submit closing briefs. (Tr. 45). These deadlines were subject to extension by stipulation. *Id.* By letter dated December 22, 2014, Employer advised that the parties had received the hearing transcripts and agreed to a closing brief deadline on Friday, January 30, 2015. The parties’ post hearing briefs were timely filed on January 29, 2015, as stipulated, and this case is now ready for decision.

¹ Claimant’s Exhibits will be identified as “CX” followed by the exhibit number and Employer’s Exhibits will be identified as “EX” followed by the exhibit number. “EX 10” refers to Claimant’s deposition transcript. “Tr.” followed by a page number refers to the transcript of the hearing in this case.

² In his Amended LS-203, Claimant also listed an injury to his “body generally.” (CX 1).

³ On May 5, 2014, Claimant filed a letter, requesting that the hearing be held in Washington, DC.

STIPULATIONS

On November 6, 2014, Employer formally filed joint stipulations, which were clarified and admitted into evidence at the hearing on November 19, 2014. (ALJ 1; Tr. 5-7). The parties agreed to the following at hearing: (1) the LHWCA, 33 USC §901 *et. seq.*, as extended by the Defense Base Act, 42 USC §1651, *et. seq.* applies to this claim; (2) the date of injury was October 14, 2011; (3) an Employer/Employee relationship was in existence at the time of injury; (4) Employer was advised of the injury on October 14, 2011; (5) a Notice of Conversion was filed on April 9, 2014; (6) the date of the informal conference was March 25, 2014; (7) Average Weekly Wage was \$1,810.20; (8) Claimant reached Maximum Medical Improvement on December 16, 2013; (9) Claimant is permanently disabled; and (10) Employer/Carrier is currently providing benefits.⁴ *Id.*

ISSUE

The only issue before me is the nature and extent of Claimant's disability. (Tr. 7).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FACTS

Claimant's Testimony

Claimant was the only witness to testify at the hearing. Claimant was 52-years old at the time of the hearing. (Tr. 15). After high school, Claimant worked as a tire builder for Goodyear Tire and Rubber.⁵ (Tr. 15). Claimant next worked for about three years as a pre-load supervisor for UPS. (Tr. 15). He then started "driving over the road," which entailed going all over the country in 18-wheelers. (Tr. 16). In addition to that employment, he had some smaller "hit and miss" jobs. (Tr. 16).

Claimant testified that began working for Employer in Iraq on December 29, 2006, and continuously worked there until October 14, 2011, aside from coming home for "R&R" [rest and recreation]. (Tr. 16-17). Claimant first began working as a heavy truck driver, then as "bobtail" operator, and finally as convoy lead in 2011. (Tr. 17). At the hearing, Claimant testified that he never had any problems with his left hip or received treatment for his left hip before he worked in Iraq.⁶ (Tr. 16).

On October 14, 2011, during Claimant's inspection of his convoy, Claimant slipped from a step on his truck and fell onto the concrete sidewalk, landing on his left hip. (Tr. 17-19). Claimant testified: "...[I] went to get into the truck; and when my left leg stepped on the second

⁴ The Stipulations provide that medical benefits have been paid in an unspecified amount and compensation benefits were paid at a rate of \$1,206.80 from 10/25/11 to 02/10/14 and from 02/11/14 to the present at \$222.92. (ALJ 1).

⁵ Claimant graduated high school in 1980. (EX 10 at 7).

⁶ Although initially stating at his deposition that he had not had prior problems with his hip, Claimant testified later that he had received treatment for arthritis in his left hip prior to his deployment in Iraq. (EX 10 at 13, 34-35).

step up, it just slipped out from under me because...the ground was wet and my foot had gotten wet...My foot slipped off that second step and I fell back onto my hip.” (Tr. 17-18).

Claimant was taken to a dispensary at the base where the incident occurred, then transported back to his base, where he was treated “immediately” by the medics. (Tr. 20). Sometime after the injury, Claimant was sent to Canadian Hospital in Dubai for medical care. (Tr. 20). At the Hospital, Claimant was given the choice of having surgery there, or at home, and Claimant chose to be treated back in the United States. (Tr. 21).

Upon his return, Claimant testified that he sought treatment from Dr. Schaefer, Dr. McBrayer, and Dr. Wellman. (Tr. 21; see also EX 10 at 20-21, 34).

Over the course of 2012, Claimant underwent six surgeries on his left hip. (Tr. 21). The first was a total hip replacement in February 2012. (Tr. 22). Claimant testified at the hearing that a few days after the surgery he experienced “excruciating pain worse than before the surgery.” He explained: “And finally they realized I contracted MRSA, I’m assuming from the hospital.” (Tr. 22). In his second surgery, Claimant testified: “[The surgeon] went in and replaced [that] hip and cleaned it all out and everything. Put a new hip back in, but the MRSA was still there.” (Tr. 22). For his third operation, Claimant testified that he visited Dr. Samuel Wellman Duke because his prior surgeon “[didn’t] know what else to do with [him].” (Tr. 22). In Claimant’s third and fourth operations, a “spacer” was inserted into Claimant’s hip, to allow the doctors to treat Claimant’s MRSA. (Tr. 23). After Claimant’s infection healed in December 2012, Claimant testified that surgeons removed the spacer and inserted Claimant’s current hip. *Id.* As a result of his injury and subsequent treatment, Claimant testified that he now “walk[s] with a slight limp.” (Tr. 24).

Claimant underwent a Functional Capacity Test in November 2013, which yielded a Functional Capacity Evaluation. (Tr. 40, 43). Claimant remembers that the Evaluation determined that he could do very heavy physical demand work—a finding Claimant disagrees with. (Tr. 41). Claimant testified that Dr. Wellman did not agree with this finding either. (Tr. 41). Claimant testified that as a result of his disagreement with the findings, Dr. Wellman restricted Claimant to working eight hours, 1 hour standing, not lifting more than 50 pounds from the floor, and no prolonged walking. (Tr. 24, 41). Claimant testified at hearing that prolonged sitting, standing, and walking made his symptoms worse and that taking Aleve “provides relief as much as it can alleviate.” (Tr. 44). Claimant also testified that, as he reported on the Evaluation, he leans to the right while sitting to avoid pressure on the left hip. (Tr. 44).

