

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 01 July 2015 CASE NO.: 2014-LDA-00224

OWCP NO.: 02-243125

In the Matter of

LE FONZE WILLIAMS, III,
Claimant,

v.

COMPUTER SCIENCES CORP.,
Employer,

and

ZÜRICH AMERICAN INSURANCE CO.,
Carrier.

Appearances: GARY B. PITTS, Esquire
 For the Claimant

 ERIC STOCKEL, Esquire
 For the Employer and Carrier

Before: CHRISTINE L. KIRBY
 Administrative Law Judge

DECISION AND ORDER AWARDING BENEFITS

This is a claim for benefits under the Defense Base Act (hereinafter “DBA”), 42 U.S.C. § 1651, *et seq.*, and implementing regulations found at 20 C.F.R. part 704, brought by the Claimant against his former Employer and his Employer’s insurance carrier. Except where specifically modified, the Defense Base Act incorporates the provisions of the Longshore and Harbor Workers’ Compensation Act, (“the Act”) 33 U.S.C. § 901 *et seq.*, with regard to the payment of medical expenses and compensation for disability of employees engaged in employment outside the United States pursuant to a contract with the United States or an executive department thereof.

This matter was referred to the Office of Administrative Law Judges on January 14, 2014. I conducted a hearing on this claim on September 29, 2014, in Washington, D.C. All parties were afforded a full opportunity to present evidence and argument, as provided in the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative

Law Judges, 29 C.F.R. part 18. At the hearing, I admitted Administrative Law Judge Exhibits (“ALJX”) 1, Claimant’s Exhibits (“CX”) 1-13 and Employer’s¹ Exhibits (“EX”) 1-18. (Hearing Transcript “Tr.” at 5-8). At the hearing, I granted Claimant leave to file CX 14, a rebuttal report by Dr. Capehart, post-hearing and stated that I would leave the record open for 30 days for that purpose. (Tr. at 7). Claimant submitted CX 14 on October 20, 2014. Claimant filed a post-hearing brief on December 9, 2014. On April 8, 2015, I granted an extension for the submission of Employer’s brief until May 4, 2015. Employer did not file a post-hearing brief.

In reaching my decision, I have reviewed and considered the entire record pertaining to the claim before me, including all exhibits, testimony, and arguments of the parties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Stipulations

At the hearing, the parties submitted the following written stipulations:

1. Date of injury/accident: 03/20/12.
2. There was an Employer/Employee relationship at the time of the injury.
3. Employer was advised of injury on 06/25/13.
4. The Notice of Controversion was filed on 07/23/13, 07/25/13.
5. The District Director’s Informal Conference was conducted on 12/02/13.
6. The Claimant’s average weekly wage at the time of injury was \$3,653.85.
7. Benefits have not been paid.

(Tr. at 7-8, ALJX 1).

These stipulations have been admitted into evidence, and are therefore binding upon the Claimant and Employer. *See* 29 C.F.R. § 18.51; *Warren v. National Steel & Shipbuilding Co.*, 21 BRBS 149, 151-52 (1988). Coverage under the Act cannot be conferred by stipulation. *See Littrell v. Oregon Shipbuilding Co.*, 17 BRBS 84, 88 (1985). However, I find that such coverage is present here.

I have carefully reviewed the foregoing stipulations and find that they are reasonable in light of the evidence in the record.

Contentions of the Parties

Claimant asserts that he sustained a psychological injury, post-traumatic stress disorder (“PTSD”), due to the conditions of his employment with Computer Sciences Corporation in Afghanistan. He asserts that due to this work-related injury, he is unable to return to his regular or usual employment. Claimant denies that he had any pre-existing PTSD problems due to his service in the Gulf War approximately 23 years ago. He argues alternatively that if he had any such pre-existing PTSD problems, they were aggravated or accelerated by his more recent employment by Employer in a war zone. He seeks reasonable and necessary medical treatment,

¹ Throughout this document I will refer to Employer/Carrier collectively as “Employer.”

including reimbursement of his medical expenses. He asserts that he is entitled to temporary total disability compensation from June 28, 2013 to the present and continuing, subject to any credit Employer may have for payments made under a separate claim (for an arm injury), as well as attorney's fees and expenses.

Employer agrees with the accuracy of Claimant's asserted work history, medical treatment, and various diagnoses. Employer questions the nature and extent of Claimant's injuries. Employer asserts that Claimant's PTSD was pre-existing and dated from his military service in the Gulf war. Employer asserts that Claimant's condition was not aggravated or accelerated by his employment with Computer Sciences Corporation.

Issues

1. Fact of injury;
2. Causation/aggravation/acceleration of condition;
3. Nature and extent of disability;
4. Section 7 benefits, including reimbursement;
5. Attorney's fees and expenses²

Claimant's Testimony

Direct Examination

Claimant testified that he is 43 years old. After finishing high school, he joined the Army and worked in logistics and transportation for four years between the ages of 18 and 22. In 1991, he was deployed to the Gulf War in Saudi Arabia and Iraq for 10 months. His job during the four-day land war was to haul supplies from the port to the front lines. He did not see anyone from his unit get killed, but as he was driving through the front lines, he passed the bodies of 700 Iraqi soldiers who had been shot and burned in the war. Following the war, he remained in the Army for another two to three years. During his time in the Army, he did not seek any psychiatric care. He did not take any medication for psychological stress or have a problem with insomnia. He thinks he adjusted to that conflict fairly well.

Following his military service, he returned home to Rochester New York. He got a job at Eastman Kodak Company cleaning filmmaking machines. He was employed there for two years. He was next employed at Vello/ITT for a year and a half working on a production assembly line, making parts for cars. Next, he worked for Xerox Corporation on a production assembly line making copier machines. He was employed by Xerox for a year to a year and a half. He was then employed by Martech industries as a delivery truck driver for a year. His next employment was with Riffenberg Construction Company for three years as a flagger/equipment operator. He then worked for Ledestri Foods as a warehouse forklift operator for two to three years.

Around October of 2005, he became employed by KBR and worked overseas in Iraq. During the 14 years between his service in the Gulf War with the Army and his return to Iraq with KBR, he never had any psychiatric care, never saw a psychologist, never saw a counselor,

² To be submitted subsequently, if benefits are granted.

and never had a problem with chronic insomnia. During that period, he was very sociable, easy to get along with, easy to make friends with, and always willing to help other people. Prior to 2005, he did not have a problem with anger management or take any kind of medication for stress or insomnia.

His job for KBR in Iraq was in logistics. He would receive inbound supplies and deal with inbound and outbound convoys that came through Camp Scania. He dealt with convoy personnel on a daily basis for three to four years. He left KBR and Iraq in 2009. During his employment with KBR, convoys were constantly being attacked by the enemy in Iraq. There were attacks on a daily basis. He would see people coming in from the attacks and deal with them personally. He saw people who had been injured, wounded, and killed and saw dead bodies. Once, when he sent out a convoy, they did not even make it ten minutes up the road before they were hit by an explosive device and a passenger was killed. The body was in two pieces and his torso was separated. The driver lost his leg. It was chaotic and there was blood everywhere in the vehicle. The base where he worked was attacked two to three times a week by indirect enemy fire. After about a year of being in Iraq, the rounds started hitting inside the camp and there were casualties in the camp from indirect fire. Initially, there would be no warning and then after the first or second round hit inside the camp, the siren would go off. That meant he was to grab his personal protective equipment and proceed to the nearest bunker. He was required to have his personal protective equipment with him at all times. It included a Kevlar vest weighing 45-60 pounds and helmet weighing 5-7 pounds. He was always at risk of being killed.

Kenny Martin was a co-worker in Afghanistan. He wrote a statement stating that on August 10, 2011, he was working with Claimant and a mortar round hit about 50 feet from their office. When they left the office, they noticed a lifeless body on the ground. They went to a bunker, believing the person had been killed, but later found out he had survived. Claimant had trouble sleeping after this incident.

Claimant started having trouble sleeping in Afghanistan and the problem has continued and gotten worse since then. He wakes up, even though he takes Trazodone, and checks the windows and doors. He has nightmares and flashbacks of being in Iraq or Afghanistan. Even an increased dose of Trazodone has not helped. He still wakes up, checks the doors, and feels like somebody is trying to get him. At most, he gets maybe four hours of sleep. The sleep deprivation makes him feel fatigued.