Claimant understood that he reached Maximum Medical Improvement (“MMI”) on December 16, 2013. (Tr. 24). Claimant testified that he has not visited a doctor since he reached MMI. (Tr. 41). Claimant was not taking any prescription medications at the time of the hearing. (Tr. 41). Periodically throughout the hearing, Claimant stood to avoid prolonged sitting.

Claimant testified that he maintains a commercial divers' license that requires physician approval. (Tr. 41-42). Claimant testified that his last physical was on November 27, 2013, wherein Claimant was medically approved to be a commercial truck driver.⁷ (Tr. 42).

Claimant testified that since his return to the United States, he has found one job. (Tr. 24). Claimant stated that until August 2014 he worked for a company driving a dump truck for "about four months, without a problem." (Tr. 24). Claimant testified that after the owner of the company heard of Claimant's work restrictions, "he immediately terminated me because he deemed me a liability." (Tr. 25). Claimant was being paid about \$12.83 or \$12.87 per hour and working a 40-hour workweek, generally 8 hours per day, although the hours could vary from 4 to 9 daily.⁸ (Tr. 25-26).⁹

Claimant stated that he has continued to look for work since he was terminated on August 15, 2014. (Tr. 26). For instance, Claimant testified that he has "applied to places like Advanced Auto, anywhere I could really find where I'm not constantly sitting or not constantly standing." However, Claimant has not applied to "places like McDonald's...because you're standing too long." *Id.* Claimant explained that he is looking for positions within his restrictions because he did not want to "work over them" and possibly get hurt: "No, I don't want six or seven surgeries." (Tr. 27).

Claimant testified that he has not looked for jobs abroad because "number one, I know there's not jobs out there I can do. Number two, my mother is 83-years old." (Tr. 28). Claimant testified that his mother has health issues and he is her only child that lives in the area. (Tr. 29).

Claimant received a labor market survey from Employer on or about March 5, 2014 that identified twelve positions available to Claimant.¹⁰ (Tr. 29; see also EX 10 at 26). Claimant testified that he applied to many of these positions online and only received a formal rejection from one of the positions. (Tr. 39). Claimant testified that he would not be able to perform any of the positions on the job market survey due to his restrictions. (Tr. 29-37). Claimant testified that he did not discuss whether the positions were beyond his physical restrictions with Dr. Wellman. (Tr. 39). Claimant stated that "[he] would disagree" with Dr. Wellman approving the positions for him. (Tr. 40). The positions identified by the labor market survey and Claimant's testimony are as follows:

1. Equipment operator for the City of Fayetteville: "The job was not available as of March 7, 2014, but I did apply to others within the city of Fayetteville." (Tr. 30).
2. Custodian for the Cumberland County Sherriff's Office: "That job was also closed when I received this and there was nothing else available within my restrictions with the Cumberland County Sherriff's Office. (Tr. 32).

⁷ During his deposition, Claimant stated that the medical examiner did not examine his hip or test his ability to bend or lift. (EX 10 at 38).

⁸ At his deposition, Claimant recollected that he was paid \$12.78 hourly. (EX 10 at 26). For purposes of assessing his wages during the period of employment, Claimant has accepted the \$12.87 hourly wage. *Claimant's Post-Hearing Brief* at 22.

⁹ At his deposition, Claimant testified he receives Social Security Disability Income and Medicare. (EX 10 at 31).

¹⁰ Shaun Mundy Aulita interviewed Claimant, and conducted a vocational rehabilitation consultation, for which she issued a report in January 2014. (EX 7).

3. Office Assistant for North Carolina State Human Resources: “I did not apply to that, because, again, I’m working off of what my doctor had told me and my restrictions and it says plainly stated in here, may require standing, walking, and prolonged sitting and not to mention the fact that I don’t know anything about Office and WordPerfect.” Claimant testified that he has never worked in an office before and was only able to “hunt and peck.” (Tr. 32).
4. Dispatcher for Delhaize America: “It was already closed. There was nothing else available.” (Tr. 33).
5. Customer Service Representative for Labor Ready: “...the job was not available.” (Tr. 33).
6. Customer Service Specialist for Ferrell Gas Company: “Customer service specialist with, I know, Ferrell Gas Company, which was going to require prolonged sitting, answering the phone, customer service rep.” (Tr. 33).
7. Receptionist for Health Works: “Again, I’ve never been in an office. I know nothing about the medical stuff and clerical and secretarial activities. I mean, I know nothing about this stuff.” (Tr. 33).
8. Call Center Representative for Sykes: “But, again, I felt that was beyond my restrictions because it says that may require standing, walking, and use of office machinery, which I don’t even know what that is...They would also want six months’ of experience in customer service required which I didn’t have.” (Tr. 34).
9. Property Custodian in Kuwait: “That job was closed.” (Tr. 34).
10. Supply Technician in Kuwait: “Again, the same thing, prolonged stooping, climbing, standing, sitting, walking for prolonged periods.” (Tr. 35).
11. Supply Technician in Kuwait: Claimant believed this position was beyond his restrictions. (Tr. 35).
12. Administrative Assistant: “Again, I had problems with the physical requirements of stooping, climbing, sitting, and standing—.” (Tr. 37).

Medical Records

Dr. Samuel Wellman: Dr. Wellman, an orthopedic surgeon, examined Claimant on several occasions, most recently for an evaluation on December 16, 2013. (CX 1; EX 6). Dr. Wellman initially treated Claimant for his infection and subsequent hip replacement on December 27, 2012. (CX 1). The first record provided is a report from a routine follow-up with Dr. Wellman after Claimant’s surgery on June 14, 2013. (CX 1). Dr. Wellman advised Claimant to “Continue activities as tolerated,” but refrain from high impact activities. *Id.* Claimant was advised to refrain from sitting more than an hour. *Id.* Dr. Wellman next saw Claimant on September 16, 2013. (CX 1; EX 4). Dr. Wellman again advised Claimant to refrain from high impact activities. *Id.* On December 16, 2013, Dr. Wellman examined Claimant for an evaluation and completed a DOL Work Capacity Evaluation form. (CX 1 at 8). Dr. Wellman determined that MMI was reached. *Id.* Dr. Wellman opined that “[Claimant] is not deployable overseas to combat zones as he is unable to move in a way to protect himself.” *Id.* The form indicated that Claimant could work, sit, and stand for 8 hours, “with hourly breaks” of ten minutes and could lift 100 pounds for up to four hours. *Id.* In a report based upon the same examination, Dr. Wellman clarified Claimant’s work restrictions:

No prolonged sitting greater than 45 min[utes] at a time. No lifting greater than 100 lb. No prolonged walking greater than 30 min[utes] at a time. He could certainly work any number of relatively strenuous jobs stateside, but we do not think it would be reasonable to send him back to a combat zone, given his complicated hip history and current level of function.

(EX 6).

Dr. W. Dickson Schaefer: Dr. Schaefer, a general Orthopedist, treated Claimant on several occasions before and after his injury in Iraq, for left hip pain. (EX 2). In an exam on April 5, 2011, Claimant reported to Dr. Schaefer that he had been experiencing left hip pain for the past 6 months. *Id.* Claimant underwent an MRI on April 6, 2011. (EX 2 at 7). On April 7, 2011, Dr. Schaefer gave Claimant a steroid injection in Claimant's left hip. (EX 2 at 9). Dr. Schaefer noted in his report dated February 2, 2012 that Claimant's MRI revealed that "[t]here is moderate joint space narrowing" in Claimant's left hip. *Id.* at 2.

Other Evidence

Correspondence with Dr. Schaefer's Office: Employer submitted two messages from Claimant to the office of Dr. Schaefer. (EX 5). In the first, dated May 31, 2011, Claimant reported that he would be returning from Iraq on June 24, 2011, and requested "another [left] hip injection..." Claimant reported that his symptoms had returned and he could not have surgery at that time. (EX 2 at 5). On June 24, 2011, Claimant contracted Dr. Schaefer's office asking how long his recovery would be if he were to have the surgery. (EX 2 at 6). Dr. Schaefer's office reported that Claimant was told his recovery would be two weeks on a walker, and about three months before he could return to Iraq. *Id.*

Dr. Daniel E. McBrayer: Dr. McBrayer is an Orthopedist and an associate of Dr. Schaefer, who interviewed Claimant after his return to the United States on November 8, 2011. (EX 3). Dr. Schaefer reviewed Claimant's previous x-rays from his April 2011 visit, and MRI from Claimant's October 2011 visit. *Id.* Initially, Claimant denied ever having been treated by Dr. Schaefer in the past and "acted confused," stating "that his son had previously seen Dr. Schaefer." *Id.* Dr. McBrayer recorded that Claimant later admitted that he had seen Dr. Schaefer in the past but "was trying to keep it out of the worker's compensation record." *Id.* In regards to his left hip injury, Dr. McBrayer recommended "physical therapy for motion and strengthening." *Id.* Dr. McBrayer recoded that "[he] would not see Claimant back as a patient." *Id.*

Functional Capacity Evaluation: Claimant underwent a Function Capacity Evaluation by Physical Therapist Elizabeth Davis, PT, DPT on November 12, 2013. (CX 13; EX 5). In a report dated November 14, 2013, Davis determined that Claimant was capable of performing "very heavy" physical demand level work. *Id.* Davis summarized, "Mr. Hobbs demonstrated the ability to occasionally lift up to 130 lbs. floor to waist, 110 lbs. waist to shoulder, carry up to 110 lbs., push 85 lbs. or force....Mr. Hobbs completed a single stage treadmill test at 2.0 m.p.h. and 5% grade. This was sufficient to predict his functional aerobic capacity at 3.52. METS (average classification) for an 8 hour time period." *Id.* Davis noted that Claimant had "...difficulties

sitting greater than 22 minutes due to increased left hip pain. He had to sit with his weight shifted to the right to tolerate sitting.” *Id.*

Labor Market Survey: Shaun Mundy Aulita conducted a vocational interview with Claimant on November 26, 2013. (EX 7; CX 12). She then conducted a labor market survey, which identified twelve positions. In compiling the labor market survey, Aulita considered Claimant’s “age, education, employment history, and physical capabilities” and “[f]urther considerations in local labor market search include distance from [Claimant’s] home (within 50 miles)...” (EX 7 at 14). Claimant’s copy of the survey includes Claimant’s notes regarding whether he applied to the jobs. (CX 12)

Dr. Wellman Approval of Labor Market Survey: Employer submitted descriptions of the twelve positions identified in the labor market survey, including Dr. Wellman’s signed approval of each of the positions. (EX 8).

Department of Labor Forms and Filings: As discussed above, Employer filed a First Report of Injury, Form LS-202, on October 18, 2011. (EX 1). On January 17, 2012, Employer filed a Payment of Compensation without Award, Form LS-206. *Id.* On February 20, 2014, Employer filed an amended Form LS-206. *Id.* On February 21, 2014, Employer filed a Notice of Final Payment or Suspension of Compensation Payments, Form LS-208. *Id.* On April 9, 2014, Employer filed a Notice of Controversion of Right to Compensation. *Id.* A Memorandum of Informal Conference relating to the March 25, 2014 conference was contemporaneously prepared. (CX 9). Claimant’s DOL Work Capacity Evaluation was prepared by Dr. Wellman on December 16, 2013. (CX 1). On May 12, 2014, Claimant filed a Pre-Hearing Statement, Form LS-18. (CX 10). Employer filed its Pre-Hearing Statement, Form LS-18 with this tribunal on July 8, 2014.¹¹

Wage and Earnings/Personal Records: The record includes Claimant’s 52-week pre-injury earnings, dated October 27, 2011. (CX 3; EX 9).