The Company he went to work for after being in Iraq (with KBR) was ITT Systems. This employment was in Afghanistan. He worked at ITT for approximately two years before beginning his employment with Employer, Computer Sciences Corporation ("CSC"). After ITT Systems, he went to work for SAIC for 3 months and then began work for Employer, CSC. His jobs at KBR, SAIC, and CSC were in logistics and were all at various locations in Afghanistan. During his employment, each of these places was hit with indirect enemy fire. He left Afghanistan in March of 2012 and went to Charlotte, North Carolina.

When he returned home to Charlotte, North Carolina, he started seeing somebody at the Veterans Administration ("VA") for stress problems. He started having issues with anger and

insomnia shortly after he returned to the United States in March 2012. He started having issues with his wife, flashbacks, and nightmares about working overseas. Because his insurance had expired with Employer, he sought medical treatment at the VA clinic. He has been going to the VA clinic for the last two years and has also seen Dr. Capehart and Dr. Thornton whom he has paid out-of-pocket. The carrier has not paid any benefits.

Cross Examination

At the deposition he testified that he had anger issues after returning from the Gulf War. He attributed that to his being newly married. However he does not have a specific recollection of any anger issues prior to his service overseas as a civilian contractor. He returned from service overseas in March 2012 due to an arm injury. He had initially injured his right arm in 2007 while under fire in a mortar/rocket attack in Iraq while employed by KBR. He has had three surgeries as a result of the injury and consequently has physical work restrictions. However, his work in logistics does not require him to do any lifting, and he has met the physical requirements for all of the jobs he has applied for. For some of the jobs that he interviewed for, he reached the next stage, but when he mentioned that he had PTSD, the employers considered it a liability. He has to mention the PTSD because he would need some time off once or twice a month for therapy and he does not want to lie. He would not want to be terminated for not disclosing that information. He recalls Dr. Aranoff telling him not to mention the PTSD when applying for jobs, but he does not recall Dr. Capehart saying that.

When he returned home from his service overseas as a civilian contractor, his wife pushed him to seek some type of treatment or diagnosis. He did not know what was wrong. That is why he went to the VA clinic. During the Gulf War, he saw several dead Iraqis, but he was not responsible for collecting and/or identifying dead bodies. While he was serving overseas as a civilian contractor, he was not responsible for collecting or identifying dead bodies, but he was responsible for sending bodies back in caskets as cargo to the United States. Dr. Thornton may have misinterpreted his statements because he does not recall telling Dr. Thornton that he was moving dead body parts back and forth during the first Gulf War. What he told him was that he was moving supplies back and forth and went through certain areas where there were dead bodies and body parts. He told the same thing to Dr. Capehart. He did not have sleep or anxiety issues after returning from the Gulf War. He continued working at his duty station in Germany and had no issues. He never went to sick call for either sleep deprivation or anger issues. Nor did he have any such issues when he returned home. He has seen Dr. Capehart five to ten times. He receives medication monitoring by Dr. Joshi. He goes for counseling once a month at the VA, but thinks it would be more beneficial to go more often. The VA is unable to provide counseling more than once a month due to the back-log of cases.

Redirect Examination

The treatment at the VA clinic has been helpful. He has not earned any income since he returned from overseas. CX 9 contains documents showing his efforts to look for work. It lists the places he has applied for work. He has not been offered any jobs. He has been applying for logistics positions and various warehouse positions or forklift positions, pretty much anything. When he has mentioned his PTSD condition, he was told that the employer felt it was a hazard.

The employer was afraid he would have a flashback or mishap at work and cause harm to other employees. He takes two medications for PTSD daily. One of them, Citalopram, makes him feel woozy and nauseous. He takes Trazodone to help him sleep.

Documentary Evidence³

CX 1, Medical Records

On 6/28/13, Dr. Deepak Joshi, staff psychiatrist of the Department of Veterans Affairs Hefner Medical Center, wrote a letter stating that Mr. Williams was diagnosed with PTSD on his initial evaluation conducted on 1/10/2013. He is on medication and attending PTSD groups at the veteran's center. Dr. Joshi opined that Williams' mental health will be best if he stays away from the environment that caused him to have PTSD.

On 8/26/13, Dr. Joshi again wrote a letter stating that Mr. Williams was diagnosed with PTSD on his initial evaluation conducted on 1/10/2013. He is on medication and attending PTSD groups at the veterans center. Dr. Joshi again opined that Williams' mental health will be best if he stays away from the environment that caused him to have PTSD.

In a *Psychological Evaluation* dated 11/02/2013, Dr. Roy E. Capehart, PH.D. stated that Le Fonce Williams III was a 42-year-old male, married with 4 children. His chief complaint was PTSD with insomnia. He noted that Mr. Williams joined the U.S. Army after graduation from high school and was sent to the Middle East from 1990-93, where he was involved with the Gulf War. He was a contract-worker in Afghanistan from 2005-12 with Computer Science Corporation. He can't clear his mind of thoughts of the war zone: dead bodies, body parts, mortar attacks. He repeatedly checks windows and doors and fears loud noises with a startled response.

Dr. Capehart noted that the patient presented for an assessment on 10/23/13. During the clinical interview, he was cooperative, with questions. He appeared sad and anxious throughout the interview. He presented with obvious symptoms of PTSD which materialize severe at the time of assessment. He stated that he suffers with all of the classic symptoms of PTSD: sleeplessness, diminished interest, social withdrawal, irritable behavior, anger outbursts, hypervigilance, exaggerated startled behavior, and problems concentrating. He also reported excessive worry, fatigue, muscle tension, restlessness, and being "keyed up".

Dr. Capehart noted that Williams has an increased frequency of negative emotional states, e.g., fear, guilt, sadness, shame, and confusion. He has diminished interest and participation in significant activities, social withdrawal, and persistent reduction of expression of positive feelings associated with PTSD. Dr. Capehart diagnosed: PTSD/chronic, directly experiencing the traumatic events of war and distressing memories. He noted problems with primary support group, problems related to social environments, occupational problems, and other psychological and environmental problems. He noted serious symptoms of obsessional rituals impairment in social and occupational functioning.

³ Although I have read each exhibit *in toto*, this summary is not intended to be a verbatim recitation of everything contained in the exhibits, but rather a summary of the general nature of the relevant exhibits.

In a letter dated 11/6/13, Dr. Capehart stated that Claimant suffers with PTSD and depression. Dr. Capehart noted that Claimant was recently employed by Computer Science Corporation from 2011-2012, working in Afghanistan, where he was involved in events that threatened his life. He has experiences of persistent intrusive recollections of the events, images, thoughts and perceptions of atrocities of war. He is awakened from sleep as if these events are recurring. Dr. Capehart recommended that Claimant not be reassigned to a war zone in Afghanistan where his illness began or could have caused his condition to become aggravated or accelerated. He stated that reassignment could cause co-occurrence and exacerbation of the PTSD and depression and therefore feels that Claimant should not go back to work in any war-zone. He noted that Claimant is to continue with the Veterans' outpatient PTSD group and seeing his psychiatrist.

In a letter dated 5/16/14, Claimant was informed by Clinical Social Worker R. Xavier Green that the VA anger management group therapy would begin on 6/11/14. He was sent details concerning the purpose and goals of the group.

In a Psychological Report dated 5/27/14, Dr. Kirtley E. Thornton, Ph.D, Licensed Clinical Psychologist, evaluated Claimant with the Minnesota Multiphasic Personality Inventory II ("MMPI2"). He noted that Claimant was deployed in the U.S. Army in the Gulf War (1990-93) and received an honorable discharge but did receive an Article 15 due to a heated incident with an NCO. He worked as a contract worker in Afghanistan (2005-12). During these experiences, he experienced interactions with dead bodies, body parts, mortar attacks as well as other common experiences during wartime. As a result, he is experiencing the symptoms of post-traumatic stress disorder such as nightmares of convoys and dead bodies. He began treatment at the VA on 1/10/13 and is on Worker's Compensation.