Letter from Highland Paving: The record also includes a signed letter from John W. McCauley, CEO of Highland Paving, dated August 19, 2014. (CX 8). In the letter, McCauley states the following:

[Claimant] has been employed by Highland Paving Co, LLC since April 2014. On August 15, 2014, [Claimant’s] employment at Highland Paving Co, LLC was terminated as a result of hour restrictions placed on [Claimant] by his attending physician. The limitations for working eight hour days only is inconsistent with the nature of our work, the hours of which are a function of the time required by specific paving projects which often exceed eight hours.

Id.

¹¹ Employer also filed a prehearing statement (OALJ form) on November 6, 2014. (ALJ 1). The parties also entered into written stipulations. (ALJ 1).

Claimant's Medical Expenses:¹² Claimant includes a mileage log and three invoices, showing two payments made by Claimant for medical visits. (CX 4). The mileage log shows that Claimant drove a total of 424.94 miles roundtrip to various doctor appointments on September 16, 2013, November 12, 2013, and December 16, 2013. (CX 4-2). An invoice dated January 23, 2014 shows a payment of \$70.50. (*Id.* at 4-3). An invoice dated April 11, shows a payment of \$68.50. (*Id.* at 4-5).

DISCUSSION

Nature and Extent of Disability

The only issue in this matter is the nature and extent of disability. Disability under the Act is defined as “incapacity because of injury to earn the 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. *Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988). “Usual” employment is defined as the claimant’s regular duties at the time that he was injured. *Ramirez v. Vessel Jeanne Lou, Inc.*, 14 BRBS 689 (1982). At the initial stage, a claimant need not establish he cannot return to *any* employment, only that he cannot return to his former employment. *Elliot v. C & P Tel. Co.*, 16 BRBS 89 (1984) (finding employee required lighter duty, which did not require the use of his right hand for heavy grip, and thus could not resume his former employment of holdman); *Harrison v. Todd Pac. Shipyards Corp.*, 21 BRBS 339 (1988) (finding due to permanent restrictions against heavy lifting and excessive bending, employee could not resume usual job as sandblaster). *See also* 33 U.S.C. § 902(10).

As factfinder, an administrative law judge must compare the claimant’s medical restrictions with the specific requirements of his usual employment. *Curit v. Bath Iron Works Corp.*, 22 BRBS 100 (1988). In doing so, “an administrative law judge is not bound to accept the opinion of any particular witness but rather, is entitled to weigh the credibility of all witnesses, including doctors, and draw his own inferences from the evidence.” *Lombardi v. Universal Maritime Serv. Corp.*, 32 BRBS 83 (1998). The Board held, in *Lombardi*, that the credited medical opinion of claimant’s treating orthopedic surgeon, in combination with the claimant’s testimony regarding his job requirements, constituted substantial evidence in support of a determination that the claimant’s impairment prevented him from performing his usual employment duties. *Id.*

It is well settled that a claimant can be totally disabled despite continuing to work if he only does so with extraordinary effort and in spite of excruciating pain. *See Louisiana Ins. Guar. Assoc. v. Bunol*, 211 F.3d 294 (5th Cir. 2000) (finding claimant established extraordinary effort when he testified that he worked in constant pain and his doctors placed restrictions on his physical activities at work); *Reposky v. Int’l Transp. Servs.*, BRB. Nos. 06-0148 and 06-0148A (Oct. 20, 2006) (finding extraordinary effort when claimant underwent numerous surgeries, took strong pain killers, and pushed her doctors to release her to work); *G.F. v. CSX Lines, Inc.*, BRB No. 08-0837 (June 24, 2009) (unpub.) (finding claimant was totally disabled when he testified

¹² Employer has conceded that Claimant is entitled to medical benefits. (ALJ 1).

that his pain level ranged from 7 to 10 but he continued working because he thought he “had to try to get through” and he missed some work because of his pain).

Once a claimant demonstrates that he is unable to perform his previous job due to a work-related injury, he has established a *prima facie* case of total disability and the burden shifts to his employer to prove the availability of suitable alternative employment. *See, e.g., Lentz v. Cottman Co.*, 852 F.2d 129 (4th Cir. 1988). To do so, an employer must show that there is a range of jobs available in the claimant’s geographic area which he is reasonably capable of performing and which he could realistically and likely secure given his age, education, and vocational background if he diligently pursued the opportunity. *Id.* at 131. If the employer establishes the existence of such employment, the employee’s disability is treated as partial, not total, unless the claimant can rebut by showing that he diligently tried yet was unable to secure employment. *See, e.g., Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 542 (4th Cir. 1988).

Total Disability

It is clear from the facts presented that Claimant cannot return to his regular employment as a convoy leader in Iraq. At hearing, Claimant testified that his position with Employer required him to be responsible for the convoy, which generally consisted of “...making sure all the freight is loaded, unloaded, accounted for from Point A to Point B.” (Tr. 17). Claimant testified that his convoy hit “several” improvised explosive devices while on a mission. (Tr. 18). Due to Claimant’s injury and six subsequent surgeries, Claimant testified at hearing that he now “walk[s] with a slight limp.” (Tr. 24). After reaching MMI in December 2013, Claimant’s treating physician, Dr. Wellman, gave Claimant the following work restrictions:

No prolonged sitting greater than 45 min[utes] at a time. No lifting greater than 100 lb. No prolonged walking greater than 30 min[utes] at a time. He could certainly work any number of relatively strenuous jobs stateside, but we do not think it would be reasonable to send him back to a combat zone, given his complicated hip history and current level of function.