Dr. Thornton opined that Claimant's responses on the MMPI2 indicated that he responded in a manner suggestive of either a "cry for help" or malingering due to the very high elevations on many of the scales. Dr. Thornton believed that the appropriate interpretation would be a "cry for help". Dr. Thornton concluded that Claimant is experiencing significant levels of PTSD, depression, paranoia, problems in reality testing, anger control issues, and anxiety, among a host of other psychological symptoms. From the reports Mr. Williams provided, Dr. Thornton stated there appears to be some pressure to return Claimant to Afghanistan. Dr. Thornton opined that this would be **VERY** [sic] unadvisable given his precarious emotional state. He opined that Claimant should be actively engaged in intensive outpatient and possibly inpatient treatment. He stated that the previous reports do not appear to have recognized the depth of Claimant's emotional problems, both in terms of his levels of depression, suicidal ideation, and aggressive potential. This is perhaps due to his ability to put up a "good face" despite the internal conflicts he is facing. Dr. Thornton recommended a clinical interview to confirm the diagnosis and statements he endorsed. His diagnostic impression included: post-traumatic stress disorder; major depression, severe with psychotic features. He stated that the severity of the psychosocial stressors was severe and found acute family problems, PTSD symptoms, and depression. He found chronic emotional effects of PTSD. He stated in his global assessment of functioning that Claimant has serious symptoms, impairment in reality testing (depression, anxiety), poses some danger to self or others, and has the presence of delusions and/or hallucinations.

In a letter dated 6/5/14, Psychological Update Outpatient Psychotherapy, Dr. Capehart stated that he treated Mr. Williams in outpatient psychotherapy on 6/5/14, the first session since 11/13/13. Williams is experiencing an increase in his emotional and psychological symptoms. Williams is experiencing very depressive thoughts, suicidal ideation and aggressive potential. There is familial discord. His condition is affecting his marriage, family, and friends. Dr. Capehart stated that the MMPI2 was administered to Williams on 5/26/14 by Dr. Thornton. The test results indicate he is experiencing significant levels of internal distress which is experienced as PTSD, anxiety, depression, paranoia, anger control issues, and a host of other psychological symptoms.

Dr. Capehart opined that Williams' Global Assessment of Functioning is 20-30 indicating serious symptoms, impairment in reality testing (anxiety, depression, PTSD and danger to himself and/or others). Dr. Capehart recommended: never reassign Williams to Afghanistan or any active war zone; continue treatment with a psychiatrist, Dr. Joshi; active engagement in outpatient psychotherapy and if needed inpatient care; continue attending PTSD groups at the veteran center; beginning 6/11/14 - Anger Management Group with R. Xavier Green, Clinical Social Worker. He noted that Mr. Williams was open, active, and receptive to the recommended treatment and tests including the MMPI2.

CX 2, Form LS-203

On 6/26/13, Claimant filed an Employee's Claim for Compensation with the U.S. Department of Labor. He stated that on or about 9/16/12 while eating at the TGIF Restaurant at Kandahar Airfield, Afghanistan, we took enemy mortar, rocket attack. The camp siren sounded and he went into the nearest bunker for cover. He described his injuries as right arm, right hand, right shoulder, stress, anxiety, sleep disorder, and psychological.

CX 3, Form LS-203

On 6/25/13, Claimant filed an Employee's Claim for Compensation with the U.S. Department of Labor. He stated that on 11/26/12, during his employment with CSC, he was subject to numerous enemy attacks while at Camp Leatherneck and Kandahar Airfield, Afghanistan which have caused physical and multiple physiological problems.

CX 4, Amended Form LS-203

On February 14, 2014, Claimant filed an Employee's Claim for Compensation with the U.S. Department of Labor. He stated that during his employment with CSC, he was subject to numerous enemy attacks while at Camp Leatherneck and Kandahar Airfield, Afghanistan which have caused him physical and multiple physiological problems. He stated that the nature of the injury is aggravation or acceleration of conditions.

CX 5, Medical Receipts and Request for Authorization

For each visit on October 22, 2013, November 6, 2013, November 13, 2013, June 5, 2014, and June 12, 2014, Claimant was billed \$90 for psychotherapy service by Dr. Roy E. Capehart.

CX 6, Statements of Co-workers

On July 25, 2013, Kenny Martin wrote a statement stating that on or about August 10, 2011, in Kandahar, Afghanistan, he was working in the office with his co-worker, Le Fonce Williams III, when a mortar round hit and exploded within 50 feet of the office, hitting a k-span building and causing a very loud explosion with rocks flying through the air hitting the building. He and Williams ran out of the office to seek shelter in a bunker. When they left the office, they noticed a lifeless body lying on the ground outside the building. Once in the bunker, they both said that the guy did not make it and commented on how close the round was to hitting the building. They later found out, after being in the bunker for over two hours, that the guy on the ground did live and had non-life-threatening injuries. After this attack, Martin noticed that Williams was often nervous when he heard any loud noises. Le Fonce said he was okay, but always seemed to be stressed. Williams also said he was having trouble sleeping at night.

On July 8, 2013, Antonio Phillips wrote a statement stating that on or about October 2011 he was eating at a TGIF restaurant in Kandahar, Afghanistan with several co-workers including Le Fonce Williams when they started taking enemy rocket/mortar attack. The camp siren alerted and they proceeded to take shelter in the nearest bunker approximately 20 feet from the restaurant. They were in the bunker for close to an hour before the all clear was given. After this encounter, he always noticed Williams seemed to be nervous and jumpy when he heard any noises or items dropped around him. He asked Williams if he was okay, and he replied that he was a little stressed and having trouble sleeping at night.

CX 7, Form LS-207

On July 23, 2013, and July 25, 2013, Employer filed a Notice of Controversion of Right to Compensation.

CX 8, Tax Forms

This exhibit contains Claimant's W-2 forms and other tax forms relating to his income for the years 2010-2012.

CX 9, Claimant's Job Applications

This exhibit reflects that Claimant applied for several jobs with various companies in 2013 and 2014.

CX 10, Memorandum of Informal Conference

This exhibit reflects that on December 2, 2013, the parties participated in an informal conference with the U.S. Department of Labor. The claims examiner recommended that employer/carrier accept and authorize ongoing medical treatment for Mr. Williams' PTSD condition. The examiner also recommended that employer/carrier commence temporary total disability payments from the date of disability, November 6, 2013, to the present and continuing to the date of maximum medical improvement at the compensatory rate of \$1,325.18.

CX 11, Pre-Hearing Statement

This exhibit contains the Pre-Hearing Statement of Claimant.

CX 12, Pre-Hearing Statement

This exhibit contains the Pre-Hearing Statement of Employer.

CX 13, Employer/Carrier's Responses to Discovery Requests

This exhibit contains Employer/Carrier's responses to Claimant's requests for production and admissions.

CX 14, Supplementary Report, Dr. Capehart

In a Psychological Update dated September 30, 2014, Dr. Roy E. Capehart, Ph.D. wrote that he had reviewed the records received from other attending physicians and psychologists. He noted that Claimant was a soldier from 1990 to 1991 in Iraq. From 2005 to 2007, Claimant worked in Iraq as a contract worker and was injured by a rocket/mortar attack. From 2005 to 2012, he was employed by Computer Science Corporation in a war zone in Afghanistan. Based on Claimant's history, he concluded the emotional and psychological symptoms began after Claimant's deployment in Afghanistan, where he was involved in events that threatened his life. It was there that he began to experience significant symptoms of PTSD. This was when Mr. Williams reached out to the VA clinic where he was referred to the VET Center and Dr. Deepak Joshi and diagnosed and given medication for his symptoms (depression, anxiety, insomnia, excessive worry, fatigue, social withdrawal, irritable behavior, anger, hypervigilance, etc.).

EX 1, Deposition of Claimant

On March 4, 2014, Claimant provided deposition testimony. He testified in relevant part as follows. He served on active duty in the Army from 1990 to 1994. He was stationed in Mannheim, Germany and deployed to the Gulf War. He worked in transportation and logistics. He served in the war in Kuwait and Iraq. He returned to the United States in 1993 following his military service in Germany.

He worked at Eastman Kodak from 1993 to 1994 as a production worker. Starting in 1994, he worked at ITT, a subsidiary of General Motors, on the production assembly line. He

worked at ITT until 1996. In late 1996 or early 1997 he began working for Xerox, producing copy machines. He next worked for Rifenburg Construction Co. from 1998 until 2001 as an equipment operator and flagger. He then had a couple temporary jobs. One job was at Peko Industries as a delivery driver for approximately a year and a half. He also worked a part-time janitorial job a few nights a week. Eventually, he took a third job working the weekends at Lidestri Foods, driving a forklift. He was laid off from Lidestri after a year. After that, in Fall 2000, he took a job through a temporary service driving a forklift for a subsidiary of Xerox. That job lasted until April 2005.

In October 2005, he went overseas with Kellogg Brown & Root (“KBR”). His position was logistics coordinator, staging convoys. He worked at KBR until 2009 when he was terminated due to an arm injury. He injured his arm during a rocket attack. He was working in the office when they started taking incoming rounds. As he was running to the bunker, he was pushed into a concrete barrier and his arm was crushed. After leaving KBR, he received treatment in the United States. His next employment was in Kuwait with CSA where he worked for three months in logistics. He then took a job with ITT systems in Afghanistan in 2009. He was assigned to Camp Leatherneck as a logistics coordinator. He worked with ITT until the early part of 2011 when he took a job with SAIC, also in Afghanistan. His job title was transportation movement control specialist. He would pick up M-racks from the flight line and drive them to a staging yard. He was working at Kandahar Airfield. He worked in this position until August of 2011.

He then left SAIC and took a job with Computer Sciences Corporation (“CSC”) as a senior logistician lead. His job was initially at Kandahar airfield for approximately three months, and then he was sent to Camp Leatherneck for five to six months, and then back to Kandahar Airfield. He remained at Kandahar Airfield until March 20, 2012. That is the day he flew back from Dubai to Charlotte, North Carolina because he had reinjured his arm. His position at CSC involved office work, as well as going outside to the flight lines or cargo areas to ship various items.

He currently goes to the Veteran’s Administration (“VA”) outpatient clinic in Charlotte, North Carolina. After March 20, 2012, he did not return to work at CSC. He has not worked at all since then because of his post-traumatic stress disorder (“PTSD”). He was first diagnosed with PTSD in January 2013. He went to see a doctor due to symptoms including depression, very bad anger, sleeplessness, and getting up to check doors and windows. He kept having nightmares about being in Kandahar, having to go into the bunker, and being under rocket or mortar attacks. He first began to experience symptoms of depression and anger in April 2012. He did not have anger issues while he was still overseas. By anger issues, he means becoming easily agitated and confrontational. He has gotten into multiple arguments with his wife very easily. When he thinks about it, there was no reason for him to blow up in these situations. When he returned home from Afghanistan, he could only get four to five hours of sleep. He would wake up nightly with nightmares of being under attack in Afghanistan. He also felt a sense of loneliness and depression. He is depressed that he has been unable to get a job and is unable to return back to work in Afghanistan. He has applied for positions that he is more than qualified for, but has not gotten a job.

He checks doors and windows for a sense of security. He is always under the impression that somebody is trying to get him. The treatment he has sought has not helped reduce his symptoms. The types of conditions and experiences he recalls are mortar attacks, rocket attacks, people blowing themselves up, suicide bombers, and people trying to rush the gates. He personally experienced ten to fifteen mortar attacks. During the time he was at Kandahar airfield, they had mortar and rocket attacks on a daily basis and would get hit two to three times a day. He believes these symptoms affect his ability to work because he feels uncomfortable being around crowds of five to six people. He always sits facing the door to feel more secure. He also has psychological issues, always dwelling on being overseas at Kandahar, taking mortar/rocket attacks, with his life on the line, running to a bunker, wondering if he is going to get killed, and wondering if he is going to see his family again. He currently takes medicine for depression and sleeplessness. The pills relax him to the point where it would be difficult to perform a job. He has not noticed any improvement in his condition. He still feels like his life is on the line every day. He goes to therapy once a month. He attempted to seek therapy more often, but had to pay for it so that it is one of the things he is seeking. He finds therapy helpful. He has attempted to get a part-time job.

His PTSD symptoms first started when he returned to the United States in April 2012. He made an appointment to see a doctor in December 2012 and was seen in January 2013. A lot of people were saying that he had issues, but he was in denial. His wife told him his behavior of constantly waking up to check doors was not normal, that he had never been like that before, and that he needed to get some help. He did not experience any of these symptoms following his military service in the Gulf War. He had some anger issues then due to being newly married, but he did not have sleeplessness or depression when he returned from the Gulf War. The anger issues he had back then were not similar to what he experienced following his return to the United States in 2012. People told him (after his return in 2012) that he had issues because he was very aggressive, agitated, confrontational, and defensive. Also, his wife noticed him waking up during the night, checking the windows, walking through the house, and making sure all the doors were locked. Prior to serving overseas as a contractor, he was not confrontational or defensive by nature. He did not notice the PTSD symptoms until he returned home.

He goes for monthly treatment with a psychologist at the VA Center because he does not have to pay and is on a limited income. He sees a counselor, Melissa Morgan. She says he has not progressed. He tries to incorporate her goals and suggestions into his daily life, but is finding it difficult. He also has not been able to sleep despite medication. He does not believe the nightmares have decreased at all. In January 2013, he saw Dr. Deepak Joshi at the VA outpatient clinic. Dr. Joshi said he had symptoms of PTSD and prescribed medicine for depression and sleeplessness. Dr. Joshi recommended that he see a psychologist, Ms. Morgan. Dr. Joshi does not provide treatment, but monitors his medications.

He has also seen Dr. Roy Capehart. He began seeing Dr. Capehart sometime between July and December of 2013, and has seen him three times. Dr. Capehart diagnosed PTSD. He does not have another appointment with Dr. Capehart because he has had to pay out of pocket for each visit. Dr. Capehart told him it would be beneficial for him to have treatment more often, if possible, twice a month. He prefers individual counseling, because he is not ready to be around a group of people. Dr. Joshi and Dr. Capehart told him he cannot return to work overseas in a war

zone environment. The doctors have told him there is no cure for PTSD. It is something you have to deal with on an ongoing basis.

He has applied for over sixty jobs, mostly on CareerBuilder or with temp agencies. He has been told that he is considered a liability. He received a job offer from Logistics 2020 for a job in Afghanistan in October 2013, but was unable to take it. When he has filled out job paperwork which asked about medical conditions, he was told he was a liability due to his PTSD. He has applied for many positions including docking positions, warehouse positions, and forklift positions for which he was more than qualified, but has not received any of them.

He believes his condition has worsened since he came home and has been diagnosed. He has been more depressed by not being able to obtain employment, and that also makes him angry. He was with his co-worker, Mr. Phillips, on Kandahar Airfield in the TGIF restaurant when they began to take heavy mortar rocket attack. They had to proceed out of the restaurant into a bunker. Kenny Martin was with him another time when they were working in a building and mortar rounds hit within 30 feet of them. They had to run and take cover in a bunker. While they were running, they noticed a person lying on the ground. He told Kenny that the person must have got hit and was dead. These were two separate incidents. Both Phillips and Martin said that they noticed after the attacks that he was always nervous or jumpy when he heard loud noises. He never pursued any treatment while overseas. His experiences in the Gulf War never caused him to seek any type of therapy or caused any significant impairment or problem. Persons of Arabic descent make him uneasy. Sometimes he has unexplained headaches which might be related to lack of sleep.

EX 2, Deposition of Dr. Capehart

Dr. Roy E. Capehart provided deposition testimony on September 5, 2014. He testified in relevant part as follows. He has a Ph.D. in clinical psychology and two master's degrees in psychology and divinity. He has been licensed by the state of North Carolina as a marriage and family therapist since 1980 and has been practicing for about 30 years. He is a member of the American Association of Marital and Family Therapists.