(EX 6-3). Finally, Claimant’s treating physician determined that Claimant cannot return to work in a war zone. Dr. Wellman stated that “[w]e do not think [Claimant] is deployable given the fact that he is unable to move in a way that would allow him to protect himself.” (EX 6 at 3).

On the basis of the record provided, I conclude that Claimant has established that he is totally disabled from performing his previous job, in that he cannot return to his previous work as a heavy truck driver overseas due to injuries suffered on October 14, 2011. The burden thus rests upon the employer to demonstrate the existence of suitable alternative employment in the area. If the employer does not carry this burden, the claimant is entitled to a finding of total disability. *Am. Stevedores, Inc. v. Salzano*, 538 F.2d 933 (2d Cir. 1976); *Southern v. Farmers Export Co.*, 17 BRBS 64 (1985).

Suitable Alternative Employment/Labor Market Survey

Once the claimant meets his prima facie showing that he cannot return to his usual work, the burden shifts to the employer to show realistic job opportunities within the geographic area where the claimant resides (or resided at the time of the injury) that the claimant is capable of performing considering his age, education, work experience, and physical restrictions, and which he could secure if he diligently tried. *See, e.g., Edwards v. Dir., OWCP*, 999 F.2d 1374 (9th Cir. 1993); *P & M Crane Co. v. Hayes*, 930 F.2d 424 (5th Cir. 1991); *Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540 (4th Cir. 1988); *Trans-State Dredging v. BRB*, 731 F.2d 199 (4th Cir. 1984); *New Orleans (Gulfwide) Stevedores, Inc. v. Turner*, 661 F.2d 1031 (5th Cir. 1981); *Pilkington v. Sun Shipbuilding & Dry Dock Co.*, 9 BRBS 473 (1978).

The employer need not show an actual job offer but must show the existence of realistically available job opportunities within the geographical area where the employee resides which he is capable of performing considering his age, education, work experience, and physical restrictions, and which he could secure if he diligently tried. *Trans-State Dredging v. BRB [Tanner]*, 731 F.2d 199 (4th Cir. 1984). For the job opportunities to be realistic, however, the employer must establish their precise nature, terms, and availability. *Thompson v. Lockheed Shipbuilding & Constr. Co.*, 21 BRBS 94, 97 (1988); *Piunti v. ITO Corp. of Baltimore*, 23 BRBS 367, 379 (1990).

A failure to prove suitable alternative employment results in a finding of total disability. *Manigault v. Stevens Shipping Co.*, 22 BRBS 332 (1989); *Am. Stevedores v. Salzano*, 538 F.2d 933, 935 (2d Cir. 1976). “If the employer establishes the existence of such employment, the employee’s disability is treated as partial, not total.”¹³ *Palombo v. Dir., OWCP*, 937 F.2d 70 (2d Cir. 1991); *Seguro v. Universal Maritime Serv. Corp.*, 36 BRBS 28 (2002); *Rinaldi v. Gen. Dynamics Corp.*, 25 BRBS 128 (1991). The claimant may rebut an employer’s showing of alternative employment by demonstrating that he diligently tried but was unable to secure such employment. *Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540 (4th Cir. 1988); *Roger’s Terminal & Shipping Corp. v. Dir., OWCP*, 784 F.2d 687 (5th Cir. 1986).

Employer retained Shaun Aulita, a vocational rehabilitation counselor, to conduct a vocational interview with Claimant on November 26, 2013. (EX 7; CX 12). In addition to the phone interview, Aulita consulted Claimant’s medical records beginning in 2012, Claimant’s Independent Medical Evaluation, and Claimant’s Functional Capacity Evaluation, as well as several DOL filings. (CX 12-1). A labor market survey was thereafter compiled, which identified twelve positions. (CX 12). In compiling the labor market survey, Aulita considered Claimant’s “age, education, employment history, and physical capabilities. Further considerations in local labor market search includes distance from [Claimant’s] home (within 50 miles)...” (EX 7 at 14; CX 12). Additionally, Employer submitted descriptions of the twelve positions identified in the labor market survey to Dr. Wellman, who signed approval of each of the positions. (EX 8).

¹³ From the date of MMI until the date suitable alternate employment is shown, the claimant’s disability is total. *Stevens v. Dir., OWCP*, 909 F.2d 1256 (9th Cir. 1990).

Claimant testified at the hearing, that he could not apply to five of the twelve positions identified in the labor market survey because they were not available.¹⁴ (Tr. 30-34). He did not receive the survey, which was done on January 27, until early March, which could explain why some of the jobs were unavailable. (Tr. 32). It appears, however, that he was capable of performing at least some of these jobs.

For example, the Equipment Operator II position for the City of Fayetteville (Parks, Recreation and Maintenance) was not available, but it appears that he would have been able to perform the job. The position was approved by his physician, and the physical requirements were listed as:

May require sitting, standing, walking, lifting, bending, driving and operation of machinery. Employer agrees to provide reasonable accommodation to an individual with a disability. Must have possession of, or the ability to obtain within 60 days, a class B CDL [commercial driver's license] and maintain insurability. [Emphasis added.]

(EX 8). Inasmuch as he is an experienced driver with a commercial license, Claimant appears to have been qualified for this position; the job did not appear to require overtime (as the salary listed was based on a 40-hour week); and the employer, a municipality, was willing to provide accommodation for a disabled worker. Claimant indicated that he applied to other jobs with the City but was unsuccessful. (Tr. 30). The job paid \$13.48 hourly, \$539.20 weekly, and \$28,038.42 annually. (EX 8). Although Claimant may have been unsuccessful in obtaining this or similar employment with this employer, it appears that he was capable of performing the job and could have reasonably competed for the job or similar jobs.