He first saw Le Fonce Williams on October 23, 2013. Mr. Williams sought treatment because he was having personal difficulties in his family, insomnia, and classic PTSD symptoms. He diagnosed Williams with PTSD following the October 23, 2013, evaluation. He recommended that Williams continued to see Dr. Joshi, a staff psychiatrist at the VA. Williams was taking medication for PTSD and depression. He took Williams' medical and social history. Williams said that he had been exposed to dead bodies and mortar attacks and that his symptoms began by checking doors, being unable to sleep, looking out the windows, checking the locks, and being agitated over loud noises. He stated that he had served in the Gulf War and seen dead, burned bodies, body parts, and injuries in the war. From his notes, he thinks that Williams had exposure to atrocities of war both in the Gulf War and in his service as a civilian worker. He did not observe any signs of either malingering or falsification. He has examined Williams six times.

After his initial evaluation, he diagnosed PTSD. During the evaluation, Williams described experiences of intrusive thoughts, events, and images of war atrocities. He determined

that to be diagnosis axis I, via implied major depressive disorder, recurrent, 309.81, generalized anxiety disorder.

On November 2, 2013, he produced a typewritten assessment letter, which was later revised. In the first version of his letter, he did not mention that Williams worked in Afghanistan. He later revised the letter because he made a mistake in that the symptoms were occurring in Afghanistan, as well as in the Gulf War. In the final version of the letter, he noted that Williams was a contract worker in Afghanistan from 2005 to 2012 with Computer Science Corporation. In his letter dated November 2, 2013, he recommended that Williams not be reassigned to a war zone. It is his opinion that Williams could work stateside. On June 5, 2014, he prepared a typewritten report opining that Williams was experiencing an increase in his emotional and psychological symptoms. He made that assessment based on Williams telling him that he had increased drinking and had some issues with his family. His professional recommendation was that Williams never be reassigned to Afghanistan or any active war zone, continue psychiatric treatment, be actively engaged in outpatient psychotherapy and inpatient care as needed, and begin anger management groups.

It is possible that if Williams had PTSD after the Gulf War, it could have been aggravated during his work as a contractor in Afghanistan. He believes that Williams definitely still needs treatment. He does not believe that Williams is faking or malingering.

EX 3, Deposition of Dr. Thornton

Dr. Kirtley Thornton provided deposition testimony on September 5, 2014. He testified in relevant part as follows. He has a PhD in clinical psychology with subspecialties in clinical neuropsychology and clinical electroencephalography. He finished his Ph.D. in 1980 and has been in private practice ever since. Mr. Williams came to see him through his insurance company because he needed a Minnesota Multiphasic Personality Inventory-2 (“MMPI”) completed. When he met Mr. Williams, he had an opportunity to interview him and then administered the MMPI. This occurred on July 22, 2014. He asked Mr. Williams to come back later because he wanted to go over some of the items on the MMPI and be sure about the diagnosis. During the second meeting with Mr. Williams a couple weeks later, he became more aware of the seriousness of his problems. He prepared a written report dated May 27, 2014. In the second meeting with Mr. Williams, he saw a greater emphasis on his paranoia. However the main findings of PTSD and depression with psychotic features remained.

Mr. Williams reported that he had experience with dead bodies, body parts, and mortar attacks in the first Gulf War in the early 1990s and then again as a contract worker in Afghanistan from 2002 to 2005. He interpreted Mr. Williams’ responses as a cry for help. Mr. Williams advised that at one point or several points he was involved with collection of bodies. When he was serving overseas in Afghanistan in the 2000s, Mr. Williams was shown videos of people being beheaded. Williams described a series of dramatic events while overseas in the Gulf War and in Afghanistan where he was at a TGIF restaurant when a mortar shell exploded nearby. There was another incident where a shell exploded and he thought he saw a dead body on the ground. They were separate incidents.

In his review of the record from either Dr. Capehart or the VA hospital, he saw reports of atrocities of war, with no detail. The VA reported some aggression issues that seem to have gotten worse over time. The second report by Dr. Capehart, dated November 2013, indicated flashbacks to dead bodies, body parts, and mortar attacks. These are classic PTSD symptoms: sleeplessness, social withdrawal, irritability, anger, outbursts, hyperventilation, exaggeration, startle behavior, and problems concentrating. Williams was not aware of his symptoms and his wife had to tell him about some of them. Sleep deprivation is a serious issue. He concluded that Mr. Williams was experiencing significant levels of PTSD, depression, and paranoia. Williams did not meet the specific qualifications for paranoia. He recommended a clinical interview to confirm the diagnosis. He does not think Williams is in a good emotional state to work at this point, due to the aggression, anger, sleep problems, and hallucinations. He clearly has to get more effective treatment. In any situation, he might go off very easily and as an employer, you don't want to hire people who are going to be yelling at you.

He believes that Mr. Williams' experience in the first Gulf War contributed to his current state of emotions. It is all part of the picture. He's put 11 years into these wars. Mr. Williams still has all the symptoms of PTSD even with all the treatments. He has not reevaluated Mr. Williams subsequent to May of 2014. He believes Mr. Williams will need 40 to 50 sessions of clinical treatment, EEG biofeedback. The VA counseling does not appear to be having much of an effect although it may be somewhat palliative. Williams may have had some symptoms following the Gulf War but they were not significant enough for his wife to mention them or to seek treatment.

EX 4, Medical Report, Dr. Aronoff

On August 1, 2014, Dr. Gerald N. Aronoff, who is certified by the American Boards of psychiatry and neurology, pain medicine, forensic medicine, and independent medical examiners, conducted a psychiatric independent medical evaluation at the request of Employer. He reviewed the reports of Drs. Joshi and Capehart and Clinical Psychologist Thornton.

He took a medical history from Mr. Williams. He noted that Williams indicated that this was his second tour in the Middle East. He reported working as a government contractor in Iraq alongside military personnel from 2005-2009. Williams reported that as of 2009, when he began his second tour in Afghanistan, he was unaware of any emotional issues. Williams described in detail the stressful situation he encountered serving in Afghanistan with rocket and mortar attacks and the constant fear that the enemy could infiltrate their camp. Williams reported that he did not have any major emotional or psychiatric issues or concerns at the time he served overseas and that they did not manifest themselves until he returned home. However, Williams emphasized that on a daily basis he had fears of rockets exploding at or near the bunkers where he was stationed. Williams reported that in January 2013, his wife made him aware that he was displaying emotional difficulty and unusual behavior. Specifically he was having disrupted sleep and would often get up to check the windows and doors to make sure they were locked. He was also often confrontational and his wife indicated he had trouble controlling his anger.

Dr. Aronoff noted current emotional symptoms including: difficulty sleeping, with frequent nightmares and getting up to check windows and doors; PTSD with nightmares of being in Afghanistan, rocket attacks, witnessing gruesome murders and dead bodies, and frequently

reliving his experiences in Afghanistan; paranoia with feeling that people are after him and people of Middle Eastern descent reminding him of the traumas he experienced in Afghanistan; depression due to inability to find work and people being afraid to hire him when he mentions he has PTSD; suicidal thoughts and fear that he cannot provide for his family; visual hallucinations of thinking he sees someone or something at the windows and mistakenly thinking he was in a bathroom and urinating on the floor; marital strain due to his issues and drinking.

Dr. Aronoff noted that Williams has no past history of emotional, psychological or behavioral problems and that he denied a history of substance abuse. Williams reported that he does not smoke but drinks a half pint of alcohol per day. Williams stated that prior to his wartime experience he was an occasional social drinker. Williams reported that he is not currently working and said he was unable to find a job. He stated that when he gives the history of his wartime experience and mentions PTSD, potential employers view him as a liability. Williams reported that being around people makes him uneasy and that he gets angry easily.

Dr. Aronoff conducted a behavioral examination. He noted that Williams was cooperative, attentive and generally a good historian. He was appropriately groomed and dressed. Initially he was mistrustful and suspicious, and moved his office chair so he would not have his back to the door. General demeanor was spontaneous and there was no noted abnormal activity such as tics or compulsions. Eye contact was good. Motor behavior was appropriate and there was no noted psychomotor retardation or excitement. Mood appeared moderately depressed and there was restricted affect but no inappropriate, flat, or labile affect. Quality of speech was clear and comprehensible and there was no evidence of blocking, pressured or slurred speech. There was no incoherence or relevance evasiveness circumstantiality, loose associations or concrete thinking. There was no noted disorder of thought content. There were no delusions of excessive ideas, ideas of reference, or other thought abnormalities, although the history and initial behavior of moving his chair suggested paranoia, there was no noted appetite disturbance, energy disturbance, or libido disturbance. He noted difficulty sleeping and awakening at night to check the doors and windows. Sensorium was intact for time, place, and person. There was no clouded consciousness or evidence of dissociation. There were no noted memory disturbances for immediate, recent or remote memory. There were no attention disturbances. Distractibility and intelligence was estimated to be in the average range. Judgments appeared intact for family relations. His only social relations now are four other men with PTSD who served with him in Afghanistan. He has no interest in making new friends. He says he would like to work but employment and future plans are uncertain. He cannot specifically deny the potential for self-injury, suicide or assaultiveness, and therefore they must be rated as being potentially present. Attitude toward the examiner was generally neutral. Overall severity of emotional illness is estimated to be moderately severe.

Dr. Aronoff conducted a Beck Depression Inventory and noted Williams' score was significantly elevated and consistent with very severe depression. He conducted a Beck Anxiety Inventory and noted that the score was consistent with moderate anxiety. He conducted a Mini Mental State Examination and noted that it was normal with no evidence of cognitive impairment.

Dr. Aronoff's impression was Post-Traumatic Stress Disorder and depression. In his discussion, he stated that there is no evidence of persistent or recurrent symptoms of depersonalization or derealization. The traumatic stressors alleged to have caused the PTSD are of sufficient severity to produce this disorder. He stated that Williams did not have a significant pre-incident psychiatric history and this includes his first four years of working in a war zone during the Iraq war. Dr. Aronoff opined that Williams' degree of depression appears to be in the moderate range. The MMPI2 psychological report indicated that Williams is experiencing significant levels of PTSD, depression, paranoia, problems in reality testing, anger control issues, and anxiety among a host of other psychological symptoms.

In response to Employer questions, Dr. Aronoff opined that there is substantial data to support that Claimant suffers from a mental illness. He opined that there is no evidence that Williams complains of any symptoms that would suggest a mental illness related to the service he provided during the time he was stationed in Iraq. He further stated that it has not been established that Williams suffered from a mental disorder as a result of the years he spent in Iraq or any other history of pre-existing mental illness. Should there be additional evidence to suggest or confirm that he had such a mental illness, this would be important information to have as it would possibly affect the opinion that his diagnoses of PTSD and depression were related to his experiences while serving in Afghanistan.

EX 5, Medical Records, Dr. Joshi

This exhibit contains various records from January-August 2013 by psychiatrist, Dr. Deepak Joshi, indicating that he saw Claimant for psychiatric symptoms related to PTSD and depression. The records indicate that Claimant was diagnosed with PTSD on his initial evaluation conducted on January 10, 2013. He is on medications and attending PTSD groups at the Veteran's Center. Dr. Joshi opined that Claimant's mental health will be best if he stays away from the environment that caused him to have PTSD.

EX 6-8, Forms LS-203

See CX 2-4, above.

EX 9, EX 10, Forms LS-207

On July 23, 2013, Carrier filed a controversion of claim, stating that an investigation was pending. On July 21, 2013, carrier filed another controversion of claim stating that there is no medical evidence to support the alleged injury of PTSD.

EX 11, EX 12, Forms LS-18

On December 19, 2013, and February 19, 2014, Claimant and Employer filed their prehearing statements respectively.

EX 13, EX 14, Claimant's Responses to Discovery

This exhibit contains Claimant's answers to interrogatories and responses to requests for production.

EX 15, Medical Records

This exhibit contains 179 pages of records from the Salisbury Veteran's Administration Medical Clinic. Many of these records do not relate to Claimant's PTSD condition. The records confirm that, beginning in January 2013, Claimant was seen for PTSD and prescribed medication for PTSD and sleep problems.

EX 16, EX 17, Settlement Documents

Documents in these exhibits relate to the settlement of Claimant's claim for injuries to his right arm. On December 3, 2013, the parties signed a Joint Petition and Application for Approval of Settlement. On January 17, 2014, the Settlement Agreement was approved by the District Director of the U.S. Department of Labor Office of Workers Compensation Programs.

EX 18, Form LS-208

This form indicates that on January 21, 2014, Claimant received final payment pursuant to the settlement of the claim for his arm injury.

Credibility of Parties

It is well-settled that in arriving at a decision in this matter, the finder of fact is entitled to determine the credibility of the witnesses, to weigh the evidence, and draw her own inferences from it, and is not bound to accept the opinion or theory of any particular medical examiner. *Banks v. Chicago Grain Trimmers Association, Inc.*, 390 U.S. 459, 467 (1968); *Louisiana Insurance Guaranty Ass'n v. Bunol*, 211 F.3d 294, 297 (5th Cir. 2000); *Hall v. Consolidated Employment Systems, Inc.*, 139 F.3d 1025, 1032 (5th Cir. 1998); *Atlantic Marine, Inc. v. Bruce*, 551 F.2d 898, 900 (5th Cir. 1981); *Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9, 14 (2001). Any credibility determination must be rational, in accordance with the law and supported by substantial evidence, based on the record as a whole. *Banks*, 390 U.S. at 467; *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 945 (5th Cir. 1991); *Huff v. Mike Fink Restaurant, Benson's Inc.*, 33 BRBS 179, 183 (1999).

In this case, Claimant's testimony is consistent with the medical data contained in the evidence of record. I find Claimant's testimony regarding the development and extent of his PTSD to be genuine and complete. I therefore find Claimant's testimony to be credible.

I also find the deposition testimony and/or medical reports of Drs. Joshi, Capehart, Thornton, and Aronoff to be credible. I have given probative weight to all the credible witnesses and reports.

Findings of Fact Based on the Record

After review of the complete record and arguments of the parties, I make the following findings of fact:

The record shows that Claimant, Le Fonce Williams, III, who is 43 years old, was a member of the United States Army between the ages of 18 and 22. In 1991, he deployed to the Gulf War in Saudi Arabia and Iraq for ten months. The record does not reflect that Claimant developed any symptoms of PTSD either during or as a result of his military service. During the period between the end of his military service and 2005 when he became employed by KBR in Iraq, Claimant did not display symptoms of PTSD or seek treatment for PTSD.

Between 2005 and 2009, Claimant was employed by KBR as a civilian contractor and deployed to Iraq to work in logistics. During this time period, he encountered people who had been seriously injured or killed in enemy attacks and personally saw dead bodies and body parts. The base where he worked was attacked two to three times a week by indirect enemy fire and Claimant lived under the constant threat of serious bodily injury or death. In 2009, Claimant began work at ITT systems as a civilian contractor in Afghanistan performing logistics work. Following his approximately two-year tenure with ITT Systems, he worked for SAIC in Afghanistan for two months as a logistician. During his employment in Afghanistan, the base where Claimant was employed was frequently hit by indirect enemy fire. The record does not reflect, however, that Claimant displayed any symptoms of PTSD during his employment by KBR, ITT Systems, or SAIC.

In 2011, Claimant became employed in logistics for Employer, Computer Sciences Corporation ("CSC"), in Afghanistan. In early 2011, Claimant was stationed at Kandahar Airfield. He was then sent to Camp Leatherneck for five to six months before returning to work at Kandahar Airfield. Claimant credibly testified that during his time at Kandahar Airfield, mortar and rocket attacks occurred two to three times per day. In August 2011, Claimant was working in his office when a mortar round hit and exploded within 50 feet of the office, causing a very loud explosion and sending rocks flying into the air. Claimant ran out of the office and had to seek shelter in a bunker. When he exited the office, he saw a body lying on the ground. Following this attack, Claimant was often nervous when he heard loud noises, was visibly stressed, and reported trouble sleeping. (CX 6). In October 2011, while eating at a restaurant on base in Kandahar with co-workers, the base came under enemy rocket and mortar attack. Claimant had to take shelter in a bunker approximately 20 feet from the restaurant for approximately an hour before the all clear was given. After this event, coworkers noticed that Claimant was visibly nervous and jumpy when he heard loud noises or items were dropped near him. Claimant reported feeling stressed and having trouble sleeping. (*Id.*). During his employment for Employer, Claimant was under constant threat of serious injury or death. I find that Claimant first began exhibiting symptoms of PTSD during his employment by Employer, CSC.