Likewise, the Dispatcher position was also unavailable; however, his physician approved the physical restrictions of the job, which required ability to reach, stoop, bend and lift up to and including 30 pounds. (EX 8). As a high school graduate with transportation-related experience, he satisfied the stated job requirements. *Id.* That job paid over \$25,000 annually. *Id.*

It is unclear that Claimant could have reasonably competed for the other unavailable positions, even if they had been available:

1. Although Claimant applied for the Custodian position at the Cumberland County Sheriff's office, that job required six months of work experience "to include some janitorial duties in an office or commercial environment" or an equivalent combination of education and experience.
2. Even if the Customer Service Representative position for Labor Ready had been available, it is unclear whether Claimant's experience would have been qualifying for

¹⁴ 1. Equipment operator for the City of Fayetteville: "The job was not available as of March 7, 2014, but I did apply to others within the city of Fayetteville." (Tr. 30). 2. Custodian for the Cumberland County Sheriff's Office: "That job was also closed when I received this and there was nothing else available within my restrictions with the Cumberland County Sheriff's Office. (Tr. 32). 3. Dispatcher for Delhaize America: "It was already closed. There was nothing else available." (Tr. 33). 4. Customer Service Representative for Labor Ready: "...the job was not available." (Tr. 33). 5. Property Custodian in Kuwait: "That job was closed." (Tr. 34).

the job, which required two years of customer service or recent education/military experience.

3. The Property Custodian position in Kuwait, while approved by his physician, clearly would have been problematic for Claimant to perform, in that it was overseas and was physically demanding, including lifting up to 50 pounds, working overhead, raising arms for prolonged periods, wearing PPE [personal protective equipment], and stooping, climbing, standing, sitting and walking for prolonged periods.

Of the seven available positions, Claimant testified that he did not apply to six due to his physical limitations and the seventh because he lacked the qualifications.¹⁵ As to the position for Office Assistant for North Carolina State Human Resources, Claimant testified: “I did not apply to that, because, again, I’m working off of what my doctor had told me and my restrictions and its says plainly stated here, may require standing, walking, and prolonged sitting...” (Tr. 32). And for instance, as to the Customer Service Specialist for Ferrell Gas Company position, Claimant testified: “Customer service specialist with, I know, Ferrell Gas Company, which was going to require prolonged sitting, answering the phone, customer service rep.” (Tr. 33). Claimant made similar remarks as to the position of Call Center Representative for Sykes;¹⁶ two positions as a Supply Technician in Kuwait;¹⁷ and the administrative assistant position.¹⁸

In addition, even if all seven available positions had met Claimant’s physical restrictions, five positions would not have qualified as suitable alternative employment, as most were beyond Claimant’s vocational experience. *See Ceres Marines Terminal v. Hinton*, 243 F.3d 222, 35 BRBS 7 (CRT) (5th Cir. 2001) (affirming finding of no suitable alternative employment when illiterate worker who was eligible for consideration had limited math skills, advanced age, and an employment history that consisted entirely of heavy manual labor, making the identified employment unsuitable). Five of the seven available positions required Claimant to work in an office environment, although Claimant testified that he had never worked in an office environment. (Tr. 32). For instance, as to the Office Assistant for North Carolina State Human Resources, Claimant testified: “...I don’t know anything about Office and WordPerfect.” And as to the receptionist position at Health Works, Claimant testified: “Again, I’ve never been in an office. I know nothing about the medical stuff and clerical and secretarial activities. I mean, I know nothing about this stuff.” (Tr. 33). Finally, as to the Call Center Representative Position at Sykes, Claimant testified: “They would also want six months’ of experience in customer service required which I didn’t have.” (Tr. 34).

The final two remaining positions for “Supply Technician” are in Kuwait. (Tr. 35). However, while Dr. Wellman may have approved those positions for the Claimant, they are physically demanding and, like the other Kuwait position described above, are not within the appropriate geographical area.

¹⁵ The remaining position, a receptionist at Health Works, is not suitable alternative employment, as Claimant testified that does not have experience working in office environments. (Tr. 33). This position is addressed further in the next paragraph.

¹⁶ “But, again, I felt that was beyond my restrictions because it says that may require standing, walking, and use of office machinery, which I don’t even know what that is... (Tr. 34).

¹⁷ Claimant believed this position was beyond his restrictions. (Tr. 35).

¹⁸ “Again, I had problems with the physical requirements of stooping, climbing, sitting, and standing—.” (Tr. 37).

Employer asserts that it has established suitable alternative employment for these two jobs due to Claimant's long history of work overseas with Employer. (Employer's Brief at 15). Employer cites to *Patterson v. Omniplex World Services*, 36 BRBS 149, which holds that the relevant labor market for the purpose of establishing suitable alternate employment includes the market where Claimant worked overseas post-injury. *Patterson v. Omniplex World Servs.*, 36 BRBS 149, 153 (2003). However this argument is meritless. The court in *Patterson* analogized the case before it to those cases wherein an injured worked relocated subsequent to the date of his work-related injury, in which case the relevant labor market was determined after considering such factors as "claimant's residence at the time he files for benefits, his motivation for relocating, the legitimacy of that motivation, the duration of his stay in the new community, his ties to the new community, the availability of suitable jobs in the community as opposed to those in his former residence, and the degree of undue prejudice to employer in providing suitable alternative employment in a new environment." In *Patterson*, the court found that the Claimant's post-injury employment as a security guard overseas merited consideration for the purpose of determining suitable alternative employment. Here, in contrast, Claimant has not worked overseas since his injury in 2011 and did not relocate but, rather, returned to his home in the United States. There is simply no merit to the Employer's suggestion that the Claimant would be compelled to accept employment anywhere in the world simply because he was employed overseas in a war zone prior to the time of his injury.