Claimant left his employment with Employer in March 2012 due to an arm injury and returned home. Upon his return home, Claimant continued to have trouble sleeping and, as of the date of the hearing, reported awaking frequently, constantly checking the windows and doors,

having nightmares and flashbacks to the war zone, feeling uncomfortable around groups of people, and feeling like people were trying to harm him. He sleeps approximately four hours per night and the sleep deprivation makes him feel fatigued. After his return home, Claimant started having issues with anger, as well as the flashbacks and nightmares. His wife encouraged him to seek medical treatment.

Claimant first sought treatment at the VA clinic in January 2013. He was first diagnosed with PTSD by Dr. Deepak Joshi on January 10, 2013. He was evaluated by Dr. Capehart on October 23, 2013. In a report dated November 2, 2013, Dr. Capehart diagnosed Claimant with severe, chronic PTSD and depression. He recommended that Claimant not be re-assigned to a war zone. In a report dated May 27, 2014, Dr. Thornton concluded that Claimant is experiencing significant levels of PTSD, depression, paranoia, problems in reality testing, anger control issues, and anxiety, among a host of other psychological symptoms. He recommended that Claimant be engaged in intensive psychological treatment and not reassigned to a war zone. In an updated report dated June 5, 2014, Dr. Capehart noted that Claimant is continuing to experience significant levels of internal distress which is experienced as PTSD, anxiety, depression, paranoia, anger control issues, and a host of other psychological symptoms.

On August 1, 2014, Dr. Aronoff, at the request of Employer, conducted an independent medical examination of Claimant. He diagnosed Claimant with PTSD and depression. He stated, and I find based on review of all the medical evidence, that Claimant did not display symptoms of PTSD while stationed in Iraq. I find that Claimant did not display such symptoms either during his service in the military or during his subsequent employment in Iraq as a civilian contractor. Dr. Aronoff opined and I find that Claimant's symptoms of PTSD and depression were related to his experiences while serving in Afghanistan as a civilian contractor. I specifically find that Claimant's symptoms of PTSD began during his employment in Afghanistan for Employer.

Claimant has not been employed since he returned from Afghanistan in March 2012. Claimant has made several attempts to find work and has been hindered in finding employment due to his diagnosis and symptoms of PTSD.

Injury Arising Out of Employment

Section 2(2) of the LHWCA, 33 U.S.C. § 902(2), defines an “injury” as an “accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury...” Section 20(a) provides a presumption that a claim comes within the provisions of the Act “in the absence of substantial evidence to the contrary.” To establish a prima facie claim for compensation, a claimant has the burden of establishing that: (1) the claimant sustained physical harm or pain; and (2) an accident occurred in the course of employment, or conditions existed at work, which could have caused, aggravated, or accelerated the harm or pain. *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991); *Kier v. Bethlehem Steel Corp.*, 16 BRBS 128, 129 (1984).

Once this prima facie case is established, a presumption is created under § 20(a) that the employee's injury or death arose out of employment. A claimant's subjective credible complaints of symptoms and pain can be sufficient to establish the element of physical harm necessary for a prima facie case and the invocation of the § 20(a) presumption. 33 U.S.C. § 920(a); see *Sylvester v. Bethlehem Steel Corp.*, 14 BRBS 234, 236, aff'd sub nom. *Sylvester v. Dir.*, OWCP, 681 F.2d 359 (5th Cir. 1982).

In order to establish the second element, that is, to show that conditions at work could have caused, aggravated or accelerated the harm or pain, a claimant needs to show specifically that conditions existed at work that could have caused or aggravated the harm or pain. A claimant under the Defense Base Act must satisfy the same requirements to prove causation as any other claimant under the LHWCA. See *Piceynski v. Dyncorp*, 31 BRBS 559 (ALJ), remanded at BRB No. 97-1451 (July 17, 1998), reconsidered at 36 BRBS 134 (ALJ) (1999). In Defense Base Act cases, the "condition or course of employment" standard has been subsumed into the "zone of special danger" doctrine. *O'Leary v. Brown-Pacific-Maxon, Inc.*, 340 U.S. 504 (1951). As first enunciated by the Supreme Court: "The test of recovery is not a causal relationship between the nature of employment of the injured person and the accident [citation omitted]. 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." *Id.*, at 506-07. If the conditions of employment create a zone of special danger out of which the injury arises, then a causal connection exists. See *Ilaszczat v. Kalama Servs. Inc.*, 36 BRBS 78 (2002), aff'd sub nom. *Kalama Servs. Inc. v. Dir.*, OWCP, 354 F.3d 1085, 37 BRBS 122 (CRT) (9th Cir. 2004) (per curiam), cert denied, 543 U.S. 809 (2004).

Once a claimant establishes a prima facie case and thereby invokes the presumption, the burden of proof shifts to the Employer to rebut it with substantial countervailing evidence that the claimant's condition was not caused or aggravated by his employment conditions. *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991). The Benefits Review Board has held: "Unequivocal testimony of a physician that no relationship exists between the injury and claimant's employment is sufficient to rebut the presumption." *Holmes v. Universal Maritime Serv. Corp.*, 29 BRBS 18, 20 (1995). If the presumption is rebutted, it no longer controls and the record as a whole must be evaluated to determine the issue of causation. *Id.* In such instance, the administrative law judge must weigh all of the evidence relevant to the causation issue. If the record evidence is evenly balanced, then the employer must prevail, because the claimant has not met the ultimate burden of persuasion. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994).

Discussion

I find that Claimant has established a *prima facie* claim for compensation. With regard to the first prong of a prima facie case, i.e., establishing that claimant sustained physical harm or pain, I find that Claimant's testimony and the medical evidence of record irrefutably establish that Claimant sustained physical harm or pain in the form of PTSD and depression. Drs. Joshi, Capehart, Thornton, and Aronoff have all confirmed this diagnosis. At the hearing, Employer agreed with Claimant's summary of his work history, medical treatment, and various diagnoses.

(Tr. at 10). Therefore, I find there is no issue that Claimant has sustained the harm of PTSD and depression.

With regard to the second prong of the prima facie case, i.e., whether an accident occurred in the course of employment, or conditions existed at work, which could have caused, aggravated, or accelerated the harm or pain, I find that the evidence clearly establishes that this was the case. Claimant's testimony, as well as the statements of his co-workers, establish that while employed for Employer in Afghanistan, Claimant worked in an environment where he was subject to constant threat of serious bodily injury or death and personally experienced at least two traumatic events whereby he was the victim of enemy mortar/rocket attacks. I find that the evidence establishes that during his work in Afghanistan for Employer, Claimant developed symptoms of PTSD, such as insomnia, anxiety around loud noises and groups of people, paranoia, and nightmares. Based on this evidence I find that conditions existed during Claimant's employment by Employer which could have caused or aggravated or accelerated his harm or pain. I further find that Claimant's symptoms have continued to worsen since they first developed during his employment by Employer.

I find that Employer has failed to present substantial evidence to rebut Claimant's prima facie case of a psychological injury which could have been caused, aggravated or accelerated by the conditions of his employment. The evidence from each of the medical professionals, set forth above, including that submitted by Employer, i.e., that of Dr. Aronoff, supports that Claimant suffered an employment related psychological injury. Even *assuming arguendo* that Employer's evidence could be deemed sufficient to rebut the 20(a) presumption of causation, I further find that the evidence as a whole establishes that Claimant's psychological injuries are work-related.

Nature and Extent of the Claimant's Disability

At the hearing, Employer stated that it was disputing the nature and extent of Claimant's injuries. (Tr. at 10).

Claimant contends that he has a temporary total disability and is entitled to temporary total disability compensation from June 28, 2013, to the present and continuing. He seeks reasonable and necessary medical treatment, including reimbursement for his medical expenses, as well as attorney's fees and expenses.

The LHWCA defines disability 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). Disability under the Act involves "two independent areas of analysis—*nature* (or duration) of disability and *degree* of disability." *Stevens v. Dir., OWCP*, 909 F.2d 1256, 1259 (9th Cir. 1990). Both areas are addressed below.

Nature of Disability

A disability is generally considered to be of permanent duration when the worker has reached a point of maximum medical improvement, and it is appropriate to find that maximum medical improvement has been reached where disability has been lengthy, indefinite in duration,

and lacks a normal healing period. *Morales v. Gen. Dynamics Corp.*, 16 BRBS 293, 296 (1984), *aff'd sub nom Dir., OWCP v. Gen. Dynamics Corp.*, 769 F.2d 66 (2nd Cir. 1985). Maximum medical improvement is determined by medical evidence as of the date on which the employee has received the maximum benefit of medical treatment. *Mason v. Bender Welding & Mach. Co.*, 16 BRBS 307, 309 (1984).

I find that the evidence does not establish that Claimant has reached maximum medical improvement. Rather the medical evidence indisputably establishes that he continues to manifest symptoms of PTSD and that he would benefit from further psychological treatment.

Extent of Disability

Extent of disability is both a medical and economic question, and whether Claimant is totally or partially disabled will depend on whether he retains any wage earning capacity. To establish a *prima facie* case of total disability, Claimant must show that he is unable to return to his regular or usual employment due to his work-related injury. *Elliott v. C & P Telephone Co.*, 16 BRBS 89 (1984); *Manigault v. Stevens Shipping Co.*, 22 BRBS 332 (1989). A residual disability is considered permanent if and when the employee's condition reaches maximum medical improvement. *James v. Pate Stevedoring Co.*, 22 BRBS 271, 274 (1989); *Turney v. Bethlehem Steel Corp.*, 17 BRBS 232, 235 (1985). In order to determine whether Claimant has shown total disability, I must compare the employee's medical restrictions with the specific physical requirements of his usual employment. *Carroll v. Hanover Bridge Marina*, 17 BRBS 176 (1985).

Once a Claimant establishes a *prima facie* case of total disability, the burden shifts to the employer to establish suitable alternative employment. *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 1038 (5th Cir. 1981); *Morehead Marine Services, Inc. v. Washnock*, 135 F.3d 366, 32 BRBS 8 (CRT) (6th Cir. 1998). To establish the existence of suitable alternative employment, Employer must show that the specific and general jobs identified are within Claimant's physical and mental capacities and that the jobs are realistically available to Claimant in his local community. *P & M Crane Co. v. Hayes*, 930 F.2d 424, 24 BRBS 116 (CRT) (5th Cir. 1991). Claimant need not establish that he diligently sought employment until Employer has first established suitable alternate employment. *Piunti v. ITO S 23 BRBS Corp. of Baltimore*, 23 BRBS 367 (1990); *Roger's Terminal & Shipping Corp. v. Director, OWCP*, 784 F.2d 687 (5th Cir.), cert denied, 479 U.S. 826 (1986).

Claimant testified that his usual job involved performing logistical work for military operations in Afghanistan. The job involved exposure to danger and violence including *inter alia* rocket/mortar attacks.

Claimant testified that he does not believe he can return to his former job because he does not have the psychological ability to perform it. He testified that he has frequent flashbacks, anger control problems, paranoia, nightmares and insomnia. He stated he has problems with social interaction, anger management, and paranoia. He also testified that he feels constant fatigue and is on medications which make him feel woozy and nauseous.

The medical evidence establishes that Claimant is unable to return to his usual employment. Dr. Joshi opined that Claimant's mental health will be best if he stays away from the environment that caused him to have PTSD. Dr. Capehart opined that Claimant should not go back to work in any war-zone. Dr. Thornton opined that it would be very inadvisable for Claimant to return to work in Afghanistan due to his precarious emotional state. Dr. Aronoff did not specifically opine on whether Claimant could return to his usual employment, but his opinion indicates that he believes Claimant suffers from mental illness due to his employment in a war zone, and I therefore conclude, based on the totality of his report, that he would not find it advisable to return Claimant to that work environment. Based upon my review of all the evidence of record, I find that Claimant is unable to return to his usual employment and is totally disabled.

Suitable Alternative Employment

Once a claimant proves he cannot return to his usual employment, the burden shifts to the employer to show the availability of suitable alternative employment. While an employer need not act as an employment agency, it still "must point to specific jobs that the claimants can perform." *Bumble Bee Seafoods v. Director, OWCP*, 629 F.2d 1327 (9th Cir. 1980).

Employer presented no evidence of suitable alternative employment. Although the record contains a vocational report and labor market survey dated November 6, 2013, it does not address Claimant's psychological restrictions. (EX 16). As Employer has not identified any appropriate jobs, I find Claimant has a temporary total disability.

Compensation, Credits, Interest, and Attorney's Fees

Compensation

I find that Claimant has established entitlement to temporary total disability from June 28, 2013, to the present and continuing, subject to a credit employer may have for payments made under a separate claim for an arm injury. The parties have stipulated that Claimant's average weekly wage at the time of injury was \$3,653.85.

Interest

Interest shall be assessed on all overdue compensation payments and medical expenses. See *Ion v. Duluth, Missabe and Iron Range Railway Co.*, 31 BRBS 75, 79-80 (1997); *Watkins v. Newport News Shipbuilding & Dry Dock Co.*, *aff'd in pertinent part and rev'd on other grounds*, *Newport News v. Dir.*, *OWCP*, 594 F.2d 986 (4th Cir. 1979). The purpose of interest is not to penalize an employer but, rather, to make claimants whole, as an employer has had the use of the money until an award issues. *Smith v. Ingalls Shipbuilding Div., Litton Systems, Inc.*, 22 BRBS 47, 50 (1989); see also *Renfroe v. Ingalls Shipbuilding, Inc.*, 30 BRBS 101, 104 (1996). Interest is mandatory and cannot be waived in contested cases. *Byrum v. Newport News Shipbuilding & Dry Dock Co.*, 14 BRBS 833, 837 (1982). The Board has held that the date that an employer knows of an injury, and therefore incurs an obligation to pay benefits under Section 14(b), is critical in determining the onset date for the accrual of

interest. *Renfroe v. Ingalls Shipbuilding, Inc.*, 30 BRBS 101, 105-06 (1996) (retired employee with hearing loss); *Meadry v. Int'l Paper Co.*, 30 BRBS 160 (1996). It is well established that interest applies to awards of medical benefits, whether costs are initially borne by the claimant or medical providers. *Hunt v. Dir., OWCP*, 999 F.2d 419, 27 BRBS 84 (CRT) (9th Cir. 1993); *Ion v. Duluth Missabe & Iron Range Ry Co.*, 32 BRBS 268 (1998).

Although not specifically authorized in the LHWCA, it had been an accepted practice that interest at the rate of six percent (6%) per annum was assessed on all past due compensation payments. *Avallone v. Todd Shipyards Corp.*, 10 BRBS 724 (1974). However, the Board has now concluded that inflationary trends in our economy have rendered a fixed six percent (6%) rate no longer appropriate to further the purpose of making Claimant whole, and held that “the fixed percent rate should be replaced by the rate employed by the United States District Courts under 28 U.S.C. § 1961.” This order incorporates by reference this statute and provides for its specific administrative application by the District Director. See *Grant v. Portland Stevedoring Company*, 17 BRBS 20 (1985). The appropriate rate shall be determined as of the filing date of this Decision and Order with the District Director. *Id.*

Attorney's Fees

Claimant's Counsel is hereby allowed thirty (30) days from the date of service of this decision to submit an application for attorney's fees. A service sheet showing that service has been made on all parties, including Claimant, must accompany this petition. Parties have twenty (20) days following the receipt of such application within which to file any objections thereto.

ORDER

On the basis of the foregoing decision, Claimant's request for disability compensation is granted.

- A. To the extent that it has not already done so, Employer shall pay Claimant temporary total disability compensation benefits beginning June 28, 2013, to the present and continuing, based on an average weekly wage of \$3,653.85.
- B. Employer/Carrier shall pay Claimant for all reasonable and necessary medical care and treatment arising out of his work-related injuries pursuant to Section 7(a) of the LHWCA, in accordance with this Order.
- C. Interest shall be paid on all accrued benefits computed from the date each payment was originally due until paid. The appropriate rates shall be determined as of the filing date of this Decision and Order with the District Director.
- D. All computations are subject to verification by the District Director who, in addition, shall make all calculations necessary to effectuate this Order.

SO ORDERED

CHRISTINE L. KIRBY
Administrative Law Judge