Claimant was employed with Highland Paving Co. from April 1, 2014 until August 15, 2014. (Tr. 24-26). At that job, Claimant was being paid about \$12.83 to \$12.87 an hour. (Tr. 26). Claimant testified that he was terminated after about four months, when management learned of his restrictions. (Tr. 24-26). This testimony is supported in the record by signed letter from John W. McCauley, CEO of Highland Paving, dated August 19, 2014. (CX 8). In the letter, McCauley states the following:

[Claimant] has been employed by Highland Paving Co, LLC since April 2014. On August 15, 2014, [Claimant's] employment at Highland Paving Co, LLC was terminated as a result of hour restrictions placed on [Claimant] by his attending physician. The limitations for working eight hour days only is inconsistent with the nature of our work, the hours of which are a function of the time required by specific paving projects which often exceed eight hours.

Id. Thus, since Claimant's employment is inconsistent with the job restrictions placed by Dr. Wellman, the employment does not qualify as suitable alternative employment. Claimant has not found employment since his termination in August 2014. (Tr. 24).

Here, Employer identified two jobs for which Claimant could realistically apply, even though they were not available when he tried to apply for them, and Claimant has obtained employment, albeit for a short period in employment which he cannot currently perform. Nevertheless, it is clear that there are some jobs that he could realistically compete for, the most lucrative of which is the Equipment Operator position for the City of Fayetteville, which paid \$13.48 hourly, \$539.20 weekly, and \$28,038.42 annually. (EX 8). Although Claimant was unable to obtain that position, he would nevertheless have been able to compete for the position

or a comparable position. Accordingly, I find that the Employer established the existence of suitable alternative employment.

Diligence of Search for Employment

Although Claimant has applied to multiple positions, and has maintained his commercial driver's license, as of the time of the hearing, he was unemployed. When, as here, suitable alternative employment has been established, it is insufficient for a claimant to merely show that he is unemployed; rather, a claimant must establish that he has exercised diligence in his job search:

[T]he burden placed on the employee does not displace the employer's *initial* burden of demonstrating job availability... If the employer makes such a showing, the employer's burden has been met, and the claimant can then prevail if he demonstrates that he diligently tried and was unable to secure such employment.

Roger's Terminal, 784 F.2d at 691 (emphasis in original).

Here, I find that Claimant has established that he exercised due diligence in his job search. He applied to each of the position identified by Employer's vocational expert for which he was qualified, and, for those positions that were unavailable, he sought other positions from the same employer (as, for example, the City of Fayetteville.) He would have continued with his job with Highland Paving were it not for the fact that they needed someone who was physically capable of working overtime, which was incompatible with Claimant's restrictions.

In short, it is clear that Claimant wants to work and has exercised due diligence in his search for employment but, unfortunately, he has been unsuccessful. I therefore find that he is totally disabled, except for the short period when he was actually employed, when he was partially disabled.

Permanency of Disability/Maximum Medical Improvement

Having established that Claimant is totally disabled, I must determine whether his disability is temporary or permanent in nature. A permanent disability exists 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 healing period." *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649, 854 (5th Cir. 1968), *cert. denied*, 394 U.S. 976 (1969). Viewed another way, a disability is permanent when the employee reaches "maximum medical improvement" ("MMI.") *See, e.g., Luce v. Bath Iron Works Corp.*, 12 BRBS 162 (1979). Whereas the extent of a disability—total versus partial—involves both a medical and an economic analysis, the determination of whether a disability is permanent is based on medical evidence alone. *Id.* Where a claimant's condition is still improving, MMI has not been reached and the disability is not yet permanent. *Dixon v. John J. McMullen & Assoc.*, 19 BRBS 243, 1986 WL 66395 (1986).

At the hearing and in the stipulation form filed at the time of the hearing, the parties stipulated that Claimant's disability was permanent and that he reached MMI on December 16, 2013. (Tr. 5-7, ALJ 1). Having reviewed the record, and particularly the medical opinion of Dr. Wellman based upon his December 16, 2013 examination of the Claimant, I find that the facts support the stipulation. (EX 6). Accordingly, I find that Claimant's disability was temporary from October 25, 2011 to December 16, 2013 and permanent thereafter.

Entitlement to Disability Benefits

Under 33 U.S.C. § 908(a) [permanent total disability or PTD] and (b) [temporary total disability or TTD], a totally disabled employee is entitled to receive 66 and 2/3 per centum of his average weekly wage, subject to the statutory cap. 33 U.S.C. §908(a), (b); §906(b). The stipulated average weekly wage (AWW) is \$1,810.20.

Hip injuries are considered unscheduled injuries, compensable under Section 8(c)(21) of the Act, 33 U.S.C. §908(c)(21), for permanent partial disability (PPD) or 33 U.S.C. §908(3) for temporary partial disability (TPD). Unscheduled injury awards based upon partial disability are calculated as two-thirds of the difference between a claimant's prior average weekly wage and the employee's post-injury wage-earning capacity. 33 U.S.C. §908(c)(21), (e). Pursuant to section 8(h) of the Act, a claimant's wage earning capacity for an unscheduled injury shall be determined by his actual earnings if representative of his actual wage-earning capacity.¹⁹

Based upon the above, I find that Claimant is entitled to Temporary Total Disability benefits (TTD) from October 25, 2011 to December 16, 2013 [the date of MMI]; Permanent Total Disability (PTD) benefits from December 16, 2013 to April 1, 2014; Permanent Partial Disability (PPD) benefits from April 1, 2014 to August 15, 2014 [during his short period of employment with Highland Paving]; and Permanent Total Disability (PTD) benefits from August 15, 2014 to Present. Claimant has already been paid TTD from October 25, 2011 to February 10, 2014 at a compensation rate of \$1,206.80 weekly, based upon 2/3 of his AWW of \$1,810.20 and he has been paid partial disability benefits at a rate of \$222.02 subsequently. (ALJ 1; EX 1). The PPD benefits for his brief period of employment will be computed based upon the difference between the stipulated average weekly wage of \$1,810.20 and his actual wages of \$514.80 (\$12.87 per hour times 40 hours per week). As noted, Employer has continued to pay benefits, initially for total disability and subsequently at a reduced (partial disability) rate. Employer shall be credited with all amounts paid, in accordance with the computations made by the District Director.

¹⁹ Under subsection (h): "The wage-earning capacity of an injured employee in cases of partial disability under subsection (c)(21) of this section or under subsection (e) of this section shall be determined by his actual earnings if such actual earnings fairly and reasonably represent his wage-earning capacity: Provided, however, That if the employee has no actual earnings or his actual earnings do not fairly and reasonably represent his wage-earning capacity, the deputy commissioner [district director] may, in the interest of justice, fix such wage-earning capacity as shall be reasonable, having due regard to the nature of his injury, the degree of physical impairment, his usual employment, and any other factors or circumstances in the case which may affect his capacity to earn wages in his disabled condition, including the effect of disability as it may naturally extend into the future."

Penalties and Interest

Section 14(e) of the Act provides that an employer is liable for an additional 10 percent added to uninstalled payments if the employer fails to pay compensation voluntarily within 14 days after it becomes due, unless the employer filed a timely notice of controversion or the District Director excuses such nonpayment. 33 U.S.C. § 914(e). Under Section 14(b), compensation is “due” on the 14th day after employer receives notice or has knowledge of the injury; thus employer must then pay compensation within 28 days from the date of notice to avoid penalties. 33 U.S.C. § 914(b). Alternatively, if the employer controverts claimant’s entitlement, it must file its notice of controversion within 14 days of its notice or knowledge of the alleged injury. § 914(d). Failure to timely pay or controvert triggers Section 14(e). Inasmuch as Employer has voluntarily paid benefits, Claimant is not entitled to an award of penalties.

Although the Act does not provide for interest to be paid on past due disability benefits, courts have upheld interest awards as consistent with the Congressional purpose of making claimants whole for their injuries. *See, e.g., Strachan Shipping Co. v. Wedemeyer*, 452 F.2d 1225 (5th Cir. 1971), *cert. denied*, 406 U.S. 958 (1972); *Avallone v. Todd Shipyards Corp.*, 10 BRBS 724 (1974). In *Santos v. General Dynamics Corporation*, 22 BRBS 226 (1989), the Board dictated that interest, when allowable, should be calculated on a simple rather than a compound basis. *Id.* at 228 (citing *Stovall v. Ill. Cent. Gulf. R.R. Co.*, 722 F.2d 190 (5th Cir. 1984)). The appropriate interest rate is that employed by the United States District Courts under 28 U.S.C. § 1961, which is periodically changed to reflect the yield on United States Treasury Bills. *Grant v. Portland Stevedoring Co.*, 16 BRBS 267 (1984), *modified on reconsideration*, 17 BRBS 20 (1985). This Order incorporates that statute by reference and provides for its specific administration by the District Director.

Attorney’s Fees And Costs

As Claimant has substantially prevailed on the disputed issue, reasonable and necessary attorney’s fees are awarded. 33 U.S.C. § 928; 20 C.F.R. §§ 702.131-702.135. Costs may also be awarded, including witness fees and expenses for transcripts. 33 U.S.C. § 928(d). Claimant’s attorney shall have 30 days to submit a fee petition and bill of costs, after which Employer shall have 30 days to file any objections. In the fee petition, Claimant’s attorney shall advise whether an informal conference was held and its significance. The issue of attorneys’ fees and costs will be addressed in a supplemental decision and order.

CONCLUSION

Based on the foregoing findings of fact, conclusions of law, and all evidence of record, I find that Claimant reached maximum medical improvement on December 16, 2013, as stipulated, and he was temporarily totally disabled until that date; he was permanently totally disabled from December 16, 2013 to April 1, 2014; he was permanently partially disabled from April 1, 2014 to August 15, 2014; and he has been permanently totally disabled from August 15, 2014 to the present. In accordance with 33 U.S.C. § 908(b), 66 and 2/3 per centum of his

stipulated average weekly wage of \$1,810.20 is compensable under the Act, subject to the statutory cap, 33 U.S.C. § 906(b). The PPD benefits for his brief period of employment will be computed based upon two thirds of the difference between the stipulated average weekly wage of \$1,810.20 and his actual wages of \$514.80. Additionally, Claimant is entitled to interest calculated in accordance with 28 U.S.C. § 1961 on the unpaid deficit compensation. Accordingly,

ORDER

IT IS HEREBY ORDERED that Claimant's claim against Employer/Carrier for compensation benefits is **GRANTED** to the extent set forth above;

IT IS FURTHER ORDERED that Employer/Carrier shall pay Temporary Total Disability benefits (TTD) from October 25, 2011 to December 16, 2013; Permanent Total Disability (PTD) benefits from December 16, 2013 to April 1, 2014; Permanent Partial Disability (PPD) benefits from April 1, 2014 to August 15, 2014 (based upon the difference between the stipulated average weekly wage of \$1,810.20 and Claimant's actual wages of \$514.80); and Permanent Total Disability (PTD) benefits from August 15, 2014 and continuing during the period of disability, with interest on accrued benefits, to the extent not already paid, as set forth above, and Employer/Carrier shall be credited with all amounts paid;

IT IS FURTHER ORDERED that the District Director is authorized to make and adjust any calculations necessary to implement this Order; and

IT IS FURTHER ORDERED that Claimant's attorney shall file a fully supported and itemized petition for attorney's fees and costs within thirty (30) days of the service of this Decision and Order, and that Employer/Carrier shall file any objections within thirty (30) days of service of Claimant's petition.

PAMELA J. LAKES
Administrative Law Judge

Washington, D.C.